

COVID-19 and Labour Protection in India
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This research brief analyses labour protection in India during the first year of the COVID -19 pandemic (From 1 March 2020 to 31 March 2021). It first briefly assesses transitions in the labour policy acquis of the country from protectionism in the post-independence era to flexibility during the years of structural adjustment. It subsequently charts the extent to which COVID-19 affected labour protection in India as a whole and in two subnational entities: the state of Kerala and the union territory of Delhi. The brief demonstrates variations in the labour policy acquis at the centre and in the sub national locations and highlights differential responses of the centre and the states to the pandemic and the extent to which these led to intergovernmental tensions and diluted policy effectiveness. The conclusion identifies areas for future research.

Introduction: Labour Policy in a Federal Set-Up

In a complex federal and diverse polity, such as India, the management of the pandemic requires a coordinated approach between the centre and the states. Public health, public order, police and sanitation are all subjects in the list of state legislative powers, while labour is enlisted as a concurrent entry under the Seventh Schedule of the Indian constitution This means that both the centre and the states can legislate on labour (Fig. 1).

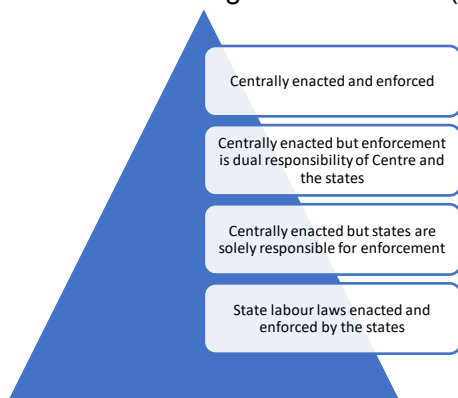


Figure 1. Categorization of labour legislations in India

Source: constructed by authors with data from National Crime Information Bureau’s Report on Labour.
https://ncib.in/pdf/ncib_pdf/Labour%20Act.pdf

The protection of workers in the context of a pandemic is not the result of targeted labour policy alone, but is in fact influenced by the complex division of powers on several allied areas in the federal set up. For instance, the centre is entrusted with the coordination of inter-state migration and inter-state quarantine. However, entries 23-26 of the concurrent list deal with social security and social insurance, employment and unemployment and the prevention of the extension from one state to another of infectious or contagious diseases. While in the concurrent areas the centre and the states can both issue regulations independently, when in conflict, the centre’s view prevails (Sahoo and Gosh 2021: 8).

Labour Policy in a context of marketization

In line with the push for state led industrialisation and a planned economy, labour legislation in post-colonial India attempted to adopt a protectionist stance. The First National Commission on Labour (1969) and the laws adopted during this period were intent on broadening labour protection, abolishing child and bonded labour, introducing social security, maternity benefits and equal pay legislations and standardising collective bargaining. However, criticism that a large majority of workers in India were outside the purview of labour regulation persisted.

The shift from state to market-led development with the implementation of structural adjustment policies in the 1990s altered the policy rhetoric on labour in independent India. This shift became apparent in the report of the Second National Commission of Labour (NCL) in 2002, which recommended a policy reorientation that would enable more ‘flexibility’ in the labour market and asserted the need to do away with stringent protectionist policies as they affected the ‘ease of doing business’ in the country. The second NCL suggested the amalgamation of several existing central and state laws on labour and a simplification of the regulatory and bargaining mechanism, which set in motion a long process of standardising India’s labour laws into four labour codes, which reached its culmination in 2020. While many experts and unions acknowledged the need to simplify

labour laws and regulatory structures, the move has seen considerable resistance from trade unions over the last decade and a half.

The BJP-led NDA government which was elected into office in 2014 with a single party majority has long campaigned against what it perceives as the over-regulation and incoherence of labour law practices in India and continued on the path of flexibilization inaugurated by previous regimes. Thus, the four new codes on labour - (1) the Wage Code; (2) the Industrial Relations (IR) Code, (3) the Social Security (SS) Code and (4) the Occupational Health and Working Conditions (OHWC) Code were introduced in parliament during 2019 and 2020, referred to a parliamentary standing committee, and quickly passed without much debate or the presence of the opposition during the pandemic. According to Jha (2016: 80), the main objectives of its suggested changes in labour law can be summarized as (1) increasing the ability to hire and lay off workers based on market forces; (2) minimize the influence of trade unions, collective bargaining and industrial action; and (3) increase the freedom of state governments to invest and attract capital. Notification of rules for all four codes by the states is awaited.

