

MIGRANTS IN CONSTRUCTION WORK: EVALUATING THEIR WELFARE FRAMEWORK

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SUMMARY

More than two decades after the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 and the Building and Other Construction Workers Welfare Cess Act, 1996 came into force, the efficacy of this framework remains in question. Correctional steps have the potential to extend social benefits to construction workers, especially migrants who face particular vulnerabilities.

Available data regarding implementation of the Acts by States presents a picture of overall tardiness and delay with wide variations. States need to ramp up worker registration; data suggests that lowering entry barriers for migrants improves registration and consequently, access to welfare benefits. While collection of cess funds has improved and is broadly proportionate to construction activity, their utilisation remains dismal. States need to think strategically on how to spend accumulated cess funds—especially on housing, occupational health and safety, grievance redressal and legal aid—and sustain welfare provisions over time. Accumulated unspent funds offer an opportunity for big-ticket, one-time expenditures. Examples from some States show that collaboration with civil society organisations could improve outreach, particularly to migrants.

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INTRODUCTION

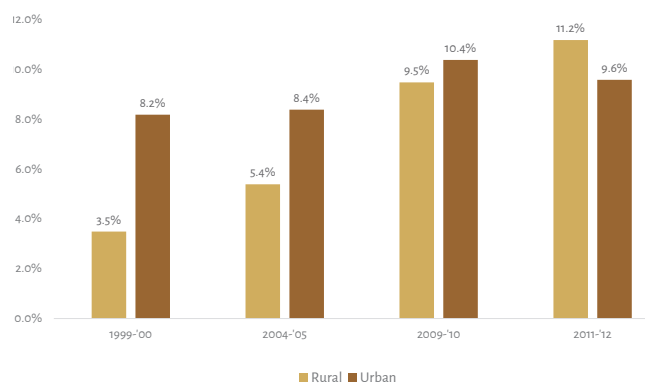
The construction sector is of vital importance to the Indian economy, contributing 7.7% to the country's GDP, with a total size of Rs 10,640.68 billion in 2015-16.¹ It is one of India's fastest growing sectors, with a CAGR of 10.3% in the decade between 2000-01 and 2010-11. In the same time period, 'trade, hotels, transport and communications' and 'finance, real estate and business' were the only two sectors that grew faster than construction.² Construction is also the third largest employer outside agriculture (after manufacturing and trade; hotels and restaurants), employing a workforce of 46 million.³ The sector's growth is not limited to urban areas but is also evident in villages (See Fig 1a & 1b). In fact, the share of rural workforce engaged in construction has surpassed that of the urban.

Fig 1a: Share of Construction in GDP and Workforce



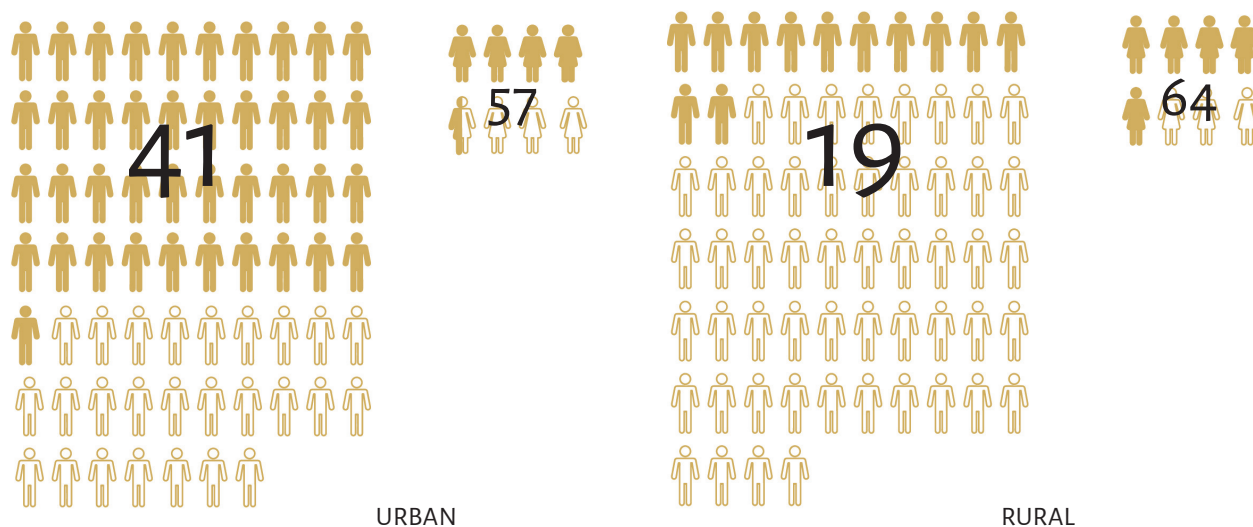
Source: Employment-Unemployment Survey ;NSSO, various rounds; RBI Handbook of Indian Economy, 2016

Fig 1b: Share of Construction Workers to Total Workers by Sector



Source: Employment-Unemployment Survey ; NSSO, various rounds

Fig 2: Percentage Share of Migrant Workers to Total Construction Workers by Sector and Gender



Source: Census of India, 2001

Each stick figure represents approximately 100,000 individuals

MIGRANTS IN THE CONSTRUCTION SECTOR

According to Census 2001, there were about 14.6 million construction workers (not including brick kiln workers), of which 30.4% of male construction workers (3.9 million) and 60.4% of female construction workers (1 million) were migrants. Thus, about 10% of non-farm internal migrant workers were employed in construction. Further, this is a growing segment of employment: according to the NSS, the total workers in construction grew from 15.3 million in 1999-2000 to 29.4 million in 2007-08, an annual increase of about 8.5%.⁴

Stream-wise analysis from Census 2001 shows that about half of the migrant construction workers move from rural to urban areas, while about 30% move within rural areas. About 66% of migrants who work in the construction sector head to urban destinations. There is a gendered distinction here, with female migrant construction workers mostly moving to rural

areas and males to cities. Although smaller in number, as seen in Fig 2, migrants constitute nearly two-thirds of the female construction workforce. Among males, migrants are more among urban as compared to rural construction workers.

Long-distance migration appears to be common among migrants in the construction sector, especially for those with urban destinations. As shown in Table 1, Census 2001 data suggests that inter-state migrant workers (1.1 million) constitute the single largest portion of all construction migrants in urban areas (35.4%). Out of all inter-state migrants in India who move out of the farm sector, construction absorbs about 9.8%; this is the second largest sector for inter-state migration after retail trade. Looked at stream-wise, about 42.6% of the rural-urban male migrants in construction are inter-state migrants, while 50.9% of the rural-rural male construction migrants moved within their districts of enumeration.⁵

Table 1: Share of Migrant Construction Workers to Total Construction Workers by Distance and Gender

Sector	Male			Female		
	Intra-District	Inter-District	Inter-State	Intra-District	Inter-District	Inter-State
Rural	10.9%	4.2%	4.2%	41.7%	12.5%	10.0%
Urban	12.9%	13.0%	15.0%	21.2%	19.6%	16.0%

Source: Census of India, 2001

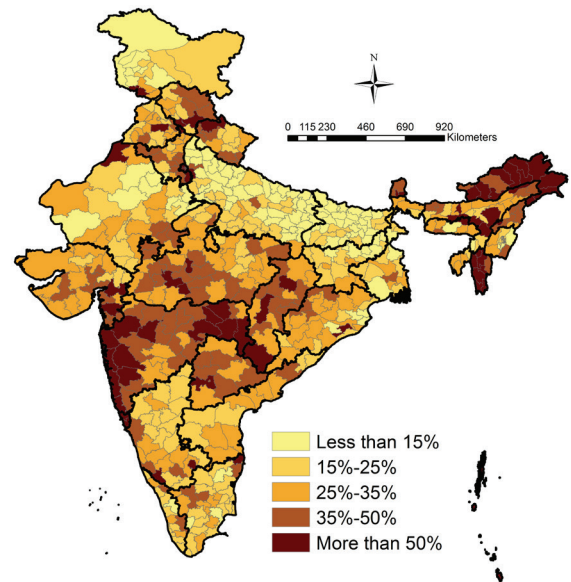
SPATIAL DISTRIBUTION OF MIGRANT CONSTRUCTION WORKERS

Urban clusters are magnets

The geographical distribution of migrant construction workforce exhibits distinct regional patterns, both when seen as a share of the total construction workforce and as concentration of the national migrant construction workforce across districts. The dark brown dots in Fig. 3a indicate districts where the number of urban in-migrants as a share of all urban in-migrants nationally is more than 1%, while the yellow dots indicate districts where the corresponding share is less than 0.05%.

