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# Covid-19 Crisis: An Indictment of India's Informal Economy

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## **Covid-19 Crisis: An Indictment of India's Informal Economy**

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This paper attempts to look at the ways informality is conceptualized in India and argues that the problems with the laws pertaining to informal labour are not simply an implementation issue, but the design of the labour laws itself exclude informal labour. While reviewing the history of labour laws in India and the social history of labour participation, the paper also examines the current change in the political approach to labour by changing the labour laws in the pretext of the pandemic. Focussing on the changes made in labour laws in Madhya Pradesh the paper argues that these changes would further informalise the workers intensifying the crisis.

The need to question informality becomes particularly important due to the events that unravelled after covid lockdown. Several post-lockdown incidents have highlighted the plight of workers, who have been left to their own devices, without any state support and forced to travel hundreds of kilometres to their homes. In the most tragic incident in this travail, 16 migrants attempting to return home were run over by a train in Aurangabad. The sight of hundreds of workers walking back home was not limited to a few locations but was seen across the country. The common thread that connects them is their dependence on the informal economy. However, as this paper attempts to elucidate, two other things cannot be overlooked. First, their life before the pandemic was defined by severe forms of precarity. Second, the post-lockdown distress which workers in the informal economy are facing has to do with structural factors that define the sector—unequal power relations, lack of job security, and absence of regulatory mechanisms. In the face of a crisis, the severity of these problems cumulatively impacted their lives, leading to a catastrophe.

### **The informal economy: its size, role and roots:**

India's informal economy is enormous. It consists of export-driven industrial clusters, manufacturing hubs, and enterprises which deal with precious gems, a vast majority of agrarian

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production, street vendors, and a large part of the black economy. Estimates for 2018 indicate that 80% of India's 461 million workers, or 369 million of them, are in the informal sector(Kannan 2020). Even within the formal sector, several workers are employed as informal workers, as casual labour.

Despite islands of prosperity such as the diamond-cutters—who live in conditions comparable with workers in the formal economy—for a large number of informal-sector workers, domestic and workspaces converge into one. These workers both eat and live at their place of work or their work is conducted in congested domestic spaces. Unlike the formal sector, there is no regulation of wages, living conditions, working hours, and other social security nets. Due to their paltry wages, occupational multiplicity is the only way many workers can make ends meet.

However, despite the different operational features of both informal and formal economy, scholars like Jan Breman(1976) have pointed out that the formal-informal duality should not let one lose sight of the continuum between the two. The informal economy plays an active role in the functioning of the formal economy, for it is symbiotically linked to big businesses, which subcontract and outsource cheap informal labour.

Now, how has the informal economy come to occupy such prominence? Scholars have pointed at the development trajectory of the post-colonial Indian state to explain this phenomenon. For instance, Breman(1999) points out that budget deficits were the norm for the rural underclass, as a direct result of the development trajectory of Indian capitalism. The urban-rural mobility in the industrial West is characterised by the “free labour” deciding for itself how and where to sell its labour-power. But this has proven non-applicable to the post-colonial Indian situation. In particular, because of the absence of land reforms, the only option for the Indian rural poor was to migrate (including as bonded and neo-bonded labour) in order to survive.

Second, Breman(1999) also notes that labour legislation which was passed immediately after Independence was mainly designed to define the industrial procedures and to solve disputes between employers and workers. These legislations exclusively addressed labour and employment in the organised sector. These laws were designed mainly with the hope to expand into an industrial society, even if the size of this sector was always minuscule compared to the economy as a whole. As a result of diminished attention to a great segment of the urban population and neglect of the social relations of production in agriculture, the process of informalisation was accentuated.

Kalyan Sanyal(2014) has also contextualised the growth of the informal economy in the

background of post-colonial development trajectory. However, his findings are different from those of Breman. He observes that unlike western nations, a transition to the industrial economy did not occur in post-colonial nations since the development trajectory which they followed while dispossessing rural poor from their property did not lead to their proletarianisation. The net result was a substantial section of the population becoming 'surplus' from the viewpoint of capitalist accumulation. He points out that this 'surplus' population, constituted a 'need economy' which while meeting the immediate needs of human sustenance, operates outside the logic of capitalist accumulation. However, he also points out that the informal (need) economy also consists of a second circuit which works according to the logic of capitalist accumulation. Symbiotically linked with big business through subcontracting, and outsourcing, this component of the informal economy plays an active role in capitalist accumulation. The role of this circuit has increased post-liberalisation. The reduced growth rate in the formal sector post-liberalisation has increased the importance of this circuit of the informal economy.