The codes have been criticized for two main reasons. Firstly, they were negotiated without the input of trade unions or more broadly the involvement of forums such as the Indian Labour Conference, a tripartite advisory body in which trade-unions, employers and representatives of the state meet. This forum has not met in more than five years. Secondly, they further dilute an already rudimentary framework of labour protection, leaving large numbers of workers within the unorganized sector unprotected or diluting their level of protection and enforcement mechanisms compared with previous regulations.

Indeed, it is important to stress that two categories of workers have remained largely unaffected by existing labour policy (even in the era of state-led development): workers who are employed in the non-organized sector and many workers who are classified as 'migrant workers' (nearly all of whom are active in the informal or non-organized sector; Jha 2016). India's most important labour laws are *enforced* only in relation to formal workers in the organized sector, even though these laws may *apply* to informal workers also. The non-

organized sector accounted for 93 percent of all workers in 2014. Even a majority of workers in the so-called 'organized' sector are now classified as informal workers (Jha and Kumar, 2021: 422-423), adding to their precariousness.

Most migrant workers are employed in the informal sector. However, because they are often not registered properly in their locality of work and lack proper documents migrant workers are often excluded from important service provision (such as the PDS food security scheme, free education or health care). Access to any protection for workers in the informal sector depends on their registration under welfare boards, which has remained a huge challenge ever since their inception. Furthermore, most migrant workers are disenfranchised: they may not be able to leave their place of work to cast a vote in their district or state of origin (Kumar and Choudhury 2021).

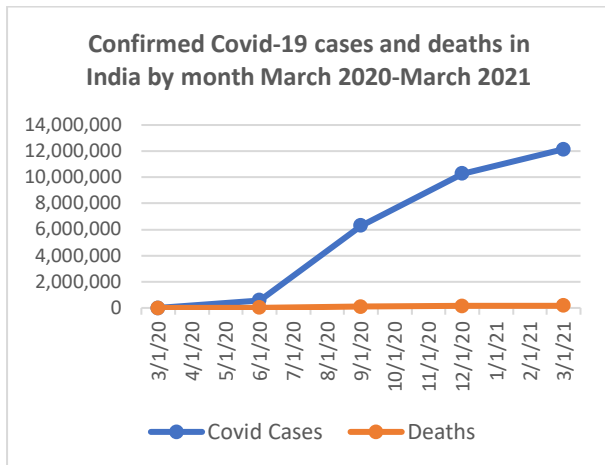
The exact number of migrant workers in India is not known. The 2011 population identified 455.8 million migrants in India, of which 67.8 percent are women and 32.07 percent are men (Kumar and Choudhury 2021: 4). Two-thirds of women migrate because of marriage, more than a third of men do so because of work/employment. Overall, the Economic Survey (2016-17) put the inter-state migration population at 60 million. Of all states, Maharashtra has the highest intake and Uttar Pradesh (UP) the highest outtake of workers.

Indian government's response to Covid 19: March 2020- March 2021

The first case of COVID-19 was reported on 30 January 2020 in the state of Kerala. The first death attributed to COVID-19 in India was reported on 13 March 2020. Figure 2 gives a snapshot of Covid cases and deaths in India between March 2020 to March 2021.

Given the localized nature of COVID-19 outbreaks, the states played a role in the initial management of the pandemic, albeit often based on dated legislation such as the Epidemic Diseases Act (1895) or the Indian Penal Code. However, the spread of COVID-19 across India prompted a central coordinating response, given the shared responsibilities in labour, crisis management, and health, as highlighted in the introduction.

Figure 2.



Source: Constructed by authors with data from Covid19india.org

The immediate outcome was unilateral centralism rather than coordination (Sahoo and Ghosh 2021). The sudden imposition of a nation-wide lockdown was communicated with just four-hours' notice and without consulting the states. The national lockdown placed strong 'coordinating' powers in the union Home Ministry, which issued guidelines on physical distancing, economic activities (such as opening of shops), the closing down of public transportation or even the purchasing of PPE. The centre even sent 'monitoring teams' to the states to check compliance with these guidelines adding to their resentment, especially of state governments ruled by parties in central opposition (such as Kerala, West Bengal or the Union Territory of Delhi).

The Centre also had the pandemic defined as a 'National Disaster' (pandemics are nowhere listed in the constitution, as such the management thereof can be considered as a 'residual power' which the Indian constitutional set-up entrusts to the Centre. This enabled the Centre to invoke the Disaster Management Act (2005), according to which it can issue binding directives to state governments and convict any person who does not comply with central and state guidelines with 1-5 years imprisonment.