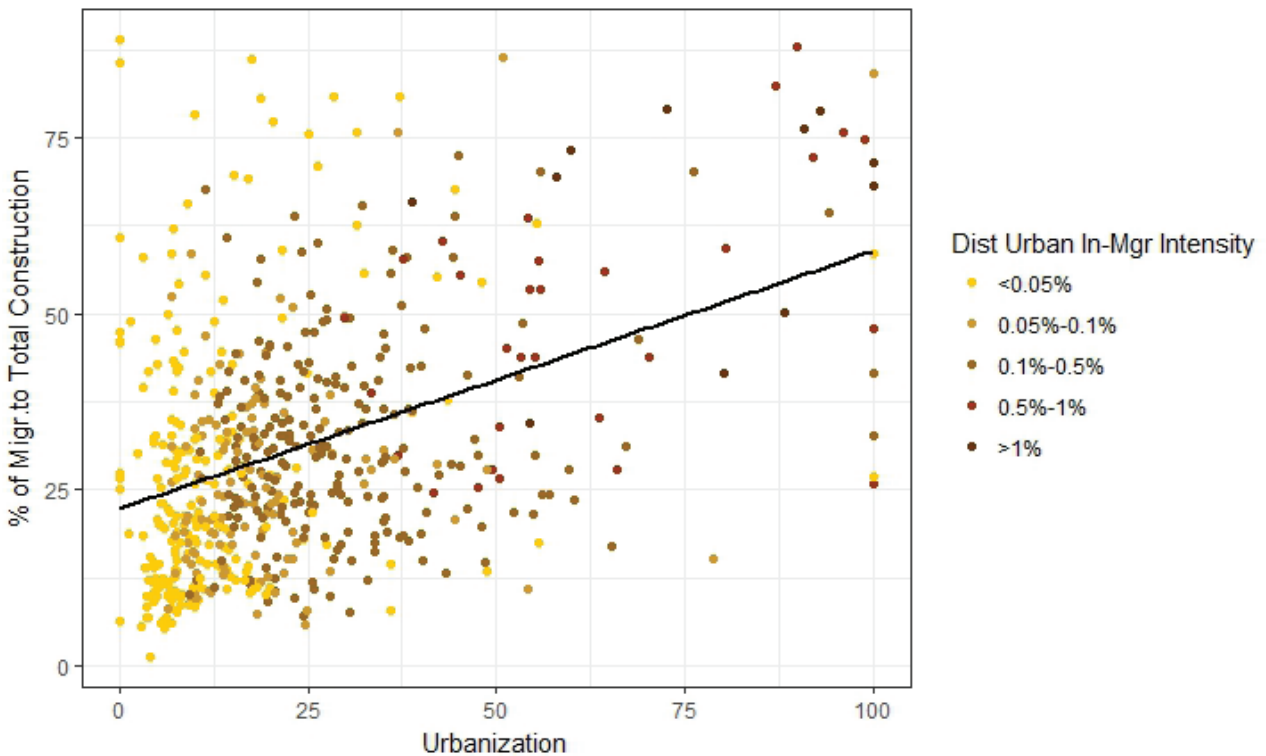
In general, districts with higher urbanization rate and high urban in-migration intensity also have a higher share of migrants in construction work. These include areas around Delhi-NCR, Gujarat, Maharashtra, Western Madhya Pradesh, Telangana, Tamil Nadu, Karnataka and West Bengal. Since rural-rural mobility is also common in migrant construction workers, clusters of migrant construction workers appear in eastern and southern UP, Chhattisgarh and Odisha as well, where urbanization rates are low (See Fig 3b).

Fig 3b: Share of Migrant Construction Workers to Total Construction Workers



Source: Census of India, 2001

Fig 3a: Migrant Workforce in Construction, Urbanization and Urban In-Migration Linkages



Source: Census of India, 2001

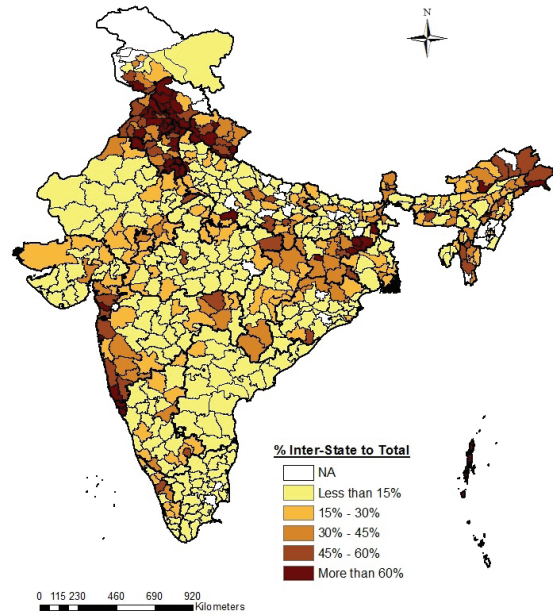
Big Cities, Large Hinterlands

Mapping the distribution of inter-state rural-urban migrant construction workers across districts shows that many of them are concentrated in and around large metropolitan districts like Mumbai, Ahmedabad, Delhi, Chandigarh or Kolkata (see Fig 4a). Inter-state migrants dominate the construction workforce of million plus cities, with 52% (0.5 million) of the inter-state migrant construction workforce going to the top eight metro cities.

Smaller Cities, Shorter Journeys

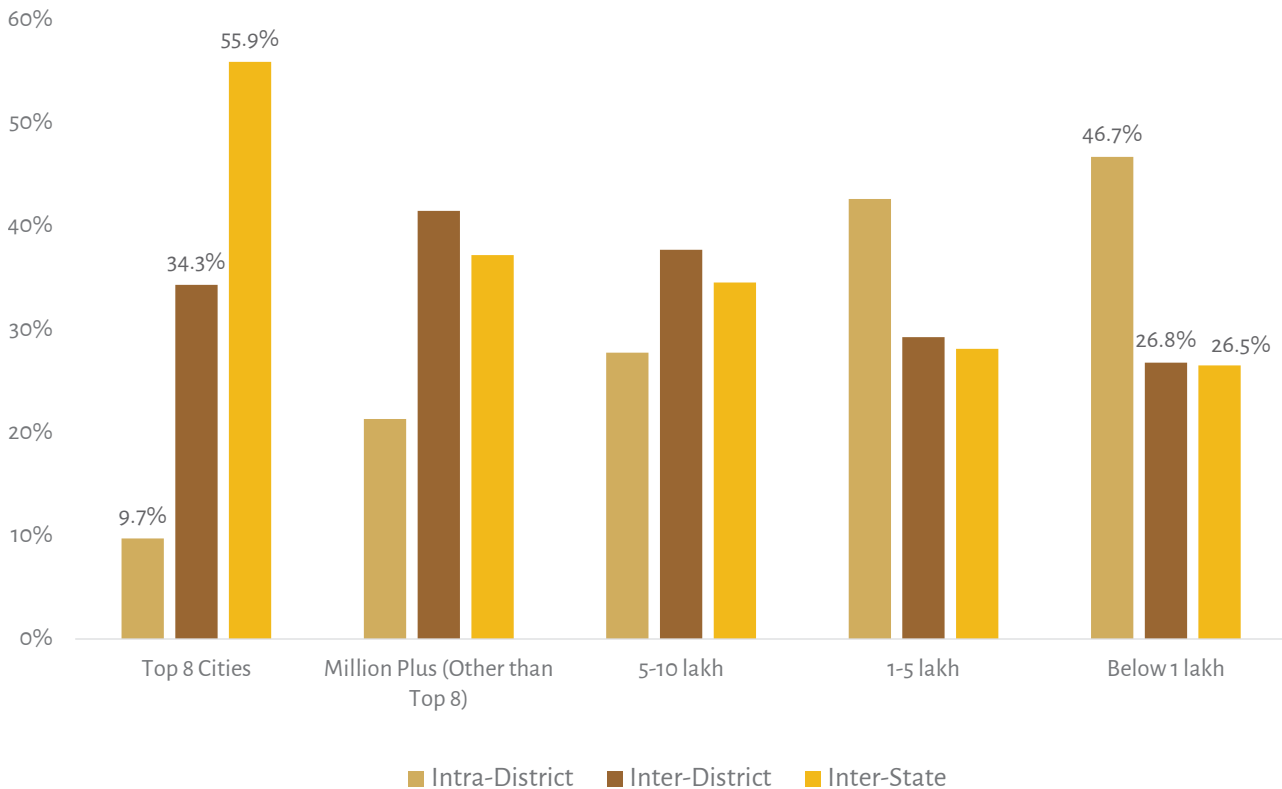
While over half of the migrant construction workers (1.3 million) with urban destinations move to million-plus cities, it is significant that about 20% of them move to cities with a population lower than 100,000, as per Census 2001. Fig. 4b shows that the ratio of long-distance to short-distance migrants in construction steadily declines with the size of city. In cities with a population lower than 100,000, close to half the migrant construction workers are from within the same district.

Fig 4a: Share of Inter-State Migrant Workers to Total Migrant Workers in Construction (R-U)



Source: Census of India, 2001

Fig 4b: Migrant Construction Workers by City Size-class and Distance



Source: Census of India, 2001

Top 8 cities are Mumbai, Delhi, Kolkata, Chennai, Bengaluru, Hyderabad, Ahmedabad and Pune

MIGRANT CONSTRUCTION WORKERS: A VULNERABLE GROUP

From agriculture to construction and back

Both migrants and non-migrants in the construction sector are largely informally employed, with about 90% of migrants in rural areas and 67% in urban areas working as casual wage labourers. Migrant construction workers are mainly unskilled seasonal migrants who work as wage labourers in the agrarian sector. Data reveals a close relationship between construction and agricultural work. Estimates from NSS 2007-08 show that most of the rural-urban migrants in construction used to work in agriculture (47.3%) or construction related activities (45.6%) before they moved into urban areas. Data for rural-rural migration tells a similar story. Some of this movement is short-term in nature,⁶ with people regularly moving back and forth between farm and construction work.⁷ About 5.5 million short-term migrants were employed in construction during their longest spell of movement, as per the NSS 2007-'08, which is about 40% of all short-term migrants. This number is equally high among long-term migrants (6.3 million). Further analysis reveals that out of all persons who are currently employed in agriculture and have a history of short-term migration, about 36% worked in construction when they migrated; construction remained the second largest sector after agriculture in their work profile. Similarly, for people currently working in construction, agriculture is the second largest industry of employment when they migrated short-term. Thus, short-term construction migrants face constant economic uncertainty owing to a perennial engagement in informal work.

