

A construction worker wearing a bright orange safety suit with reflective yellow stripes and a yellow hard hat is working on a metal structure. The worker is seen from the back, leaning over a horizontal metal bar. The background is a dark, industrial setting with a large, textured metal wall. The overall scene is dimly lit, with some highlights on the worker's suit and the metal structure.

**MIGRANTS
RESILIENCE
COLLABORATIVE**

Ensuring Safe Migration in Asia Series - Part 3

**Labour Laws and Impact on Internal Migrants
in Asia**

Labour Laws and Impact on Internal Migrants in Asia

The unequal power dynamic between workers and their employers lead to instances of unjust working conditions. In such cases, effective labour laws help promote worker protection. If the informal economy is brought under the labour laws, it could lead to favourable working conditions. ^[1]

1. The need for laws and policies addressing the unique challenges of internal migrant workers

Even though each country has labour laws that govern workers, there is a lack of policy or law specific to the needs of internal migrants. At the international level, policies formulated by organisations such as SAARC ^[2] and ASEAN have been limited to international migrants, and the focus on internal migration has been negligible. At the country level, only India had a law that aimed at the safe migration of internal migrants – The Inter-State Migrant Workers Act 1979 (ISMA). However, it was never effectively implemented, and has now been subsumed under new labour codes. ^[3]

2. Gaps in existing labour laws and the need to adhere to international standards

As mentioned above, all countries have labour laws in place. However, in countries such as India and Indonesia, existing labour laws were relaxed recently citing economic slowdown as a result of the pandemic as a reason. It is important that workers' rights are protected in this scenario and countries amend and adhere to the international standards set by ILO.

2.1. Unclear definition of who is an employer: contracting and sub-contracting

Employer-employee relationship in the informal sector is often a complex one as the role of an employer is often undefined in labour laws across countries, such as different levels of employers exist in the construction value chain, ranging from a principal employer → contractor → sub-contractor → micro contractor. In such cases, the

ability to identify who should be complying with laws becomes even more difficult. For example, in India, under the labour law, there are provisions for working hours, wages and overtime. The 'employer' is a key person in implementing this law. ^[4] However, responsibilities such as maintenance of register records of overtime, wages, etc. are often given to a contractor by the principal employer, therefore, he is seen as the primary employer by the workers. Such a scenario sometimes leads private firms to forgo their responsibilities towards workers and non-compliance and regulations can often go unchecked. ^[5]



“When we give a contract to a big contractor, compliance is usually higher. However, down the value chain, if a small contractor is hired – traditionally, there will be a foreman and if there is a requirement of 50 masons, he will go around scouting in the neighbouring villages in search of those masons. Here non-compliance can be higher.”

*-Harleen Oberoi, Vice President,
Project Management, Tata Realty, India*



2.2. Lack of strict penalties

To ensure worker protection, it is important that workers have rights in cases of non-compliance. However, this is not always the case. For example, in the event of non-compliance by the employer, the mechanisms for redressal are not strict or properly enforced. In Indonesia ^[6] and India ^[7], the penalty is significantly less for non-compliance with minimum wage, which further increases the chances of more instances of non-compliance. Meanwhile, in Thailand ^[8] and Nepal ^[9], even though there is strict punishment

for non-compliance with minimum wage, the implementation of the act is poor, leading to high cases of workers being paid less than the minimum wage.

2.3. Right to Strike

The right to strike helps workers safeguard their socio-economic interests and improve working conditions. When dispute negotiations between workers and employers fail, peaceful strikes are a democratic way of protecting workers' rights.^[10] According to ILO, the notice given to the employer by workers before the strike is vital as it acts as an additional stage for final negotiations. In its labour law, each country specifies what this notice period should be. It is essential that the period isn't too long as that might restrict the right to strike. For most establishments except essential services or services of social or public interests, ILO has not suggested a specified time frame. However, it has stated that a period of 48 hours' notice before the strike is reasonable.^[11]

Bangladesh, Cambodia and Indonesia have adhered to the international standard, while India, Nepal and Thailand have deviated from it. In India^[12] and Nepal^[13], the provision has been criticised as solely working on making the labour market more efficient while dismantling worker rights as a longer notice period weakens it. In Thailand, the notice period is less than 48 hours, which might give less time for reconciliation.