The economic contraction of the lockdown has been severe, with 120 million job losses reported within the first few months of the lockdown (Jha and Kumar 2020: 46). The impact was highest in the construction sector (-50.3 %) followed by the trade, hotel, transport and communication services (-47%), manufacturing (-39%) and mining (-23.3%).

The central government did not prepare immediate measures to accommodate the plight of migrant workers in view of its suddenly imposed lockdown. Although it (and state) governments had advised employers to pay "full wages and salaries" it did not insist on this measure when its non-enforcement was challenged in court, propagating mutual settlement 'as per the Industrial Dispute Act' instead (Kumar and Choudhury 2021). Employment income support in the form of a provident fund for people earning less than Rs15,000 was only available to workers in the organized sector. Ration cards providing access to food were only made available to workers at their place of work, thus leaving migrating labourers outside the ambit of such measures. These workers suffered grossly without adequate support and relief.

It is argued that a crisis as severe as that provoked by the lockdown should have come with a massive cash injection under the form of direct cash transfers or enhanced spending on physical or social infrastructure. Instead, the government's central relief package (self-reliant India or *Atmanirbhar Bharat*) offered only additional expenditures of 1 percent GDP above earlier made commitments in previous budget announcements. Key to this is the Rs 400 billion rise in support for the MGNREGA programme, an amount unlikely to be high enough to meet rising demand (Jha and Kumar, 2020: 431). Additional pledges were made to increase support to workers who do not normally qualify for PDS food supply, to work towards a 'One Nation, One Ration Card' in the foreseeable future, to pilot a rural public works scheme promising 125 days of paid work to six million migrants from 116 districts across six states and to enable states to access the PM-Cares fund to support their relief efforts. As Rajan (2020: 5) points out in all returning international migrants (1-1.5 million from the Gulf States alone, of whom many to Kerala) were overlooked. Most domestic migrants could not access any welfare measures since they were not registered under any welfare board.

State policy and response to labour prior to Covid: Kerala and Delhi

Unlike the BJP-led government at the Centre the subnational incumbents in Kerala

and Delhi are the Communist-led Left Democratic Front (LDF) government in Kerala and the centrist-welfarist Aam Aadmi Party (AAP) in Delhi. This had led to active policy initiations in relation to general welfare including labour prior to the pandemic. Some of the relevant labour policies amended or launched by the Kerala and Delhi governments prior to the pandemic are listed in the left columns of Tables 1 and 2. In Kerala, these more progressive labour laws are not just linked to Left-front politics, but to deeper structural causes, such as earlier and deeper land-reform than in the rest of India in a context of cross-class social mobilization, the legacy of missionary schools, the comparably low share of upper caste Hindus among the population and the competitive nature of state party system (Heller, 2000; 2013).

Table 1. Labour Policies of Kerala (before and since Covid-19)

Before Covid	Response to Covid
Minimum Wages Act (Kerala Amendment) Act 2017	Kerala State Planning Board initiated the prioritisation of Plan Schemes of 2020-21
Kerala Shops and Commercial Establishment (Amendment) Act 2018	Budgeting for immediate availability of resources
The Industrial Dispute (Kerala Amendment) Act 2017	Economic Relief package of 20,0000 million and loan moratoriums to MSMEs*. Interest free loans
Amendment of Kerala Contract Labour (Regulation and Abolition) Rules 1974	State Industrial Development Board announced rent-waivers
Amendment of Kerala Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Rules, 1983.	Government of Kerala Social pension scheme was increased to 1600, Lumpsum provision of welfare pensions and cash relief by welfare boards

*MSMEs: Micro, Small and Medium Enterprises. ¹ Source: Kerala Development Report 2021, Kerala Planning Board

Table 2. Labour Policies of Delhi (before and since Covid-19)

Before Covid	Response to Covid
Aam Aadmi Mohalla Clinics (free community health clinics)	Delhi Epidemic Diseases, Covid 19 Regulations 2020
Delhi Swarozgar Yojana (Delhi self-employment scheme)	Registration of construction workers under the Delhi Building and Other Construction Workers Welfare Board to avail benefits from welfare schemes.
Jai Bhim Mukhyamantri Pratibha Vikas Yojana (Chief Minister Scheme for housing for labourers)	Rescue, Repatriation and rehabilitation of Child labour with a budget allocation 2020-21: INR 10 Lakh.
	The Delhi government also announced INR 50,000 for families with Covid death and INR 2500 per month for kids orphaned due to death of parents till they attain the age of 25 years, and the state will provide free education to such children.