Limited legal protection for migrant workers

The existing protective legal framework for migrant workers is the Inter-State Migrant Workmen (Regulation of Employment

and Conditions of Service) Act, 1979 (ISMWA), designed to protect the interests of labourers who are recruited and subjected to exploitation by contractors. It provides for registration of establishments employing inter-state migrant workmen, and licensing of contractors. Safeguards include non-discrimination in terms of wages vis-à-vis non-migrant workmen, payment of travel and displacement allowance, and suitable work conditions, in the form of obligations placed on the contractor. However, the ISMWA is of limited utility to those who migrate on their own.⁸

Migrating women & children additionally vulnerable

Although the migrant workforce in construction is male-dominated, the share of migrants in overall female construction workforce is higher. NSS data shows that about 87% of the migrant women working in construction are not the head of their households, indicating that they have not moved alone and are not living on their own. Table 2 shows that most migrant construction workers are working adults (20-60 years) of both genders whose children move with them, in both rural and urban areas. Along with adults without children, they constitute nearly 70% of the migrant construction workforce in both rural and urban areas. Also, 26% of all households with a migrant in the construction sector have a size of three members or less with at least two working adults of different genders, further corroborating the significant presence of associational migrants in construction. While poor working and living conditions, marked by deplorable access to clean drinking water and sanitation facilities, are a grim reality for all construction workers, women and children particularly suffer multiple deprivations on account of lack of daycare/creche facilities, and lack of medical leave, health insurance and maternity benefits.⁹

Table 2: Family Composition of Migrant Construction Workers

Destination	Family Composition	Migrant Worker Households		Migrant Workers	
		With Children	No Children	With Children	No Children
Rural	Working Adults: Both Gender	58.5%	10.5%	72.6%	10.1%
	Working Adults: Only Male	1.3%	8.7%	1.3%	4.1%
	Working Adults: Only Female	16.3%	2.0%	8.8%	1.7%
	No Working Adult	1.4%	1.3%	0.8%	0.6%
Urban	Working Adults: Both Gender	60.3%	12.0%	61.4%	13.9%
	Working Adults: Only Male	2.4%	19.2%	2.5%	16.6%
	Working Adults: Only Female	2.2%	2.5%	2.3%	2.2%
	No Working Adult	0.6%	0.7%	0.6%	0.5%

Source: NSSO 64th Round, Sch.1.2, 2007-08.

'Working Adults' refer to person working and aged 20-60 years. 'Children' are less than 18 years of age.

Percentage to All Rural and Urban Migrant Households/Migrant Workers

BOX 1: INTER-STATE MOVEMENT ADDS TO PRECARIOUSNESS OF THE SOCIALLY DISADVANTAGED

As per NSS 2007-08, a large share of construction workers (43%) belong to socially disadvantaged groups, of which 14% belong to the Scheduled Tribes (STs) and 29% to the Scheduled Castes (SCs). Of these, about 13% of the ST workers and nearly a quarter of the SC workers are inter-state migrants. Administrative lists of SCs and STs for the purposes of affirmative action are prepared and maintained at the State level. Hence, construction workers who migrate across state boundaries stand to lose this administrative classification and consequently, access to social justice schemes designed for their communities, despite the fact that the migration may not have significantly improved their socio-economic condition.

Source: Report of the working group on migration, p14.

THE BOCW ACT: A STEP TOWARDS SOCIAL PROTECTION

Building and construction workers thus face multiple vulnerabilities on account of their socio-economic profile, migrant status, and informality of employment. In response to these vulnerabilities and recognising the size of the workforce, a policy framework for ensuring social welfare for construction workers and preventing their exploitation was devised in the form of two comprehensive national-level legislations: the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 ("the Act"); and the Building and Other Construction Workers Welfare Cess Act, 1996 ("the Cess Act").¹⁰ The Act came into force in March 1996, while the Cess Act was retrospectively implemented from November 1995. In two States (Tamil Nadu and Kerala), the Acts replaced similar State legislations that were already in force at the time.

Under this regime, every State and Union Territory (UT) has to set up a Construction Workers Welfare Board (CWWB) which is a tripartite entity comprising up to fifteen members with equal representation from workers, employers and the government, and a Chairperson nominated by the state government. The CWWB is required to register all construction workers in the state and promote the welfare of registered construction workers through various schemes, measures or facilities. Indicative welfare benefits are listed out in section 22 of the Act and include medical assistance, maternity benefits, accident cover, pension, educational assistance for children of workers, assistance to family members in case of death, group insurance, loans, funeral assistance, and marriage assistance for children of workers. Detailed schemes for implementation of these benefits are devised at the State level. Minimum safety standards and conditions of employment for construction workers have also been prescribed under the Act.

Legal and administrative framework

The Act is a Central legislation, with implementation to be carried out by States. The Act empowers the appropriate government to make Rules for its implementation and in particular, for regulating the safety and health of construction workers in the course of their employment.¹¹ Section 60 of the Act empowers the Central Government to issue directions to any State government or Board relating to the execution of the Act in that State. There are also advisory committees at the

State and Central level to advise the appropriate government on matters relating to implementation of the Act.

The provisions of the Act apply to all individuals or associations of any kind employing workers in building or construction work, except individual construction of houses costing less than Rs 1 million. The definition of 'building or construction work' under the Act excludes work in factories or mines, and 'building worker' is defined to include any person employed in building or construction work, but excludes supervisory staff drawing a monthly salary of more than Rs 1600, and persons in primarily managerial or administrative roles.¹² The scope of construction work under the Act has been given wide import by notifying a number of ancillary activities such as stone cutting, brick-making and sand mining under its ambit. Thus, the protection under the Act also extends to brick kiln workers, who constitute one of the most vulnerable classes of informal workers due to the prevalence of exploitative systems such as debt bondage and caste.¹³

Enforcement Mechanism

The Act provides for an enforcement machinery in the form of inspecting staff appointed by the appropriate Governments, who are vested with powers of entry, search and seizure in respect of all premises within their jurisdiction where building or construction work is being carried out. Obstruction of inspectors or refusal to produce documents during inspection is punishable with a fine of Rs 1000 and imprisonment of up to three months. Penalties under the Act are extremely meagre: contravention of rules regarding safety measures carries a penalty of imprisonment up to six months and a fine of Rs 2000, while any other contravention of the Act carries a civil penalty of Rs 1000 for each instance. There is no data available regarding the number of prosecutions or convictions.

Funding: Levy and collection of cess

Section 24 of the Act requires each CWWB to set up a Fund for meeting its expenses, into which all moneys received by it are to be deposited. Up to 5% of this amount may be used for administrative expenses. In order to fund the welfare activities of the CWWB, the Cess Act envisages the levy of a cess on the construction of all buildings and other works employing construction workers. Under Section 3 of the Cess Act, the Central Government has notified the quantum of cess to be 1% of the cost of construction.¹⁴

BOX 2: ONGOING LITIGATION BEFORE THE SUPREME COURT

In 2006, the National Campaign Committee on Construction Labour (NCCCL), an advocacy group that was earlier involved in the campaign to enact a central legislation for construction workers, filed a public interest litigation in the Supreme Court [Writ Petition (Civil) No. 318/2006], seeking effective implementation of the Act and the Cess Act by the appropriate governments. At that point in time, fewer than half the 35 States and Union Territories (UTs) had framed Rules under the Act or set up CWWBs. The Supreme Court responded to the petition by directing the Central and State governments to frame and notify Rules for the implementation of the Act, set up their Boards and Advisory Committees, and hold regular meetings. It has sought periodic compliance reports on implementation and continues to monitor the case, with recent orders focusing on expanding registration and ensuring disbursement of the cess funds available with CWWBs. Following the Court's orders, the Central Government has also issued directions to all States under section 60 of the Act for registration of workers, and extension of benefits under central schemes such as the national health insurance scheme (RSBY) to registered workers.

