Page 517 - 526 **DOI:** *https://doi.org/10.63108/IJLMH.13195*

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 9 | Issue 6

2026

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Lost in Consolidation: Inter-State Migrant Workers under the OSH Code, 2020

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ABSTRACT

One of India's most well-thought-out and least enforced labour legislations was the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979. The 1979 Act has been superseded by the Occupational Safety, Health and Working Conditions Code, 2020 and its content incorporated into a brief Part of the Code. The change is described by its supporters as modernisation: a broader definition which includes workers who migrate on their own, a moveable public distribution entitlement, a helpline and a national database. This article explores what remained and what has been lost. It claims that the Code has substituted a dense pyramid of recruitment-based regulations with a thinner structure of welfare and registration-based regulations. The displacement allowance, passbook, specific duties on accommodation and medical care, the low threshold of applicability and the role of the originating State have become either non-existent or reduced. The article argues that, taken together, from the Asiad case to the migrant labour suo motu *proceedings of 2020 and 2021, the central issue with the old law was its inability to be enforced, and the task that the Code took up was to make it easier to let go of the obligation to enforce it. It ends with suggestions for State rules and future amendment.*

Keywords: *Inter-State migrant workers, OSH Code, 2020, Inter-State Migrant Workmen Act, 1979, labour codes, cooperative federalism, e-Shram*

I. INTRODUCTION

During the summer of 2020, the Indian public saw a part of the workforce that the law always knew about, but rarely looked at. Workers in different industrial and construction centres of different States, who had shifted from Bihar, Uttar Pradesh, Odisha, Jharkhand and West Bengal, started walking back home after the national lockdown shut down their workplaces. Few had any written contract, and few had any record signed by any authority in either State, and few had a definite employer to whom they could go. The photos were described across the

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board as a humanitarian crisis. They were a legal embarrassment as well for lawyers, for since 1979 India had a statute written just for these workers.[1]

The provisions of the Inter-State Migrant Workmen Act called for the registration of establishments, licensing of contractors, a passbook for every migrant, wage equality, travel and displacement allowances, and the participation of the authorities on both sides of the State border.[2] Few of these were in use. When the Supreme Court, on its own motion, took up the crisis, it asked the States to place the number of migrant workers on record, and it later found that their affidavits gave no facts and figures on the implementation of the Act.[3]

In the span of months, Parliament passed the Occupational Safety, Health and Working Conditions Code, 2020, which had the effect of repealing the 1979 Act as well as twelve other Acts.[4] The Code was brought into force on 21 November 2025[5] and the Central Rules were notified on 8 May 2026.[6] This article's title raises a question regarding the consolidation. What happens to the specific protections when a specific, purpose-made statute is integrated into a general code pertaining to the factory, the mine, the plantation, dock, construction, the beedi worker and the audio-visual worker? This article implies that much has been lost in the process, and that the loss is not just technical.

II. The 1979 Act: a law born of dadan

A certain abuse gave rise to the 1979 Act. Labour contractors, known as sardars, in Odisha recruited labour from poor and indebted families offering them good wages in other States. The workers were paid paltry wages, removed from their families, and exploited almost like slaves. This practice was known as the dadan system, which resulted in the enactment of the Orissa Dadan Labour (Control and Regulation) Act, 1975 in Odisha.[7] Once the worker crossed the border a single State law was unable to hold sway, and therefore the issue was discussed at the national level and the Act of 1979 was passed by Parliament.[8]

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[1] Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, No. 30, Acts of Parliament, 1979 (India).
[2] *Id.* §§ 4, 8, 12 and 13 to 16.
[3] *In Re: Problems and Miseries of Migrant Labourers*, Suo Motu Writ Petition (Civil) No. 6 of 2020, order dated 28 May 2020 (Supreme Court of India); *id.*, judgment dated 29 June 2021, ¶ 46.
[4] Occupational Safety, Health and Working Conditions Code, 2020, No. 37, Acts of Parliament, 2020 (India), § 143.
[5] The Code was brought into force with effect from 21 November 2025 by Notification S.O. 5321(E) dated 21 November 2025 of the Ministry of Labour and Employment, Government of India, Gazette of India, Extraordinary, Part II, Section 3(ii).
[6] Occupational Safety, Health and Working Conditions (Central) Rules, 2026, Notification G.S.R. 345(E) dated 8 May 2026, Gazette of India, Extraordinary, Part II, Section 3(i).
[7] Orissa Dadan Labour (Control and Regulation) Act, 1975.
[8] *Supra* note 1.