While his arguments are important from the viewpoint of Indian development trajectory, it would be perhaps not entirely accurate for several other nations which have a colonial past. For instance, several nations in south-east Asia, and China, have followed a trajectory which resulted in large-scale industrialisation and expansion of the formal economy (Bardhan 2015). These states reinvented themselves as developmental states, steering and even dictating the economic trajectory of their nations. Two factors- disciplining of their local industrial class, and carrying out land reforms which in turn increased the purchasing power of the population, were integral to this process (Chibber 2003). Such measures were not adequately undertaken in India, even during the so-called 'socialistic' era.

To sum up, informalisation—which ensured a precarious existence for the vast majority of workers left at the mercy of their employers and contractors—should be understood against its background in the post-colonial development trajectory of our country.

### **Social features of the informal sector.**

In India where who does what work is closely connected to the caste system, caste labour has always been informal and cheap labour. Several scholars have pointed out that the apathy of the state institutions is rooted in the lack of dignity given to workers. The higher bureaucracy, government jobs and other rewarding jobs in the formal sector are mostly occupied by upper castes while the lower rung informal jobs are disproportionately done by the marginalised communities. Barbara Harris-White and Aseem Prakash (2010) based on the estimations of KP Kannan (2009) argue that the social identities over-determine the results of the operation of

labour markets and other segmented markets in the informal economy. Muslims, Dalits and Adivasis are concentrated on Group C and Group D classes of jobs. The fact that within the government and public sector jobs, 55-75% of sweepers and sanitary workers are Dalits itself shows how the caste system continues to determine who is placed where in the hierarchy of work in India. Even within the informal sector, the higher and middle-income jobs are mostly occupied by upper-caste while the low-income jobs are done by people from marginalised groups. Dalits and Adivasis constitute the highest proportion of the population; 89 per cent situated in the four poverty group categories. Among Muslims in the informal sector work-force, 85 per cent find themselves in the lowest four income groups; likewise 80 per cent of the OBCs who work in the informal sector. In contrast, only 59 per cent of 'others' are in the poverty groups. Further, the share of 'others' in the informal sector work-force earning middle and high incomes is relatively high—about 42 per cent. In comparison, the proportion of Dalits/ Adivasis, Muslims, and OBC in the middle and high-income brackets is merely 11.5 per cent, 15.3 per cent, and 19.9 per cent respectively (Kannan 2009). It is also imperative to note that India lacks any legislation that defines and determine workplace discrimination unlike several other countries with the history of racial and ethnic discrimination.

#### **Asymmetrical power relations, toothless legal protection and impact of Covid-19 lockdown:**

The asymmetrical power relations which define the informal economy are also apparent in the legal framework which covers it. On the one hand, laws specifically formulated to deal with labour in the informal economy often overlook certain key questions regarding the target group. Second, even when the text of the law is honestly intended, the implementation is significantly influenced by existing social power relations, which are skewed against informal labour. It is this entrenched powerlessness that has had a decisive impact on the informal labourers during the lockdown.

For instance, only enterprises which have employed twenty or more contract labourers over the previous twelve months come under the ambit of the Contract Labour (Regulation and Abolition) Act, 1970. Micro-enterprises in India regularly employ less than twenty people; therefore, despite its progressive components, a large number of employees of informal enterprises remain out of the purview of this law. Concerning implementation, large-scale corruption due to the collision of the state with contractors and the absence of sufficient state capacity to implement the act has made it ineffective in many places. Despite flaws in this law, if implemented properly, its provisions could have enabled the government to access data on contract labourers and provide them assistance during the lockdown.

Similarly, the stated objective of the Interstate Migrant Workmen Act, 1979, is to regulate and lay down the conditions of service of inter-state migrant workers. This act mandates registration of contractors who employ migrant workers and for employers to maintain a record of their workers. However, by design itself, it excludes a vast majority of self-employed wage labourers and intra-state agrarian and other migrants in the informal economy. The 2011-12 report of the Standing Committee on Labour records that eleven states do not have a single employer or contractor registered under this act. The highest number of registered contractors and principal employers under the act was in Bihar, but the figure was as low as 20 and 56 respectively. If reviewed and implemented correctly, this law would have made it much easier for the government to assist migrant workers during the lockdown.