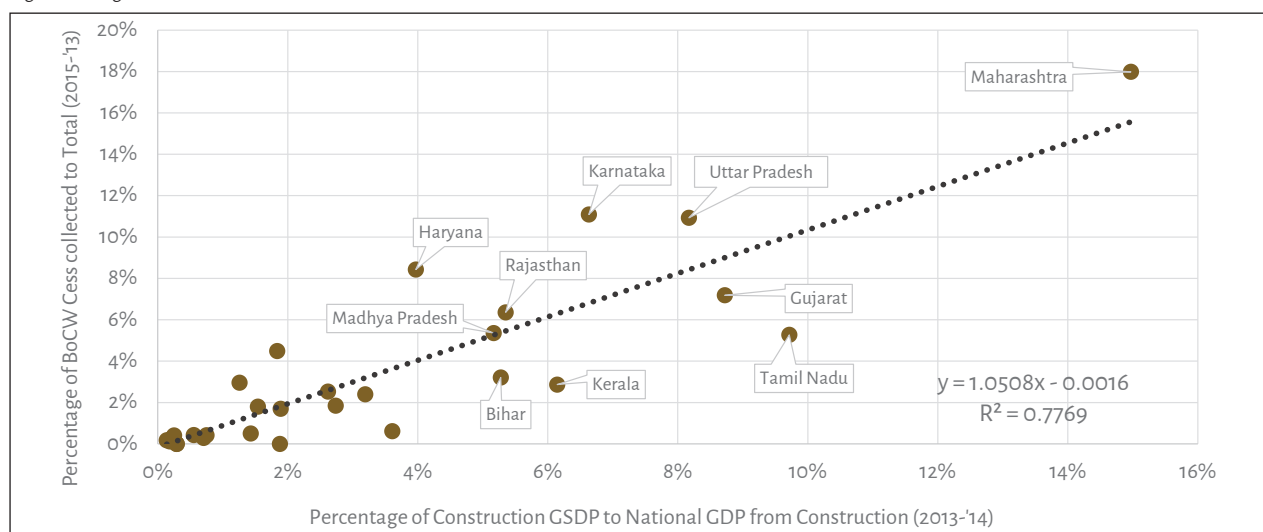
Source: Orders in WP(C) 318/2006, Website of NCCCL at <http://nirmana.org/>

The procedure for levy and collection of the Cess is detailed in the Building and Other Construction Workers' Welfare Cess Rules, 1998 ("Cess Rules") framed under the Cess Act. Under Rule 6 of the Cess Rules, every employer is required to submit in a prescribed form information regarding the estimated cost of construction, timeline for completion and number of workers employed to an Assessment Officer appointed by the State Government, who is then required to pass an order of assessment within six months. In case of public building or construction works, the government or public sector undertaking is required to deduct cess at the time of paying bills for such construction. Further, in cases of projects requiring approval by a local authority, the estimated cess amount for the first year of construction is required to be paid to such authority at the time of applying for approval. In all other cases, the cess amount is paid to a cess collector appointed by the State Government when it becomes due.¹⁵ After collection, the

Cess is deposited into the CWWB Fund, after deduction of up to 1% of the amount as collection charges.

Fig. 5 shows that cess collection is broadly proportionate to the construction activity ongoing in the States. The increase in cumulative cess collected between 2013 and 2015 amounted to Rs 124.15 billion, while the expenditure between 2013 and 2015 was Rs 36.35 billion.¹⁶ About 53% of the nationwide cess collected is contributed by six States and UTs (Maharashtra, Karnataka, Uttar Pradesh, Madhya Pradesh, Delhi and Haryana), all of which rank high in terms of their input to the national income generated from construction activities and with the exception of MP, collect more cess than their contribution to national GDP from construction. Tamil Nadu and Gujarat are two other states which rank high in terms of construction GSDP, but together collect only 12% of the nationwide cess.¹⁷

Fig 5: Linkages between construction GSDP and Cess collection



Source: RBI Handbook of Statistics on Indian States, 2016; Rajya Sabha Unstarred Question No. 1224, dated 09.12.2015 (accessed from <http://164.100.47.234/question/annex/237/Au1224.pdf>); and Lok Sabha Unstarred Question No. 2914, dated 10.02.2014 (accessed from <http://164.100.47.194/Loksabha/Questions/QResult15.aspx?pref=152008&lsno=15>). The chart excludes West Bengal, Odisha, Daman & Diu, and Dadra & Nagar Haveli due to data inconsistency.

TARDY PROGRESS OF IMPLEMENTATION

The slow pace of implementation of the welfare mechanism under the Act has been a major cause of concern. While the Central Government framed the Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Central Rules, 1998 in respect of building or construction work where it is the appropriate government, the framing of Rules by States took much longer and was only completed by 2011, with more than half of the States doing so only after the Supreme Court's intervention in 2006 (see Box 2).

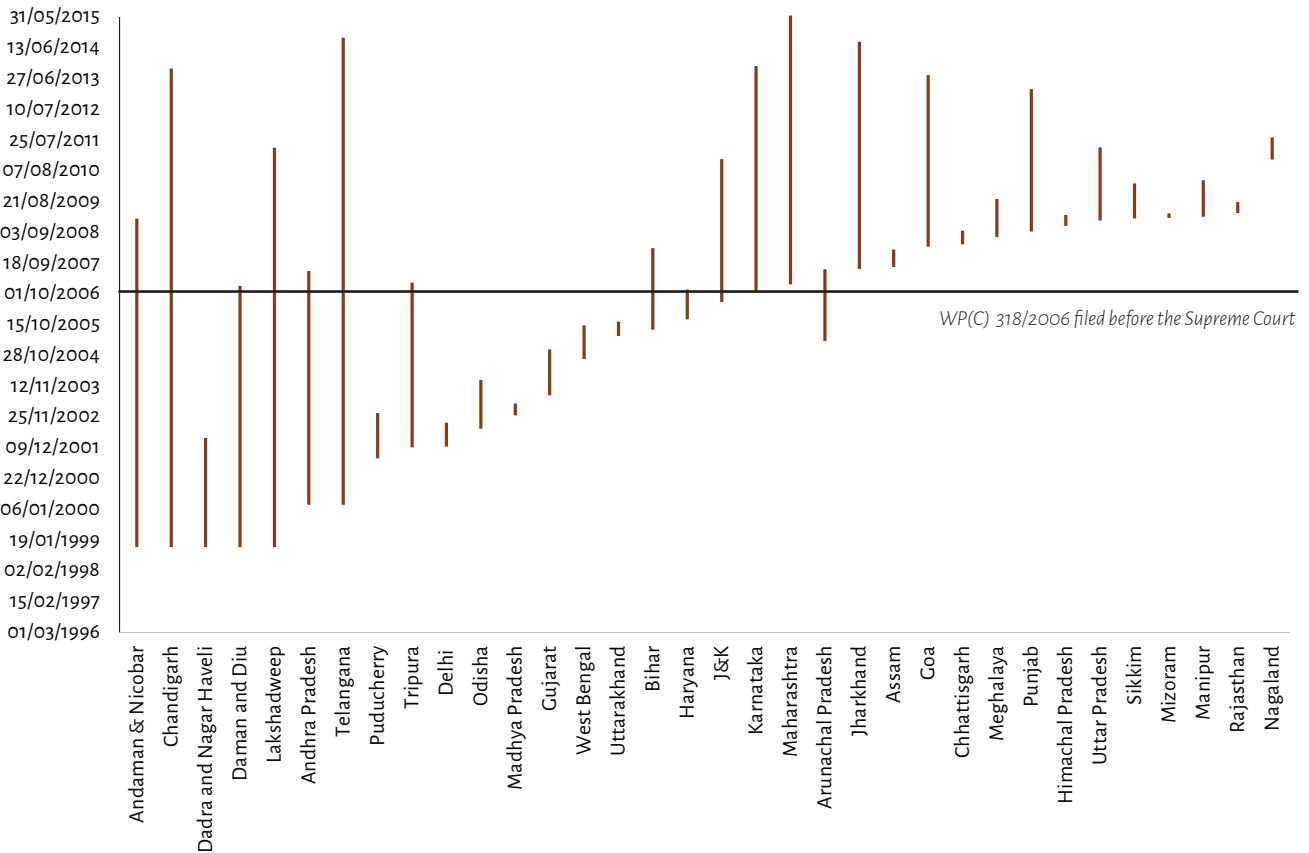
The timeline of framing of Rules and constitution of the CWWB reveals wide variations and a huge time lag in the two decades since the Act came into force. The bottom of each vertical line in Fig. 6 represents the date of notification of the respective Rules, and the top records the establishment of the Board for the corresponding State or UT. The height thus shows the time taken between the two actions, and the graph indicates that

several States and UTs reported a long delay in setting up the administrative apparatus even after framing Rules. While Tamil Nadu and Kerala already had CWWBs in place prior to 1996 owing to regimes preceding the Act, a majority of the states and UTs only set up their CWWBs and Advisory Committees after 2006, when the litigation before the Supreme Court was initiated and orders were issued.

WORKER REGISTRATION: DOES LOWERING ENTRY BARRIERS HELP?

Section 11 of the Act requires a construction worker to be registered as a beneficiary with the CWWB before receiving any benefits from its Fund.¹⁸ Any building worker between the ages of 18 and 60 who has been engaged in building or construction work for at least ninety days in the preceding twelve months is eligible for registration under section 12 of the Act. All registered beneficiaries are required to contribute a notified amount towards the Fund on a monthly basis, while

Fig 6. Timeline of implementation



Source: Submissions before the Supreme Court in WP(C) 318/2006; Gazette Notifications

The Act came into force on March 1, 1996. The last Board was set up (by Maharashtra) on May 28, 2015. The data is presented within this timeline, in ascending order of notification of Rules by the appropriate government. Arunachal Pradesh set up its Board prior to notification of Rules. Kerala (1990) and Tamil Nadu (1994) set up their Boards under State legislations prior to the Act coming into force and are therefore not represented here.

each CWWB is required to issue identity cards to all workers registered with it. Registration is carried out at the state level by the CWWB under the Rules framed by each State, and the process varies from state to state, with differing requirements for registration fees, annual contribution, requirement for periodic renewal of registration, and eligibility of migrants to register. Table 3 offers a comparison of some of these aspects of the registration process across different states, as well as the number of workers actually registered in these states.

As of December 2015, about 21 million workers had been registered as beneficiaries across the country, which is 45.5% of all construction workers as per NSS 68th EUS estimates (2011-12).¹⁹ It would appear that in the 20 years that the Act has been in effect, States have not been able to register even half the construction workforce. Moreover, field studies show that the vast majority of those workers who seek work at labour chowks are unaware of the existence of the Act.²⁰ Clearly, much remains to be done with regards to communicating the benefits of registration and making it easily accessible.