Source: All data from Delhi government's Labour commissioner official website: <https://labour.delhi.gov.in/home/Office-of-the-Labour-Commissioner>

Kerala and Delhi both attract a large number of migrant labourers due to enhanced minimum wages. These workers are known as 'guest workers' in Kerala and 'casual workers' in Delhi. Consequently, the government of Kerala and the Union Territory of Delhi had a network of welfare schemes in place for such workers as well, as listed below:

Kerala: 1. The **Aawaz health insurance scheme** of Kerala for migrant workers providing claims against accidental death (Rs 2,00,000) disability due to accident (Rs 1,00,000), treatment benefit to the patients (Rs 25,000) with an objective of registering them and providing healthcare.

2. **Apna Ghar Project** of Bhavanam Foundation Kerala (BFK) was commissioned in

2017, envisaged to provide good quality hostel accommodation on a rental basis to inter-state migrant workers in Kerala.

3. A **Literacy programme** for migrant workers called Changathi, which has been in operation since 2017.

Delhi: 1. The government started 1780 **centres to feed the poor**, jobless and migrant labourers and **380 shelters** for providing shelter to migrant labourers, before the pandemic.

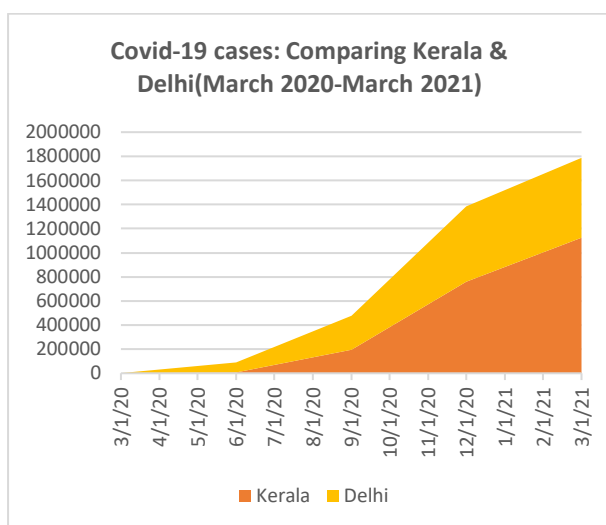
2. **Night shelters:** The Delhi Urban Shelter Improvement Board was providing free meals to homeless people staying in night shelters.

3. **Pension Scheme** of Rs. 5000 for elderly, widowed and disabled including labourers who are old or disabled was started.

State response to labour during Covid 19 pandemic: Delhi and Kerala

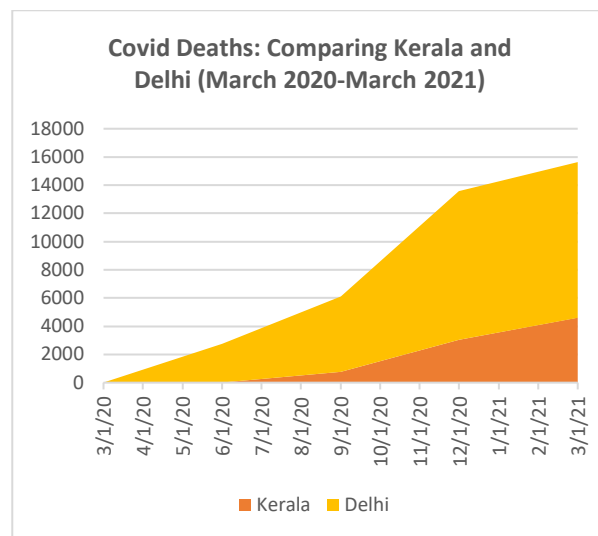
As illustrated in figures 3 and 4, Delhi and Kerala were deeply affected by the pandemic.

Figure 3



Source: Constructed by authors with data from Covid19india.org

Figure 4.



Source: Constructed by authors with data from Covid19india.org

Both subnational governments provided regular communication updates communicated by their Chief Ministers in regular press-conferences, news channels and social media platforms. A Special Covid task force was established comprising of administrators, doctors, healthcare and sanitary workers, social workers etc. Apart from policy measures discussed in the last section, certain welfare schemes were started by the government of Kerala and Delhi in response to the Covid emergency, as listed below:

Kerala

1. **Monthly social welfare pension** to provide relief to labourers due to job-loss.
2. **Free food kit** with 17 essential items to every household in the state from March 2020
3. **Migrant labourers were provided food** and other provisions during the lockdown period. **Camps** were set up to ensure better facilities for migrant workers.
4. **Community kitchens:** 1165 such kitchens were started under 1034 Local Self Government Authorities and provided to 92,05,585 beneficiaries.