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The Act's design was determined by its source. It was centred around a recruitment chain, with the contractor as the point of control. It had the following principal characteristics. It covered all the establishments having five or more inter-State migrant workmen as its employees and all the contractors having five or more inter-State migrant workmen.[9] Principal employers had to register their establishments, and contractors had to obtain licences from licensing authorities in both the State of recruitment and the State of employment.[10] A contractor was required to submit specific details of each recruited worker to the authorities of both the States within a certain time and give every worker a passbook containing the name of the establishment, his wages and conditions, in his own language as well as Hindi and English.[11]

The substantive rights were also clear cut. Wages were to be the same as for local workers engaged in similar work.[12] Displacement allowance was paid at the time of recruitment to every worker, and was fifty per cent of his monthly wages or seventy-five rupees, whichever was the greater, in addition to wages, and was not refundable.[13] The worker was also entitled to a journey allowance which included the fare on the outward and return journey and wages for the journey period.[14] The contractor was required to give appropriate dwellings, free medical services and protective clothing, pay wages on time, pay equal wages for males and females and notify appropriate authorities of the two States and next of kin of any deaths or serious injuries.[15] If the contractor did not pay, then the principal employer was liable.[16]

In short, the Act was created around the notion that a worker who crosses a State border is made vulnerable, and vulnerable in a different way than workers who remain in their own State, since they lose the protection of family, community, language and local political voice. The law sought to make amends by making the recruitment known to two governments and by adding money and facilities to the process of displacement.

III. THE JUDICIARY AND THE UNENFORCED STATUTE

Early, the courts realised the significance of the 1979 Act. In *People's Union for Democratic Rights v. Union of India* (1982)[17] the Supreme Court in a matter relating to construction activities

[9] Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, No. 30, Acts of Parliament, 1979 (India), § 1(4).
[10] *Id.* §§ 4 and 8.
[11] *Id.* § 12(1)(a) and (b).
[12] Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, No. 30, Acts of Parliament, 1979 (India), § 13.
[13] *Id.* § 14.
[14] *Id.* § 15.
[15] *Id.* §§ 16 and 17.
[16] *Id.* §§ 17(4) and 18.
[17] *People's Union for Democratic Rights v. Union of India*, (1982) 3 SCC 235.

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for the Asian Games in Delhi held that workers from various States brought in through jamadars were paid less than the minimum wage with deductions made by the jamadars. The Court decided that the principal employers, namely, the Union, the Delhi Administration and the Delhi Development Authority, were duty-bound to ensure compliance with the Inter-State Migrant Workmen Act, 1979, the Contract Labour (Regulation and Abolition) Act, 1970, and the Minimum Wages Act, 1948. Most significantly, it held that work for less than the minimum wage is forced labour under Article 23,[18] because a person who works for less than the minimum does so under compulsion and not of his own free will. The case continues to be the backbone of public interest labour litigation in India.

In *Labourers Working on Salal Hydro Project v. State of Jammu and Kashmir* (1983),[19] the Court once again addressed questions of workers migrating for a public project and ordered compliance with the 1979 Act and other labour laws. In *Bandhua Mukti Morcha v. Union of India* (1984),[20] the Court stated that when read together, Article 21 and the Directive Principles make it the duty of the State to provide good working conditions and gave detailed directions for identification and release of bonded labourers in the stone quarries near Faridabad, many of whom were from other States.

These decisions sufficiently clarify the law. The issue was with enforcement.

Few establishments were registered under the Act and few contractors were licensed, and passbooks were almost never issued. The obligations for workers who did not vote in the host States were not well enforced; it seemed impossible for the home States to enforce anything outside their borders.

In May 2020, the Supreme Court of India, on its own motion, took up the failure in the case of *In Re: Problems and Miseries of Migrant Labourers*.[21] The Court gave interim directions to move stranded workers home free, provide them with food on the way home, and have the State Governments simplify and speed up the registration of the workers waiting to go home. The Court went further in its decision of 29 June 2021.[22] It stated that the provisions of the 1979 Act had not been complied with; that establishments should be registered and contractors licensed in compliance with the 1979 Act; and that the contractors should provide the details of the migrant workers required by the 1979 Act. It instructed the Union to finalise the national portal

[18] INDIA CONST. art. 23.
[19] *Labourers Working on Salal Hydro Project v. State of Jammu and Kashmir*, (1983) 2 SCC 181.
[20] *Bandhua Mukti Morcha v. Union of India*, (1984) 3 SCC 161.
[21] *Supra* note 3.
[22] *In Re: Problems and Miseries of Migrant Labourers*, Suo Motu Writ Petition (Civil) No. 6 of 2020, judgment dated 29 June 2021 (Supreme Court of India).