Some states have registered much more, e.g. only four states (UP, TN, MP, WB) contributed to about half the the total number, while Dadra and Nagar Haveli reported zero registrations. States like Delhi and Chhattisgarh had more registrations than the estimated number of construction workers in them, as per NSS 2011-12. Fig. 7a & 7b on the

following pages show these significant spatial variations. It is noteworthy that the share of registered workers are much higher in states such as Tamil Nadu where the requirements for registration are minimal. Tamil Nadu has only 6.7% of the country's construction workforce, but contributes to 12.3% of the total registration nationwide. The same is also true for migrant intensive states like Delhi or Haryana, which allow migrant workers to register with their Boards.

UTILISATION OF CESS: DOES ROBUST REGISTRATION RESULT IN HIGHER SPENDING?

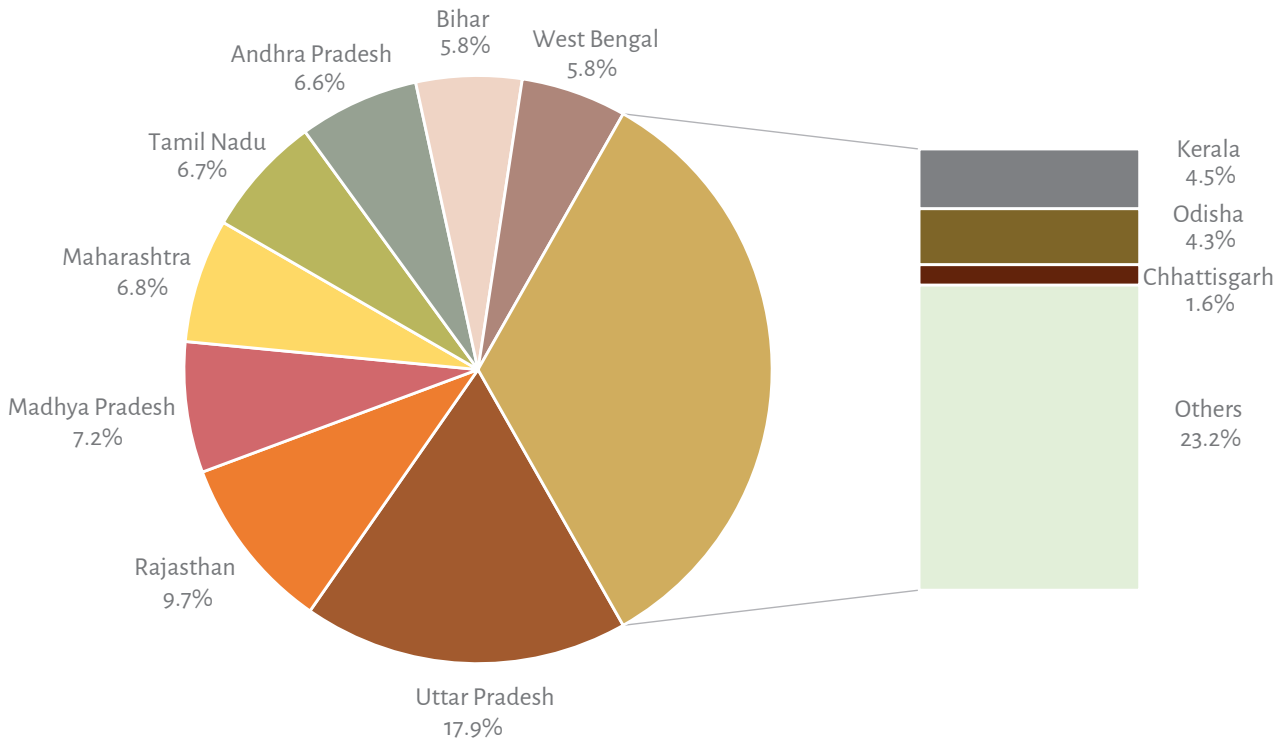
As of December 2015, an amount of Rs 254.96 billion had been collected as cess by all the CWWBs, of which Rs 53.71 billion had been spent. Fig 8a & 8b on the following pages reveal significant anomalies in terms of collection and expenditure of the CWWB cess, where the states collecting most of the cess are not necessarily big spenders. In terms of collection, more than half of the amount has been generated by five states, namely Maharashtra, Karnataka, UP, MP and Delhi. Together, these states constitute about 34% of the gross value added by construction in the country.²¹ Of these, only Madhya Pradesh also reports high spending. Kerala collects only 4.8% of the total cess nationally, but has spent 21.5% of the total cess spent nationwide. Maharashtra presents a contrasting picture, having collected 14% of the nationwide cess but spent only 4%.

Table 3: Worker registration formalities of select States under the Act

	Kerala	Gujarat	Odisha	Tamil Nadu	Telangana
Age criteria	18–60 years	18–60 years	18–60 years	15–60 years	18–60 years
Documents to be submitted at the time of registration	Proof of age; Certificate of employment (issued by employer/trade union/Asst. Labour Officer)	Proof of age; Certificate from present employer; Ration card	Attested proof of age; Certificate of employment (issued by employer/ trade union/ Inspector)	Attested proof of age	Proof of age; Certificate of employment (issued by registered establishment/ trade union/Asst. Labour Officer)
Registration fee	Rs. 25	None	Rs. 20	None	Rs. 50
Annual contribution	Rs. 240	None	Rs. 100	None	Rs. 12
Validity of registration	No limit	No limit	No limit	Five years	Five years
Can migrants register?	Unclear	Yes	Unclear	Yes	Unclear
Number of workers registered (Dec 15)	1,570,360	215,060	119,204	2,540,860	835,501