2.4. Rightful termination

It is essential to strike a balance between employers' right to dismiss workers in valid situations and ensuring that dismissal is fair for the employee, as unfair dismissal can have negative economic consequences for the worker and their family.^[14] The ILO Convention on Termination of Employment (No. 158) states a terminated worker should be entitled to a reasonable notice period or compensation. An exception to this is when the worker is guilty of serious misconduct. However, a time period for notice of termination is not provided, leaving it to countries to define a 'reasonable period'. It also suggests that while terminating a contract, an employee should be given a valid reason.^[15] This convention has not

been ratified by any of the selected countries.^[16]

In Bangladesh, the employer is only required to give a reason for termination in cases of misconduct, physical or mental incapacity, or retrenchment. In Thailand^[17] and Nepal^[18], the reason is only necessary in cases of retrenchment or misconduct. In Indonesia, the employer is required to negotiate with the worker or the trade union to carry out the termination, even though they are under no obligation to state the reason for dismissal.^[19]

For written notice, we observe that in Nepal^[20], even though the law states that a notice should be given to employees who are terminated, it doesn't specify if the notice should be written or verbal, while in Thailand, the law stipulates that the employer 'may' give the notice in written form.^[21]

3. Lack of adherence to labour laws

Apart from gaps in the existing labour laws, challenges in the form of access barriers/coverage of workers, and compliance also continue to exist. The data on Labour Rights Index demonstrates the prevalence of unfortunate working conditions across countries such as in India, Cambodia, Thailand, and Indonesia. The index suggested that labourers in these countries have limited access to decent work while in Bangladesh they had a total lack of decent work. Thereby, indicating a need for labour laws that are more favourable to internal migrants in these countries.^[22]

3.1. Long working hours that are above the legal limit

It has been observed that compliance rates are usually low and actual working hours tend to be much higher.^[23] Estimates suggest one-third of the global workforce work more than the prescribed working hours, seen more commonly in developing countries. Long working hours can have disastrous impacts on workers' overall health, well-being, and productivity.

^[11] For the purpose of this report, a maximum of 10 days was taken, based on ILO guidelines and best practices, for the notice period.

“Working over the working hour limit set by the government is the most common challenge faced by domestic workers in Indonesia. Some of them work from 4 am to midnight, and they only make around IDR 1.2 million (8 USD) which is far from Batam’s minimum wage of IDR 4.2 million (29 USD).”

*- Irwan, Director,
Yayasan Embun Pelangi (NGO), Indonesia*

3.2. Overtime payment

In all sample countries, overtime payment is at par with ILO standards, however, compliance rates are questionable. For example, In Bangladesh, a survey on garment factories observed those working on lower wages worked the most overtime hours. ^[24] 36% employees in Cambodia were working more hours than the limit. ^[25] During interviews, it was observed that even in prominent sectors such as the construction sector in India ^[26], garment sector in Bangladesh ^[27] and tourism sector in Thailand ^[28], longer working hours, lesser or no overtime payment, and non-compliance with safety standards were common occurrences.

“My boss often forces me to work overtime without pay even when I do not want to. I don’t dare to refuse him because I fear losing my job. On some days, I feel so tired, but I still have to do overtime and if not my boss will cut my one day salary.”

*- Bora, labourer in
the construction sector, Cambodia*

3.3. Minimum wages

Minimum wages exist in over 90% of the ILO member states. ^[29] However, an estimated

266 million workers globally are paid below the minimum wage rate in their country either because of non-compliance or lack of coverage in certain sectors. Exclusion of certain sectors from minimum wage is a highly debated issue as globally, many countries exclude certain professions such as agricultural and domestic workers. For example, India is the only country where some states include domestic workers under their Minimum Wage Act. Since they are unregistered and unregulated, their working conditions entirely depend on the employer. As a result, they work long hours with little pay and limited access to social protection schemes. ^[30] Similarly, Cambodia’s Minimum Wage Act is limited to garment and textile workers. ^[31]

“I worked there for about 3 months, but I was only paid IDR 1.7 million. I was promised a salary of IDR 1.8 million (124 USD) per month, but when I arrived, my employer told me that they’d only pay IDR 1.5 million (103 USD) monthly. I was also surprised to know that I had to do a lot of tasks. The employment agency only told me that I would be required to cook and do a little bit of cleaning, but in reality, I had to do everything from A to Z.”