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for registration of informal workers, and the States to implement the One Nation One Ration Card scheme, run community kitchens and provide dry ration to migrant labourers. Following the above, in subsequent orders, the Court reiterated its demand for ration cards for the workers registered on the e-Shram portal.[23]

What is relevant to note here is that the Court's directions were drawn on the basis of the 1979 Act at the time the Act was being repealed. In part, the judgment is an instruction to adhere to a law which Parliament had already announced it would replace.

IV. WHAT THE OSH CODE BRINGS FORWARD

The OSH Code deals with inter-State migrant workers in a separate Part of Chapter XI.[24] Some of its features are improvements; they should be highlighted.

The definition is broader. An inter-State migrant worker now refers not only to a person who was recruited by an employer or contractor in one State for employment in another, but also to a person who has come on his own from one State and obtained employment in an establishment of another State. It is important because the vast majority of the movement of migrants has occurred via family and village networks in addition to formal contractors, and the old Act, by section 2(1)(e), covered only a person recruited by or through a contractor. The definition is restricted, however, by the ceiling of a certain wage; it applies to the employees whose wage is not more than eighteen thousand rupees per month or such higher amount as may be notified by the Central Government.[25]

The journey allowance is retained in a slightly adapted form. The employer shall pay once a year a lump sum for the round trip fare to the worker's home, subject to such minimum term of service as may be prescribed.[26] The Code also envisages portability of benefits, which will enable a migrant worker to avail the public distribution system in the State of origin or State of employment, and get benefits from the building and other construction workers welfare cess fund in the State where the migrant worker is working.[27] It also provides that the appropriate Government may provide a toll-free helpline and a study on inter-State migrant workers, and

[23] *In Re: Problems and Miseries of Migrant Labourers*, Suo Motu Writ Petition (Civil) No. 6 of 2020, order dated 20 April 2023 (Supreme Court of India).
[24] Occupational Safety, Health and Working Conditions Code, 2020, No. 37, Acts of Parliament, 2020 (India), ch. XI, pt. II (§§ 59 to 65).
[25] Occupational Safety, Health and Working Conditions Code, 2020, No. 37, Acts of Parliament, 2020 (India), § 2(1)(zf).
[26] Occupational Safety, Health and Working Conditions Code, 2020, No. 37, Acts of Parliament, 2020 (India), § 61.
[27] *Id.* § 62.

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requires the Central and State Governments to maintain a database.[28] The Code on Social Security, 2020 provides for the registration of unorganised workers, which is now implemented via the e-Shram portal.[29]

These are good supplements. The portability of food entitlements, in particular, is directly addressing one of the biggest issues of 2020, namely, that a worker stranded in a different State is unable to avail of rations in that State.

V. WHAT IS LOST IN CONSOLIDATION

The gains are offset by a number of losses, some obvious, others structural.

Displacement allowance is no longer available. This was the most explicit representation of the underlying spirit of the 1979 Act, being a payment made for the uprooting of the worker, not for any work the worker had done.[30] The quantity of it became obsolete, but there is a possibility for the principle to be updated. When it no longer exists, the nature of the scheme changes; displacement ceases to be a compensable harm in itself.

The passbook is no longer available. A document carrying the worker's photograph, the name of the establishment, the wage rate and the length of service was frequently all that existed as proof of the employment relationship when no written contract existed and the worker had limited literacy skills. Otherwise the worker has to rely on the employers' registers or on digital records which the worker may never see. The requirement for appointment letters is a general requirement in the Code,[31] but does not re-create the specific function of the passbook of connecting the worker with the recruiting organisation and the place of work.

The exact responsibilities for living and working conditions have been watered down. The old Act specified that migrant workers should be provided with appropriate housing, free medical care and protective clothing.[32] The Code confers welfare facilities under general provisions that are common to all establishments, with a great deal of detail in the rules.[33] A general duty can be helpful but it fails to acknowledge that a migrant worker, unlike a local worker, might have no other place to sleep at night.