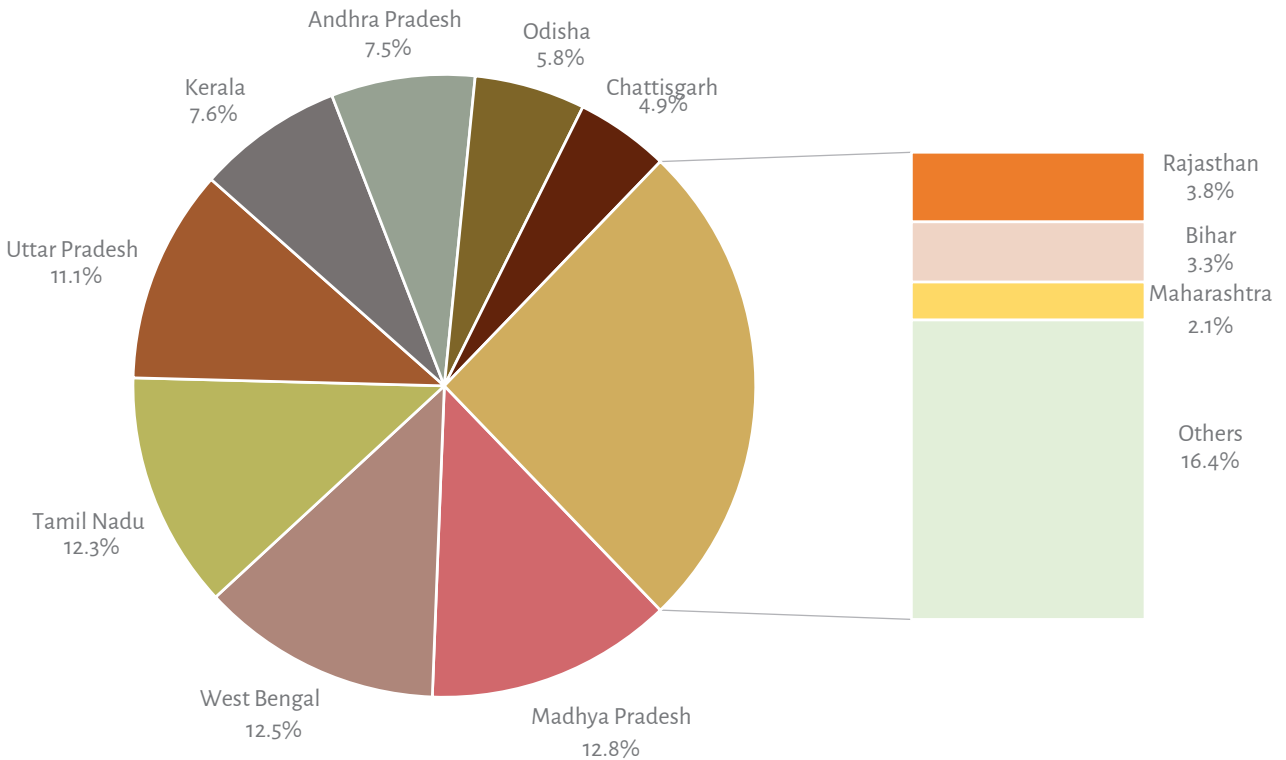
Source: State Rules

Fig 7a: Share of Construction Workforce



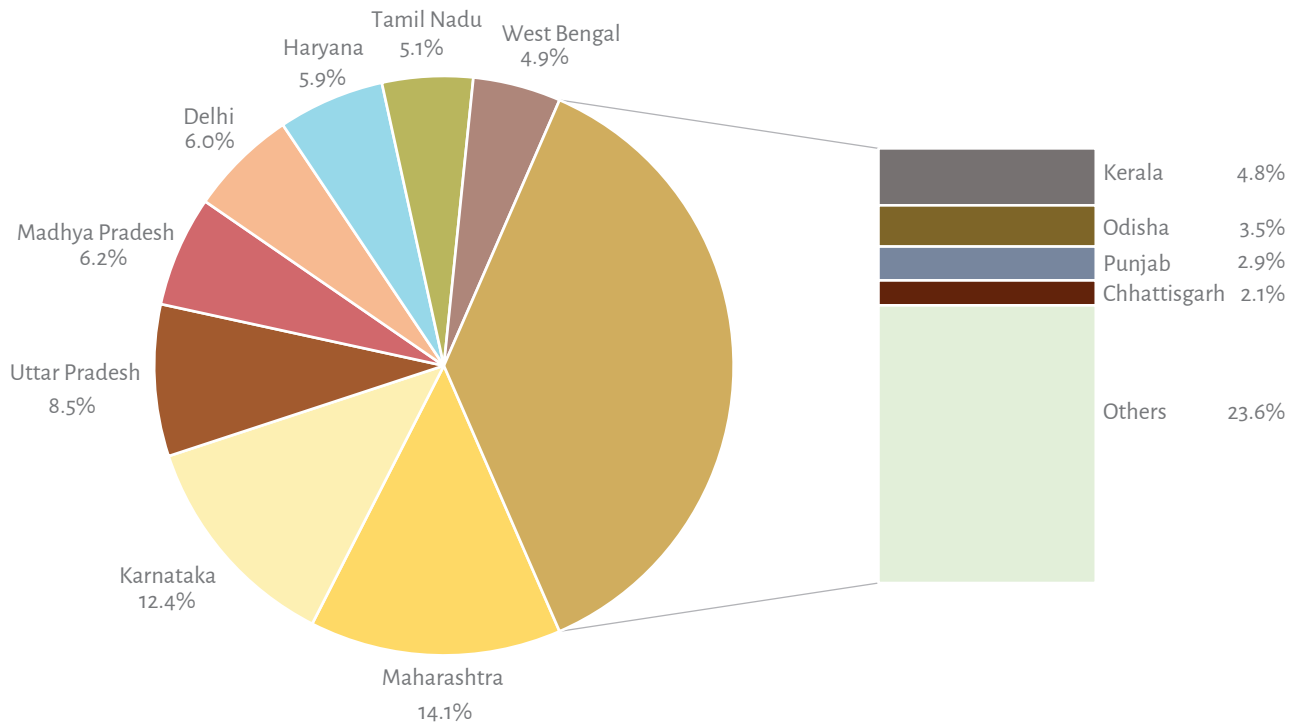
Source: Employment-Unemployment Survey, NSSO, 68th Round (2011-12)

Fig 7b: Share to Workers Registered under CWWB



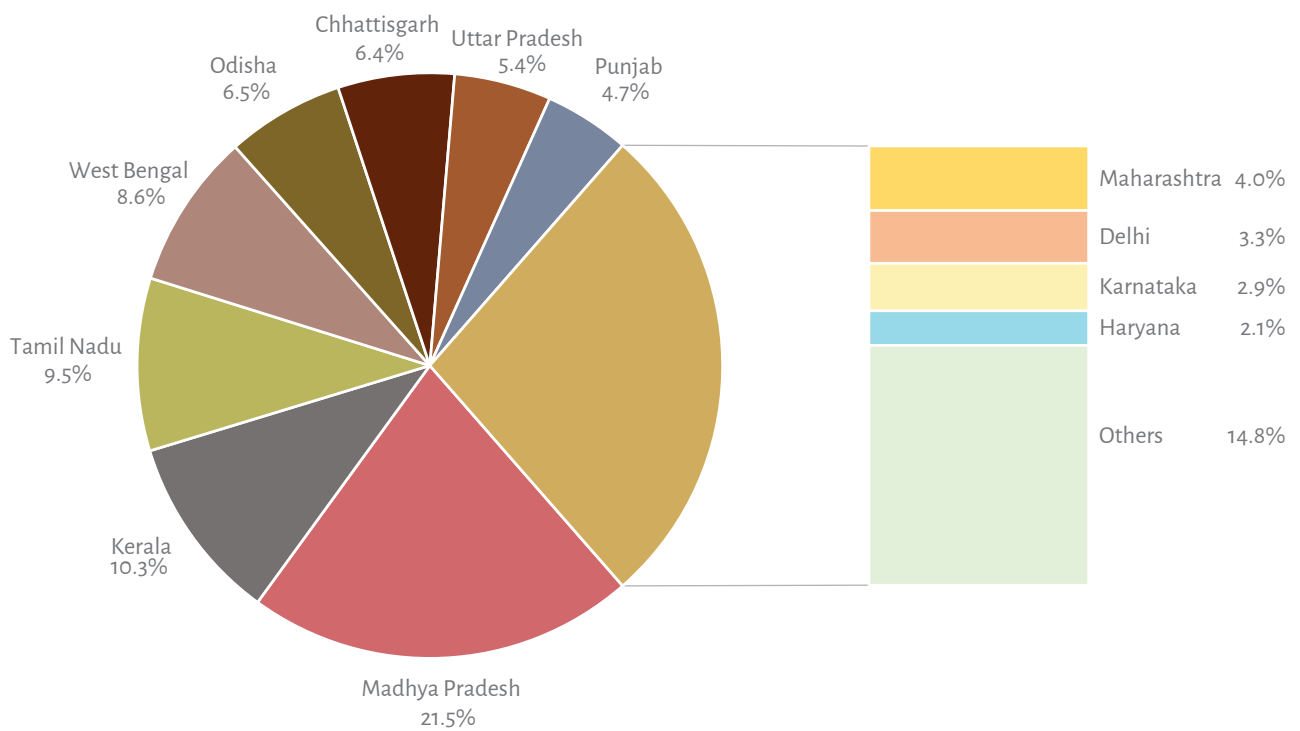
Source: Ministry of Labour and Employment, Government of India.

Fig 8a: Distribution of Cess Collected (2015)



Source: Rajya Sabha Unstarred Question No. 103, dated 24.02.2016 (accessed from <http://164.100.47.234/question/annex/238/Au103.pdf>).

Fig 8b: Distribution of Cess Spent (2015)



Source: Same as Fig 8a.

The variation in collection and spending of CWWB cess is also reflected in the patterns within States, with Kerala spending 93% and Gujarat spending barely 2% of their collected cess. There are also significant correlations between the expenditure pattern of the states and the level of registration of workers, where states that have registered a higher number of workers have also spent higher amounts of cess funds. Based upon the expenditure pattern and registration of workers, the states can be categorized into four types as shown in Fig. 9. The states have also been colour coded based on their spending per registered worker, which varies from a minimum of Rs 871 to a maximum of Rs 7338. Quadrant 1 of the figure portrays states with high registration and higher spending, which includes Kerala, Odisha, Madhya Pradesh, Tamil Nadu, West Bengal and Chhattisgarh. Many of these states have low per capita spending on account of high registration; exceptions include Kerala and Chhattisgarh. Similarly, the group with low registration but high spending (Quadrant 2) includes Jharkhand, Jammu and Kashmir and Punjab. The largest pool of states form the Quadrant 3, which portrays both low registration and low expenditure, including Maharashtra, Uttarakhand, Rajasthan, UP, Bihar, Himachal Pradesh, Gujarat, Assam, and Haryana. Despite low spending, some of these states (like Maharashtra) managed to retain high per capita spending due to very low registrations. The fourth category has high registration but low expenditure and includes three states, namely Delhi, Karnataka and Andhra Pradesh.

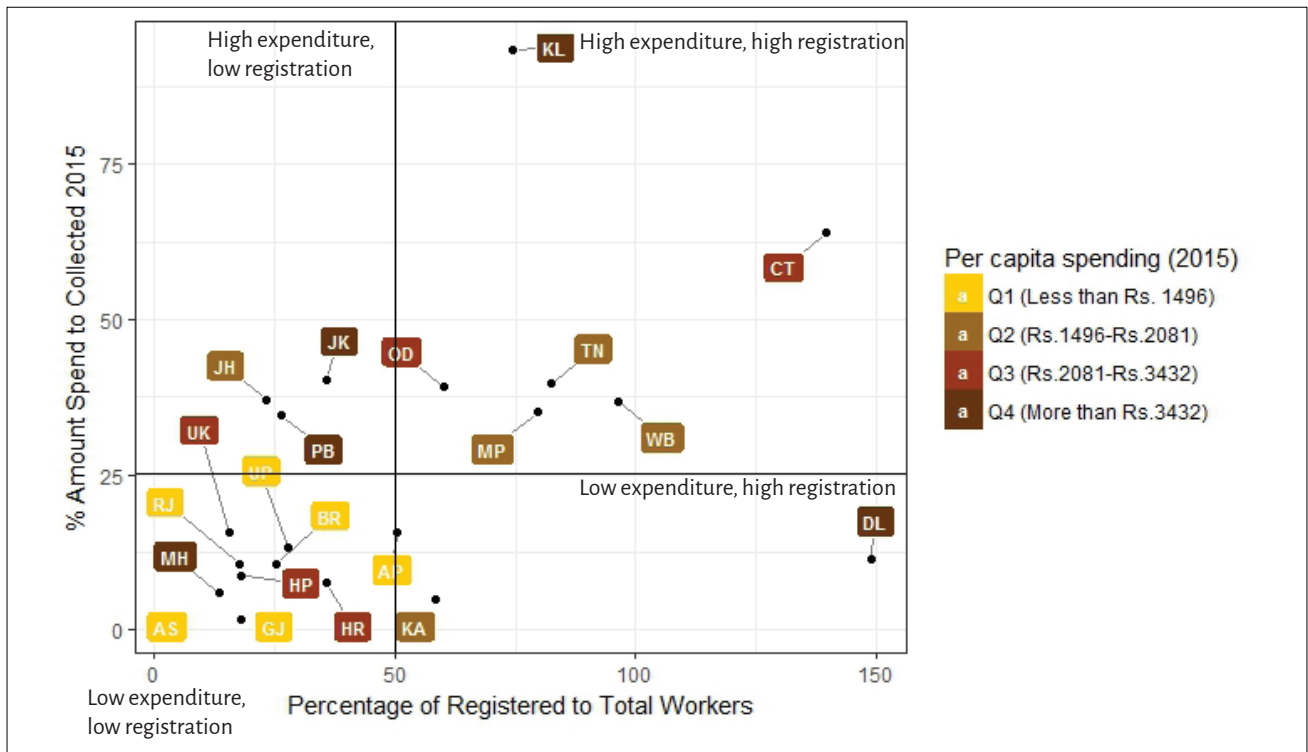
The above examples portray variations in collection, distribution and expenditure of CWWB cess in the country; combined with variation in the number of worker registrations, there are very few success stories. Delhi barely spent 12% of its collected cess in 2015, but spent more than Rs 5000 per worker as it collects a lot of money owing to robust construction activity in public and private sector. Kerala, on the other hand, collects only 5% of the total CWWB cess at national level, but is one of the most efficient in terms of distributing its benefits to the workers.