Unfortunately, that was not the case. The new labour code on Occupational Safety, Health and Working Conditions 2020 also excludes the intra-state migrant workers from its ambit and further operates on the same assumption that migrant workers depend on the labour recruiters for inter-state migration. The 2019 bill defined 'migrant worker' as a person who: (i) has been recruited by an employer or contractor for working in another state, and (ii) draws wages within the maximum amount notified by the central government. The 2020 bill, however, revised this definition to include people who are finding work on their own but removed the earlier provision of displacement allowance to be paid by the contractor instead of expanding it to the employers. The code also defines migrant workers as someone who earns less than Rs.18000 a month. While this might be helpful to identify the low-income informal migrant workers, it still lacks an understanding of the precarious employment conditions workers go through. For example, the workers who are recruited in wedding halls in Delhi continuously work for two-three days and earn task-based wages for seasonal employment. They are unemployed in off-seasons and live out of this earning. The wage calculation in informal employment is tricky and difficult to prove.

The rare progressive legislation, such as the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, or BOCW, acknowledges the seasonality and precarity of employment and defines anyone who worked in the construction industry for 90 days in the past year as a construction worker. This law makes registered establishments responsible to provide housing and child care facilities to workers and obliges state construction boards to register workers as beneficiaries of several welfare measures. However, there is no standard procedure for registering oneself as a beneficiary under different state boards. For eg, In Delhi, each worker needs the employer, a contractor or a trade union to verify the application form before submission. In Kerala, verification is done by the local

governance institutions. Many of the destination states are reluctant to register migrant workers under their state board. The lived reality of a large section of informal workers are overlooked by this legislation—they keep migrating from place to place and are largely non-unionised and undocumented.

Further, a recent study conducted by Jan Sahas (2020) finds that only 29% of the 20.37 lakh labourers registered under BOCW Board in Uttar Pradesh had access to a bank account. Predictably, the study also finds that more than 90% of the construction workers they interviewed were outside the ambit of this act since they do not have BOCW cards (Jan Sahas, 2020). In this situation, the central government directive to the state governments to use the collected BOCW cess funds to aid workers during the lockdown becomes toothless).

Another act, the Unorganised Sector Workers Social Security Act, 2008, (or USSA) mandates the registration of unorganised workers—including home-based workers—by state social security boards as beneficiaries of several schemes. As many schemes under this act already exist and overlap with other target populations, there is no database to assess the registration of informal workers. A PIL filed in 2013 in the Jharkhand High Court The National Domestic Workers Welfare Trust points out that the entire state of Jharkhand had not registered a single beneficiary under the Master Craft Pensions scheme, one of the ten schemes covered by the USSA. So while the Act professes to protect the rights of unorganised workers, its vague directives and the state's lack of will in registering workers results in many exclusions.

During the lockdown, several states started surveying their migrants. Had there been specific schemes for informal workers, coupled with the will to register them as beneficiaries in the states, and clear directions in the act to fund the state boards, the system would have been better equipped to deal with this crisis.

The existing legal discourse is, at least theoretically, guided by a vision of welfare, but the guiding principle of the ongoing labour “reforms” is simply “Ease of Doing Business” (Jain, 2020). The recently passed code on wages, for example, allows a state government to “fix the number of hours of work which shall constitute a normal working day”, without adopting a weekly limit on working hours. The earlier Minimum Wages (Central) Rules, 1950, had specified that a normal working week will comprise 48 hours of work.

The consequence of changing these provisions will strip even the formal-economy workers of the rights they previously enjoyed while depriving informal workers the bargaining power to negotiate their working hours and wages. The culmination of such a draconian wage code is

several states are issuing ordinances to extend working hours.

It is in this context that we must place the plight of informal labourers during the lockdown. The government's post-lockdown directives, like many of the aforementioned acts, have honest intentions, at least on paper: for instance, a Ministry of Home Affairs order dated 29 March categorically states that wages must be paid to all workers. Similar directives were issued by several state governments.

However, in an environment marked by unequal power relations, widespread governmental apathy, and insufficient infrastructure, complete overhauls cannot be expected in such short notice. In many states, even if they had wanted to carry out this task, there was almost no data to rely upon due to loopholes in different acts and its incapacitated implementation thus far.