*- Puji, domestic worker
in Indonesia*

3.4. Unsafe Working Conditions

A key responsibility of employers across countries is to ensure the safety of their workers. However, in many instances this regulation is the least implemented. For example, working conditions of piece-rate workers are highly precarious. Evidence from fields of Aurangabad district in Maharashtra, India where sugarcane farming is done on a piece rate basis, observed farmers get a mere Rs. 250 (3.26\$), for cutting and wrapping a ton (1000kg) of sugarcane, irrespective of the number of people involved in the work. Farmers work endlessly to meet such targets, even in extreme weather conditions. They are engaged in such tasks as a family where even children are employed to meet the targets. ^[ii]

^[ii] This information was gathered from a field visit by Garima Sahni, Jan Sahas team member.

The global workforce sustains up to 370 million injuries and 3 million deaths in the workplace every year. It has been argued that this number is higher since many injuries or accidents go unreported. The working conditions are worse in developing countries where every 4 out of 5 workers work in hazardous conditions without proper safety equipment. Migrant and seasonal workers, women and children are most likely to work in the most hazardous and toxic work environment.

“We do not provide any safety and security measures to the worker. We only provide them with helmets for protecting themselves while working on the construction site. We ask them to be safe while working on the site.”

- Vishal Rai, contractor in the construction sector, Nepal

Saira* - a migrant working as a domestic worker in Indonesia

“I migrated to Jakarta and received employment as a domestic worker with the help of an employment agency. They informed me that I would live with the family and cook for them. In reality, I had to do a lot of household chores. I was given very little food. My employers were extremely loud and violent. If I didn't know how to do a task, they would scream at me. After the first month of working there, I asked for my salary multiple times but they refused to pay me. Since the working conditions were unbearable, I decided to leave. However, they asked me to pay them IDR 2.5 million (170\$) if I insisted on leaving. After working there for three months I finally convinced them to let me leave. Even then, they handed me my salary only a few minutes before my bus departed. Earlier they had told me that I would get IDR 4 million (272\$) for 3 months but I was only paid IDR 150,000 (10.23\$).

I sold satay before migrating, and it was also exhausting but when you work under mental pressure, that makes a huge difference. I think I would've stayed if they'd been nice to me but there was a lot of mental burden so I just went home.”

**This story is anonymous and Saira is a pseudonym.*

4. Recommendations

- **International organisations such as IOM and ILO along with regional level organisations such as ASEAN and SAARC must work on the issue of internal migration and play an important role in working with member countries to bring the issue to the forefront.** Currently, the focus of majority of these organisations is international migration and an added lens of internal migration is equally important in relation to labour welfare and economy.
- **Designing policies and interventions to address the unique challenges of migrant workers:** Since we understand migration is an inevitable process, it becomes essential to design policies focused on safe migration of vulnerable populations.
 - International and regional level organisations can lead the way in regard to ensuring the lens of internal migration is included in labour laws and welfare measures. All member countries must ratify ILO Convention No.189 on Decent Work for Domestic workers and Convention No.190 on Violence & Harassment in the workplace in selected countries

- **Ensure compliance of labour laws across countries and building awareness amongst workers:** Labour policies ensuring the protection of workers across parameters (such as work hours limit, overtime payment, minimum wages (also in relation to piece-rate output remuneration), and occupational health and safety) are ridden with issues of low compliance because of implementation and monitoring related challenges.

What can the key actors do?

- Governments, private sector, trade unions and civil society must partner together to ensure compliance of labour policies and build awareness around it.
 - In cases of non-compliance, all stakeholders must work to strengthen grievance redressal systems and build awareness around the same.
 - Governments must work towards bringing the informal sector under labour laws as they are highly unregulated and therefore witness maximum cases of exploitation.
 - Private sector employers/ investors should ensure enforcement and monitoring of labour laws by intermediaries within workplaces.
 - International and regional level organisations should initiate dialogue between member states for strengthening implementation of labour laws and learn from the best practices of each country.
- **Investors to promote innovations such as strong focus on measurement of “S” in ESG ratings** especially within industries employing a majority of internal migrants; investors play a significant role in norming labour welfare expenditure and practices in supply chains.

End Notes

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