ANALYSIS AND RECOMMENDATIONS

The Act has the potential to enhance the social security of a large workforce that face multiple vulnerabilities. However, the best of intentions are often bereft of action. The legislative framework for the welfare of construction workers has been no exception. The quantitative analysis in this brief presents a dismal picture of the state of implementation: from tardy action on the creation of State-level legislations and institutional mechanisms to inadequate registration of workers and poor utilisation of cess funds, with wide variations across States.

A review of amendments proposed to the Act in 2013 by a Parliamentary Standing Committee underlines the urgent need for States to streamline processes and resolve administrative hiccups with the objective of maximum inclusion in the

Fig 9: Registration-Spending Linkages Across States



Source: Same as Fig 7b and 8a.

Cumulative amount collected and spent up to December 2015. Lines on graph represent national averages. Q in legend refers to quartile.

implementation of worker welfare mechanisms (see Box 3). The committee's observations are a useful starting point in planning future action to bring this legal regime to fruition. Three years since these recommendations, the availability of up-to-date national level data on worker registrations and cess expenditure is still a concern, and while cess collection seems to have marginally improved, much remains to be done.²² States that register robust per capita spends on the back of low registrations need to focus on bolstering registration of workers, while those that have been successful in registering workers in significant numbers will have to worry about sustaining the welfare benefits they already offer over time. Moreover, the significant corpus of unspent funds (about Rs 200 billion as of March 2016) offers scope for large scale capital investments by CWWBs after which the focus could shift to ensure sustainability of such investments and infrastructure. Thus, a majority of States will need to deliberate on the kind of expenditure or investment strategy that will best ensure the welfare of construction workers while remaining sustainable. In this, the inclusion of migrants will need special focus, given their significance in the construction workforce.

What is clear is that States need to perform well on all fronts—the establishment of appropriate regulatory and implementation institutions, registration of workers, cess collection and utilisation—in order to deliver on welfare benefits. It should be noted that Kerala and Tamil Nadu, which had state-level arrangements even before the Act came into force, have done better than most other states on most fronts. Given the wide variation across States and the quantitative nature of this exercise, it is difficult to identify trends and further

qualitative research would be required to make specific policy recommendations for States. Some explanations, suggestions and relevant questions are raised below in the spirit of encouraging speedy and responsive implementation.

Ensuring representative CWWBs

The CWWB is a tripartite organisation designed to provide representations to the unorganised workers who form a majority of the construction workforce. A preliminary perusal of notifications setting up Boards in different states reveals that many appointees are representatives from trade unions who may not represent unorganised workers. States must ensure that the representation does not come at the cost of unorganised workers' voices being unheard.

Simplifying worker registration processes

The Cess Act provides States additional resources to implement social welfare for construction workers. Yet, in our analysis, we do not see States that have a large number of construction workers (e.g. Rajasthan) or States where construction contributes significantly to GDP (e.g. Gujarat) particularly motivated to register workers under the Act. Registration success is better explained by the streamlining of processes and lowering of entry barriers through minimal registration requirements (e.g. Tamil Nadu) as well as through inclusion of migrant workers (e.g. Delhi, Haryana). States would do well to encourage self-registration, streamline and localise verification processes, and engage civil society organisations to sustain registration drives on construction worksites, labour chowks and in settlements where construction workers live (see Box 4).

BOX 3: REVIEW BY PARLIAMENTARY STANDING COMMITTEE

In 2012, a Task Force set up to review inadequacies in the Act and the Cess Act submitted a set of 20 recommendations to the Central Advisory Committee. Based on these recommendations, the Central Advisory Committee proposed amendments which the Central Government introduced in Parliament through the Building and other Construction Workers Related Laws (Amendment) Bill, 2013. Some of the significant proposals included: (i) removal of the upper age limit of 60 years for eligibility; (ii) removal of the requirement of 90 days of construction work; (iii) replacing minimum threshold cost of Rs 1 million for applicability of the Act with an amount to be notified by the Central government; and (iv) replacing the ceiling amount of 5% for administrative expenses of the CWWB with an amount to be notified by the Central Government. The Bill was referred to the Parliamentary Standing Committee on Labour for its comments.

After consulting various stakeholders, the Standing Committee disapproved of most of the amendments, observing that only nine of the 20 recommendations made by the Task Force, relating to the administrative machinery and 'paraphernalia', had been considered, while the remaining recommendations pertaining to workers' welfare had not been considered. It expressed surprise regarding the absence of centralised data regarding the total number of workers engaged in construction work, and observed that there were several lacunae in the implementation of the existing Acts, including non-registration of brick kiln workers and migrant labourers, non-issue of identity cards, and lack of clarity on the manner in which cess funds, which had accumulated to the tune of several billions of rupees, were to be spent. In light of the fact that the Act had been dormant for almost 15 years, it recommended comprehensive amendments to streamline existing systems and processes, including setting up a grievance redressal mechanism, instead of the proposed piecemeal legislative changes which in its opinion would not be able to bring about the desired results.

Source: Parliamentary Standing Committee on Labour, 44th Report, March 2014 (accessed from http://164.100.47.193/Isscommittee/Labour/15_Labour_44.pdf).

BOX 4: GOVERNMENT-NGO COLLABORATIONS TO OVERCOME REGISTRATION ROADBLOCKS

A growing network of migration resource centres (MRCs) run by civil society organisations is already playing an important role in connecting migrants with government schemes. For example, Sahbhagi Shikshan Kendra (SSK), Ghaziabad works with construction workers and facilitates registration of workers under the Act, often liaising with the local labour department to resolve any barriers related to procedures. In 2015, the NGO found that most unorganised construction workers in Ghaziabad did not have a Certificate of Employment for 90 days as required by the Act. They were successful in convincing the district level labour department to permit workers to submit self-certified affidavits for the purposes of registration, which could be on plain paper, instead of the stamp paper ones usually demanded. SSK has also from time to time organised camps where registration cards are distributed and where the labour inspector visits and verifies affidavits on the spot.

Source: *Legal clinics, BOCW linkages, and mobile kiosks: SSK's recent interventions* (accessed from <http://www.shram.org/blogs/?p=812>); Meeting with SSK representatives, Lucknow, July 2016.

Creative, strategic ways to increase cess expenditure

With cess collections having improved drastically after 2013, the focus must shift to expenditure of cess funds. The Act suggests a wide array of welfare activities, allowing States to be both creative and strategic in the expenditure of cess funds. In the absence of detailed expenditure data from States, this brief makes some general suggestions based on available data. Considering the important role that the NGO sector has played in the dissemination of government welfare schemes, the experiences of NGOs affiliated with the Tata Trusts Migration Initiative (of which SHRAMIC is also a part) have been considered in making these suggestions.

Facilitating grievance redressal: A common problem faced by non-unionised informal sector construction workers is non-payment, delay or reneging of wages by employers. Those migrant workers in this group who seek jobs at destination without registered intermediaries are not protected by the ISMWA. States could explore the utilisation of cess funds to support the establishment and operations of helplines and legal redress mechanisms. Investments can also be made in training workers to maintain labour records and sensitisation of employers to comply with labour regulations. For example, the

Labour Department in Rajasthan government now supports a labour helpline and legal cell, which was initiated and continues to be operated by NGO Aajeevika Bureau. This labourline offers mediation services between employers/contractors and workers for wage and other disputes.

Improving worker housing: In urban destinations, States must concentrate attention on improving access to housing and basic services. Government schemes to construct dormitory housing for single male workers as well as family housing, especially for rental purposes, must be prioritised. Moreover, in line with the recommendation of the Working Group on Migration,²³ access to these facilities should be open to all registered construction workers, including migrants, and not be based on domicile/residence requirements. Allowing local governments to extend basic services to informal settlements is another way that state governments can facilitate the self-creation of informally provided rental housing, which has been successful in creating affordable housing stock in urban areas.