### **Attempts at Further informalisation during lockdown: The case of Madhya Pradesh**

The lockdown has been used as an excuse for several governments to further informalise the labour sector. This has been done by amending many of the labour laws. Among many Indian states who initiated these attempts, the state of Madhya Pradesh has been most pro-active in amending labour laws. While most other states have amended only the Factories Act, Madhya Pradesh has gone a step ahead and made changes in several other laws. A thorough examination of these changes can shed light on the lengths to which the state has gone to further informalise the formal sector.

When it comes to the changes made in the Factories Act, according to a government order dated May 5th 2020, apart from section 6, 7, 8, 59, 65, 67,68,88,79,112 and section 21 to 41 H, factories are exempted from all other sections. It should be noted that Sections 21 to 41 H deal with Safety in factories.

Before looking into those clauses which are non-valid, it should be noted that the inclusion of many of the aforementioned clauses have become weakened since many of them are more or less irrelevant without the exempted clauses. For instance, section 8 explains who can be appointed as inspectors at different levels. However, it is section 9 of the act which explains the power of these inspectors. With the exemption of section 9 from the act, the role of inspectors has become null and void. Similarly, clause 1 of 7A (section 7 is retained) points out that *'Every occupier shall ensure, so far as is reasonably practicable, the health, safety and welfare of all workers while they are at work in the factory.'* Concomitant to this clause, the amendment has not removed the section on safety in this act ( 21 to 41 H). However, at the same time, chapter 3 and 5 which deals with health and welfare have been made inapplicable. So while on the one



hand, the factory owner is asked to provide for the health and welfare of the employees, detailed clauses which explain the implementation of this have been made redundant. Overall, these changes have permitted the factory owner to freely interpret these clauses, whereby his benevolence more than legal binding can guarantee health and welfare for workers. It should be noted that both these sections (health and welfare), deal with the basic rights of employees in any place of work. For instance, the section on health provides for provisions of drinking water, ventilation, suitable temperature, and many other provisions which are necessary for any place of work. For instance, clause 14. 1 states that :

*'In every factory in which, by reason of the manufacturing process carried on, there is given off any dust or fume or other impurity of such a nature and to such an extent as is likely to be injurious or offensive to the workers employed therein, or any dust in substantial quantities, effective measures shall be taken to prevent its inhalation and accumulation in any workroom, and if any exhaust appliance is necessary for this purpose, it shall be applied as near as possible to the point of origin of the dust, fume or other impurity, and such point shall be enclosed so far as possible.'*

By the power of this amendment, this clause is no more applicable. Therefore, legal binding to provide safety against accumulated dust and the working conditions which emanate from it is no more present. There are certain provisions in the section on safety which looks into dangerous gas, fumes and dust. But the stress there is on danger and safety, and not into the health of individuals. Also since drinking water, latrine and other facilities are no longer legally mandatory since the section on health is no more applicable, workers are further devoid of the legal safety mechanisms which were previously present to provide humane working conditions, even if they existed only in paper.

The amendment has also revoked the applicability of the entire chapter on welfare in the act. This means that there is no legal binding from the state to factory owners to provide crèches, sitting facilities, first aid appliances, canteens, washing facilities, and many other provisions. For women who have young kids, this would mean a choice between getting employed and taking care of their kids or in desperate cases, leave them unattended at worksites since the place of work would have no creche. The factories Act had better provisions for creches compared to the Maternity Benefit Amendment Act, 2017. While the Maternity Benefit Amendment Act only mandated creches for establishments that employ fifty or more employees, which means even if an establishment employs below fifty women, they are not legally mandated to provide creche facility. However, the Madhya Pradesh Factories Rules, 1962 mandated creches for factories employing more than fifteen married/ widowed women. The Factories Act was also

comprehensive compared to the Maternity Benefits Act in ensuring the welfare of older children since it mandated factories to ensure fenced open playgrounds for them. The provisions of the factories act have been used by several women's organisations for advocacy on workplace facilities. The amendments also limit the political scope of this legislation.

Concerning wages, the only clause in the factories act which has not been revoked by the MP government is clause 59 which provides for an extra wage for overtime work. However, it remains unclear how this clause or any clause on wages would be implemented since clause 62 of the factories act is no more valid. This means that there would be no registry of workers in the factory. In the absence of this, workers would find it difficult to prove their details regarding employment in factories. Naturally, they would also face difficulties in proving reduction or absence of wage payments. Second, almost all provisions which provide for penalties due to non-compliance of the act have been removed. Even clause 95 which provides a penalty for obstruction of the working of a labour inspector has been removed.