Delhi

1. **Free ration scheme:** Distribution of 7.5 kgs of ration to all needy was started in March 2020. Around 71 lakh people benefitted from this scheme till April 2020. The CM announced

that labourers who did not possess a ration card were also to be provided with ration

2. **Financial assistance** of INR 5000 taxi drivers, construction workers, auto rickshaw drivers.

3. **Hunger Relief Centers:** On March 26, 2020, at the onset of the pandemic, the government directed the District Magistrates to set up at least two hunger relief centres in every municipal ward for providing 500 meals twice (lunch and dinner) every day at each centre.

4. **Compensation to family members:** The Delhi government will be giving compensation of one crore rupees to the family members of the employees who may die due to COVID-19. (Delhi Government <https://delhi.gov.in>).

Concluding Observations and Avenues for further Research

This research brief showed that attempts to centralize India's management of the pandemic during the initial phase appeared to have intensified the precarity of vulnerable workers, especially migrant workers. Central measures to improve the livelihood conditions of vulnerable workers arrived either too late or were too limited in scale. In some sense, COVID-19 appears to have intensified the deregulation of labour. However, given the shared responsibility between the Centre and the states in labour and the key role of the states in health and social policy, subnational governments such as the Left-front led Kerala state government and the AAP-led Delhi union territory government intensified the number of measures to protect workers, adding to their overall profile as pro-welfare governments.

Overall, the ability to counteract the policy direction of the central government demonstrates the continued capacity for state agency in India's federal context, despite the return of a one-party dominant regime in 2014 at the Centre. However, we should note that state agency can also be used in a socially regressive manner. In fact, several -often BJP or National Democratic Alliance-led state governments used the economic decline associated with the lockdown to extend working hours of labourers from 8 to 12 hours without paying overtime, even provoking the resentment of the International Labour Organization.

This brief points at a need for further probing in some areas, some of which are

carried through in the next phase of this research project.

Firstly, data on the extent of implementation of the various schemes initiated by the various governments, at the level of both outlay and disbursement of funds is yet to emerge. What governments commit to in law or resources is not necessarily carried through or implemented. This led to litigation of both the central and subnational governments. For instance, on 22 July 2021, the Delhi High Court issued a warning to the Delhi government that it needs to live up to its promise to pay rent to those who are unable to do so because of COVID-19 induced poverty. 'The promise... given by the CM [Chief Minister] clearly amounts to an enforceable promise, the implementation of which ought to be considered by the government' (Justice Pratibha Singh, The Hindu, 22 July 2021).

Secondly, the management of the pandemic in India also demonstrates the need for intergovernmental collaboration, given the shared centre-state responsibilities in this area and the ability of central actions to cancel out or at the least counteract subnational measures and vice versa. However, in India, centre-state relations are often adversarial and mechanisms to resolve centre-state or inter-state disputes through negotiation (rather than litigation) are underdeveloped. This can also be seen in the relationship between the centre and Delhi. The 'profiling' of worker protection policies post-COVID-19 by the Delhi government which -at least on paper- are more generous than what the central government had offered, added to an already adversarial relationship between both governments. Since Delhi, unlike Kerala is a union territory, the Centre is in a constitutionally stronger capacity to tighten its grip on what it perceives as a politically hostile subnational government. The entering into force of the National Capital Territory Amendment Bill at the very end of our reference period (24 March 2021) should be seen in this light as it makes decisions of the elected Delhi government dependent on the consent of the centrally appointed Lieutenant-Governor.

In the case of Kerala, the centre is not just constitutionally weaker (given its status as a state), but politically also less capable (given the comparably weak presence of the BJP in the state, unlike in Delhi) of undermining the intentions of the Kerala government. Indeed,

structural shifts in the economy and attempts made by the government to bring more workers under the protective umbrella of labour regulation and social security have been important components of that state's response to labour. Even so, despite a less fractious intergovernmental relationship, the divergent policy environment of the Centre and the State has resulted in tensions. For instance, do the much higher daily wages for all sections of workers in Kerala lead to the exclusion of certain establishments in the state from several central relief provisions?

Finally, although the centre's response to the pandemic has appeared to intensify the trend toward casualisation of employment in India as a whole, it is too early to tell whether the socially more generous measures of the Kerala and Delhi governments have curbed that trend and increased the share of workers under the purview of labour welfare boards and other labour regulation.

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Funding

We acknowledge the support of British Academy - Humanities and Social Sciences Tracking Global Challenges Grant TGC200263 'Covid-19 and the South Asian state: a cross-national and cross-regional comparison (2021-23)