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[28] *Id.* §§ 21(2), 63 and 64.
[29] Code on Social Security, 2020, No. 36, Acts of Parliament, 2020 (India), § 113.
[30] *Supra* note 13.
[31] Occupational Safety, Health and Working Conditions Code, 2020, No. 37, Acts of Parliament, 2020 (India), § 6(1)(f).
[32] *Supra* note 15.
[33] Occupational Safety, Health and Working Conditions Code, 2020, No. 37, Acts of Parliament, 2020 (India), § 24; *see also id.* § 60; *supra* note 6.

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The minimum applicability has increased. The 1979 Act applied where five or more inter-State migrant workmen were employed.[34] The OSH Code defines an establishment in terms of ten or more workers and the licensing of contractors, which is unified for contract labour in general, is at a higher level.[35] Relocation to construction, brick kilns, agriculture and small-scale manufacturing is frequently done on a small scale. A contractor who is transferring eight workers from Jharkhand to another State could easily fall outside the scheme.

The role of the home State has diminished. The old Act required the contractor to be licensed by the home State of the workers, and it provided for the submission of specific information regarding the recruited workers, which the authorities of the State of origin could follow up.[36] The licensing and inspection system of the Code is primarily based in the State in which the establishment is located, and leaves the home State little place. This turns on its head the standard logic of the original law, which was based on an assumption that recruitment occurs in one State and exploitation occurs in another.

Another exclusion is the wage ceiling. The workers who are earning more than eighteen thousand rupees per month, perhaps because of overtime or because they are skilled tradesmen, are no longer considered inter-State migrant workers for the purpose of the Code, although their vulnerability as migrant workers does not change. There was no cap in the old Act.[37]

The overall outcome is a change in regulatory model. The 1979 Act was designed to control recruitment and imposed duties on contractors and employers. The Code emphasises registration, welfare portability and data, and places greater emphasis on the State's capacity to provide schemes. The worker is no longer employed on an enforceable agreement, but rather is added to the list of beneficiaries.

VI. Federalism and the two-State problem

By its very nature, inter-State migration is a problem which can only be solved by a collective effort of all the States. Both the Union and the States have rule-making and enforcement powers under the Codes, under the rubric of Labour, which is in the Concurrent List.[38] In fact, the enforcement of the OSH Code will largely be done by States, which are the competent Government for most establishments in their territories.

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[34] *Supra* note 9.
[35] Occupational Safety, Health and Working Conditions Code, 2020, No. 37, Acts of Parliament, 2020 (India), §§ 2(1)(v) and 59; *see also id.* ch. XI, pt. I.
[36] *Supra* notes 10 and 11.
[37] *Supra* note 1, § 2(1)(e); *supra* note 25.
[38] India Const. sched. VII, list III, entries 22 and 24.

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This establishes an incentive problem. A host State spends administrative resources on migrants who are not its voters, and places costs on the host industry by imposing obligations in favour of migrants. A home State is interested in its workers but does not have any jurisdiction over the sites where they work. In 1979 an attempt was made to fill this void by granting a role to both States in the Act. The Code is mainly based on host State and central databases.

Some States have attempted to fill this void with schemes of their own. The State of Kerala has, for instance, established registration and insurance programmes for workers from other States[39] and the State of Odisha has developed ways of registering workers who move out from its districts and tracking them at the gram panchayat level through a database.[40] This is a testament to the fact that inter-State coordination can be achieved. They also demonstrate that it relies on political will and that is extremely volatile. There might have been a way to establish a statutory mechanism for coordination, such as through formal agreements between sending and receiving States or by establishing a joint grievance mechanism, under the Code. The Code does not provide one.

It is a point made by the Supreme Court in its *suo motu* proceedings. Directions had to be given with respect to each State and the adherence to the directions was not uniform in both 2020 and 2021.[41] This was an opportunity to develop inter-State cooperation as part of the law through a national code. Instead, consolidation has left behind a single text, which is enforced by numerous distinct governments, with no clear way to coordinate their actions.

VII. Data without duties

Started in August 2021 after the Supreme Court's directions, the e-Shram portal has registered a huge number of unorganised workers, in the hundreds of millions.[42] This is an obvious answer to the issue of invisibility made evident by the pandemic. When a crisis situation arises the State knows who and where migrant workers are so that it may reach them.

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[39] *See, e.g.*, the Aawaz Health Insurance Scheme for inter-State migrant workers, launched by the Department of Labour and Skills, Government of Kerala on 1 November 2017; Kerala Institute of Labour and Employment, *Influence of Interstate Labour Migration on Socio, Economic, Political and Cultural Scenario in Kerala* 30 (2022), https://kile.kerala.gov.in/wp-content/uploads/2024/10/ISM-19.05.22latest.pdf.