Outreach: While the political economy of cities provides few incentives for the inclusion of migrants, the lowering of entry

BOX 5: POTENTIAL IMPACT OF GST ON THE BOCW FRAMEWORK

The Goods and Services Tax (GST) regime seeks to introduce a single tax on all transactions involving the supply of goods and services. GST is intended to provide a common national market for goods and services, by subsuming various existing Central and State taxes, surcharges and cesses on goods and services. To this end, the Central GST Act, 2017 and the Taxation Laws Amendment Act, 2017 propose repealing of a number of central taxes, cesses and levies on goods and services.

Although the Cess Act has not been proposed for repeal, there have been apprehensions about the possibility of it being subsumed under the GST regime as this would cripple the functioning of the CWWBs, which are dependent on Cess funds for carrying out welfare activities. However, this is unlikely, given a core principle of the GST regime is that "...taxes, levies and fees that are not specifically related to supply of goods & services should not be subsumed under GST". The Cess is not specifically related to the supply of goods and services, but is levied on the cost of construction, and is treated as a fee for the welfare of building and construction workers.²⁴ Further, unlike the cesses and levies that have been repealed, it is not merged with the general revenue, but deposited in a specific statutory Fund with the CWWBs.

Source: The Central Goods and Services Tax Act, 2017 (sections 173 and 174); The Taxation Laws Amendment Act, 2017 (section 18 and the Third Schedule); *Frequently Asked Questions on Goods and Services Tax*, Central Board of Excise and Customs, March 2017 (accessed from http://www.cbec.gov.in/resources//htdocs-cbec/deptt_offcr/faq-on-gst-second-edition-revised.pdf)

barriers for registration does provide the potential for States to extend welfare to migrants as envisaged by the legal framework and highlighted by the Standing Committee. States with large metropolitan centres would benefit particularly from outreach to inter-state migrants, who might face barriers to public sector housing schemes, as well as labour market opportunities or education with domicile/residence requirements. One way might be through bilateral arrangements between sending and receiving States, as suggested by the Working Group on Migration.²⁵ State and local governments can also leverage the work of NGOs in extending amenities to construction workers.

Occupational safety and health: Given the prevalence of unorganised workers in construction, it is particularly important that States regularly inspect establishments to ensure compliance with occupational standards and safety regulations that are specified in great detail in the Rules framed under the Act. Further, cess funds could help treat and rehabilitate workers who have been injured at site, as is being done in some State schemes. Cess funds can also be utilised to improve access to health for construction workers. For instance, MRCs run by Sampark, an NGO in Bangalore, have been working to organise

migrant construction workers with a focus on healthcare access, with Shramic Mitras at these MRCs assisting referral patients to access hospitals.²⁶ Since several ancillary activities have been brought under the ambit of the Act, cess funds could be used for treating diseases like silicosis that are common among those who have worked in stone quarrying and crushing. In rural and peri-urban destinations, where associational migrants are significant, cess funds could be used in facilitating education and healthcare access, for instance at brick kiln sites.

CONCLUSION

Given the importance of the construction sector in creating mass employment, the welfare regime under the Act is a golden opportunity to increase the productivity of this vital sector through improvements to working and living conditions for workers. The data suggests that States need to streamline processes and act with a sense of urgency to deliver these benefits, and are likely to see positive economic impacts if they do so. This will ensure that construction workers, especially migrants, are not left out of the economic growth story that they play an integral role in creating.

NOTES

1. GDP at Factor Cost (Constant Prices) as per base years 2011-12., sourced from the RBI Database on Indian Economy (accessed from <https://dbie.rbi.org.in/DBIE/dbie.rbi?site=statistics>)
2. GDP at Factor Cost (Constant Prices) as per base year 2004-05, sourced from the RBI Database on Indian Economy.
3. As per NSSO 68th Round (2011-'12). The workforce figure refers to only Usual Principal activity Status, and rises to 73 million if Usual Subsidiary activity status is added.
4. There is a significant variation in the migrant share between figures from the Census and estimates from the NSS: according to the Census, the share of migrants in the total workforce in construction in 2001 was 33.6%, while according to NSS estimates, it was 25% in 1999-2000 and 21.5% in 2007-2008.
5. As per Census 2001, there are about 1.8 million rural-urban internal male migrants in the construction sector, of which 0.8 million are inter-state. On the other hand, there are 0.85 million rural-rural internal male migrant workers, of which 0.43 million are intra-district.
6. 'Short-term migrants' refers to persons who stayed away from the village/town of enumeration for between one and six months in their last 365 days for employment.
7. About 13% of the migrant construction workers in the rural areas have a history of short-term migration as opposed to 1.4% in urban areas. This, however, presents an incomplete picture as NSS data does not enumerate short-term migrants at destination, which means that people currently working in construction for the short-term cannot be estimated from this data. Analysis using the 'duration of stay' question from the NSS suggests that about 11% of the migrants currently working in construction had moved in the last one year preceding the date of survey.
8. Gol. (2017). Report of the Working Group on Migration. New Delhi: Ministry of Housing and Urban Poverty Alleviation, Government of India. <http://mhupa.gov.in/writereaddata/1566.pdf> ("*Report of the working group*"), p.26.
9. See, CWDS.(2012). Gender and Migration: Negotiating Rights- A Women's Movement Perspective. New Delhi: Centre for Women's Development Studies; and Srivastava, R & Jha, A. (undated). Capital and Labour Standards in the Organised Construction Industry in India: A Study Based on Fieldwork in the National Capital Region of Delhi. New Delhi: Centre for the Study of Regional Development, Jawaharlal Nehru University.
10. These legislations emerged out of a discussion at the 41st labour ministers' conference in May 1995. They were preceded by Ordinances, and were the result of a long national-level campaign by workers' unions and advocacy groups.
11. The "appropriate government" is the Central Government in the case of Union Territories, public sector undertakings, railways, ports, mines, oil fields, and industries carried on by or under the authority of the Central Government; and the State Government in all other cases.
12. For convenience, the terms 'construction work' and 'construction worker' will be used throughout this document.
13. See, for example, Guérin.I., Venkatasubramanian, G & Kumar, S. (2015). Debt Bondage and the Tricks of Capital, *Economic and Political Weekly*, 50 (26-27), pp.11-18.

14. Rule 3 of the Cess Rules defines “cost of construction” to include all expenditure incurred by an employer in connection with building or construction work, excluding the cost of land and compensation paid for workplace accidents.
15. The payment of cess becomes due, in cases of construction for a duration of less than one year, within thirty days of completion of the project or the order of assessment, whichever is earlier. In other cases, it becomes due within thirty days of the completion of each year from the date of commencement of construction.
16. Due to data limitations, while the collection is from September 2013 to September 2015, expenditure figures are from September 2013 to December 2015.
17. The construction GSDP is collected from the RBI Handbook of Statistics on Indian States, 2016 (accessed from <https://www.rbi.org.in/scripts/OccasionalPublications.aspx?head=Handbook%20of%20Statistics%20on%20Indian%20States>). The total GDP (in constant prices) from construction, as derived from the same document is Rs. 4653.56 billion, for the year 2013-'14 and as per base year 2004-'05. The amount for the same period as derived by the Central Statistical Organization is Rs. 4266.64 billion, which has an offset of 8.3%.
18. In addition, section 7 of the Act mandates the registration of every establishment to which the Act is applicable, and every employer in relation to an establishment (owner or contractor) is required to give notice to the jurisdictional Inspector at least 30 days prior to the commencement of construction work in that establishment.
19. As per NSS 68th Round EUS, there are 45.5 million construction workers within the age bracket of 18 to 60 years.
20. This is based on the results from a survey of naka workers in Navi Mumbai conducted by NGO Yuva, which showed 98% of them were unaware of the Act. See Naraparaju, K. (2014). Well-being of migrant workers: Perspectives from daily labour markets in Navi Mumbai, *Urban India*, 34(1), pp. 68-86.
21. Refers to Statewise GSDP by sector for 2013-14 at constant prices, as per base year 2004-05, sourced from the RBI Handbook of Statistics on Indian States, 2016.
22. *Report of the working group*, pp. 16-18.
23. *Report of the working group*, pp. 25 and 48.
24. *Dewan Chand Builders v. Union of India*, Civil Appeal 1830/2008. This case challenged the Constitutional validity of the Cess Act. The challenge was rejected by the Supreme Court, which held:

“The levy of Cess on the cost of construction incurred by the employers on the building and other construction works is for ensuring sufficient funds for the Welfare Boards to undertake social security schemes and welfare measures for building and other construction workers. The fund, so collected, is directed to specific ends spelt out in the BOCW Act. Therefore (...) it is clear that the said levy is a ‘fee’ and not ‘tax’.”
25. *Report of the working group*, p. 31.
26. See, *Facilitating migrant workers’ access to healthcare: Sampark* (accessed from <http://www.shram.org/blogs/?p=771>)

STRENGTHEN AND HARMONIZE RESEARCH AND ACTION ON MIGRATION IN THE INDIAN CONTEXT

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SHRAMIC (Strengthen and Harmonize Research and Action on Migration in the Indian Context) is a multi-stakeholder project, supported by the Tata Trusts, that brings together academia and NGOs to study migration related issues. Besides CPR, other research partners of SHRAMIC include the Indira Gandhi Institute for Development Research (IGIDR), National Institute of Urban Affairs (NIUA), and IRIS Knowledge Foundation (IRIS-KF).



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