The overall impact of the changes in the factory act by the Madhya Pradesh government is further or even complete informalisation of the formal sector. However, unlike other states, the Madhya Pradesh government, seemingly with a focused agenda on labour, has enacted amendments in other acts also.

For instance, the avenues for workers to settle their disputes, which would naturally arise considering the weakening of factories act, have been shut. This has been made possible due to the amendments in the Industrial Disputes Act (IDA). IDA provides for a detailed process through which grievances can be adjudicated in the industries. Numerous institutions have been set up at different levels for this. These are grievance redressal committee, conciliation committees, labour court, tribunal and national tribunal. All of them would cease to function for 1000 days post the amendment. The government has noted that adequate provisions should be made by industries to settle disputes. But that raises the question of why new provisions are required when there are already existing provisions and institutions. Second, such vaguely worded suggestions are an open invitation for the factory owners to completely skew the outcome of the disputes in their favour.

The state has also amended the applicability of another industrial relations act ( Madhya Pradesh industrial relations act 1960). Eleven major industries which include iron and steel, electrical goods, textiles, leathers etc would be outside the ambit of this act. The crucial provision of this act is '*CHAPTER-III Recognition of Representative Unions and Associations of Employers*'. With this chapter no longer valid, unions would be weakened, thereby weakening

yet another feature which is commonly associated with the formal sector.

There has also been an amendment to Madhya Pradesh Industrial Employment (Standing Orders) act. The amendment limits the scope of industries which can come under the ambit of this act. While according to existing clauses, industrial enterprises employing fifty individuals came under the purview of this act, it has been increased to a hundred under the amendment. Thereby, we see another intervention which reduces the regulatory power of the government.

Madhya Pradesh Shram Kalyan Nidhi Adhiniyam, 1982 that mandates the setting up of a workers welfare board in MP is another Act that has been amended during the lockdown. The stated objective of setting up the board according to this act is to *'improve the standard of living and ameliorate the social conditions of labour'*. As per the act every employee is expected to pay a small contribution of ten Rupees and the employer thirty Rupees for each worker once in six months. The fund collected by the board is utilised for building community centers, libraries, educational facilities and for other community activities. What may look like an amendment is actually adding a subsection to the section 28 of the act that says, *'The State Government may, by notification, exempt any establishment or any category of establishments from any or all of the provisions of this Act, subject to such condition, as may be specified in the notification'*. Earlier the act allowed the government to exempt the micro-enterprises from its provisions. With the new change, any establishment however big it is can be exempted from its purview by a notification. This clause functionally invalidates the act itself.

### **The way forward:**

From workers walking for days to reach home to the long queues for a single meal, the Covid-19 crisis has reiterated the precarity of informal workers. Neither their rights as labour nor their rights to state welfare are adequately addressed by the existing approach. Only a radically-altered development model, which addresses the conditions that foment informalisation, can ameliorate these conditions. These would include significant investment in agriculture, ensuring stable livelihoods in the villages to prevent the hunt for precarious jobs by the rural masses; formulating new state policies that address the increased dependence on metropolises; increasing state capacity to implement existing laws covering the informal sector.

On purely a policy level, several steps can be taken. For instance, The Occupational Safety, Health And Working Conditions Code, 2020 proposes the online registration of inter-state migrant workers to understand the scale of interstate migration India. It is clear that this attempt is motivated by the need to acknowledge the crisis of migrant workers as a serious

problem. However, a large number of migrants are also intra-state migrant workers who are likely to be left out of this process.

The ILO report titled *Road map for developing a policy framework for the inclusion of internal migrant workers in India* (2020) recognizes informality as one of the main issues faced by the migrant workers. The lack of formal employment contract and the casual work arrangements reduces their chances of approaching formal institutions for grievance redressal. Instead of simply consolidating old acts with minor changes into labour codes, the state must invest in developing mechanisms to recognize and document various hiring practices in informal employment to make sure that the provisions of various social security schemes are compatible with these practices.

Grassroots organizations like Aajeevika have employed innovative approaches to prove the agreement on work without actual written contracts. Mathadi board for head load workers in Maharashtra is another innovative legislation that allows informal and casual workers to register themselves in the board and avail the benefits of social security formal sector workers normally avail (Khotkar,2013). Such examples have to be extrapolated to a larger canvas. However, for all of this to happen, the existence of political will from the part of the state is a necessary variable.

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