[40] Labour Directorate, Government of Odisha, *State Action Plan for Safety and Welfare of Inter-State Migrant Workers*, https://labourdirectorate.odisha.gov.in/board/migration/state-action-plan-safety-and-welfare-inter-state-migrant-workers (last visited Nov. 7, 2026).

[41] *Supra* note 22.

[42] The e-Shram portal was launched by the Ministry of Labour and Employment on 26 August 2021 and had completed registration of over 31.42 crore unorganised workers on 22 December 2025; Ministry of Labour & Employment, *Year End Review 2025*, Press Information Bureau (Dec. 30, 2025), https://www.pib.gov.in/PressReleasePage.aspx?PRID=2209767&reg=48&lang=2; *see also supra* note 22.

Registration is not regulation, however. The database only shows the worker and not his or her employer, conditions of employment or if those conditions are fulfilled. It is largely self-declared, and there is a weak connection between it and the employment relationship. A database can be used to tell the State the number of workers from Bihar in Surat. It will not be able to inform a labour inspector if a specific contractor in Surat is paying them the minimum wage or if they are being housed safely. The 1979 Act's requirements to register establishments and for contractors to issue passbooks were directed at just that worker/employer relationship.[43] The Code substitutes for some of these a link between worker and State, which is helpful for welfare delivery, but not so helpful for enforcing labour standards.

One argument about privacy also needs to be noted. The large databases of vulnerable workers and identification through Aadhaar give rise to questions with regard to consent, purpose limitation, and the possibility of exclusion in case of incomplete or inaccurate data, under the Digital Personal Data Protection Act, 2023.[44] If a migrant worker is not in the database, then he or she should not be absent from the law.

VIII. Recovering what was lost

The damage can be reversed in most cases without the need to break apart the Code. There are rules being framed and refined at the State level and several protections can be restored at the State level; others require amendment.

First, States should restore a document similar to the passbook. The contractor or employer would issue such an employment card with the worker's photograph, the name of the contractor and principal employer, the wage rate, and a duration of work on it to recreate the evidentiary function of the old passbook. It may not be replaced by the e-Shram number but it can be linked to the e-Shram number.

Secondly, a displacement or settling-in allowance needs to be re-introduced either through State welfare boards or amendment. The amount could be linked to the minimum wage so that it does not become obsolete.

Third, the registration and licensing thresholds for inter-State migrant workers must be reduced, at least for industries which are known to see small groups of migrants, like agriculture, brick kilns and construction.

[43] *Supra* notes 10 and 11.
[44] Digital Personal Data Protection Act, 2023, No. 22, Acts of Parliament, 2023 (India), §§ 4 to 6.

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Fourth, there should be no wage ceiling, or the ceiling should be set high enough to cover the earnings of skilled migrant workers. The vulnerability of migration is not necessarily income based.

Fifth, formal arrangements for sharing information, for redress of grievance and for common inspection should be established between sending and receiving States with a view to future development, and a statutory instrument in the Union for this purpose should be devised, so that they are not merely relied upon on an *ad hoc* basis.

Sixth, specific responsibilities for the accommodation, medical care and safety of migrant workers should be included in the State rules, since a worker who is away from home is likely to rely on the employer for these things.

Finally, the e-Shram database should be made part of the employment relationship by mandating employers and contractors to enter the employment of migrant workers, rather than focusing on the delivery of welfare.

IX. Conclusion

The 1979 Act did not do enough for migrant workers, but it did not ask too much from employers. It was not enforced by the States, the contractors did not know about it, and the workers did not know about it, so it did not work out. That failure became apparent during the pandemic and the Supreme Court attempted to remedy the failure by instructing governments to enforce the law in place. The solution offered by Parliament was consolidation.

The OSH Code shows some real improvements, such as a wider definition, the portability of food rights and an institutional commitment to data. However, it has also taken away specific protection for migration, increased thresholds, reduced the role of the home State, and changed a model that is based on recruitment to a model based on registration. The worker who is transferred between the States today has fewer statutory rights than those afforded in the Act of 1979, despite the fact that the State may know more about the worker than ever before.

It is not necessarily a bad thing to consolidate. One code may be more readily understood and more easily implemented. However, simplification has a price when the thing being simplified is a particular answer to a particular evil. The question now is whether the inter-State migrant worker, who was lost on the highways of 2020, is lost again in the text of the law which was enacted to protect them.

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