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# Building India Brick by Brick

## Labourers in the Construction Industry

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The construction sector is one of the most important sources of wage employment in the country. For reasons that we will discuss later, data sources on employment reveal only part of the story. But they point to very important trends in employment in this sector in relation to overall employment.

The figures for employment growth in construction are impressive. Results estimated from the Employment & Unemployment Surveys carried out by the National Sample Survey Organisation reveal that between 1983 and 2011–12, male employment in the construction industry increased from about 5.8 million to 42.3 million (7.2 times), while female employment also increased from 1.02 million to 7.58 million (7.4 times).

With nearly 50 million workers, the share of the construction workforce increased from only 3.2 per cent of the total workforce in 1983 to 10.6 per cent of the total workforce in 2011–12. Among non-agricultural workers, the share of workers in the construction industry increased from 7.2 per cent to 20.3 per cent. i.e., one out of every five workers employed out of agriculture was a construction worker.

Till 2011–12, the sector's employment grew at a blistering and increasing pace: from 5.62 per cent per year during 1983/1993–94 to 7.20 per cent during 1993–94/2004–5 and 9.81 per cent during 2004–5/2011–12, showing an average rate of growth of 7.52 per cent over nearly three decades between 1982/2011–12. This rate of employment growth was

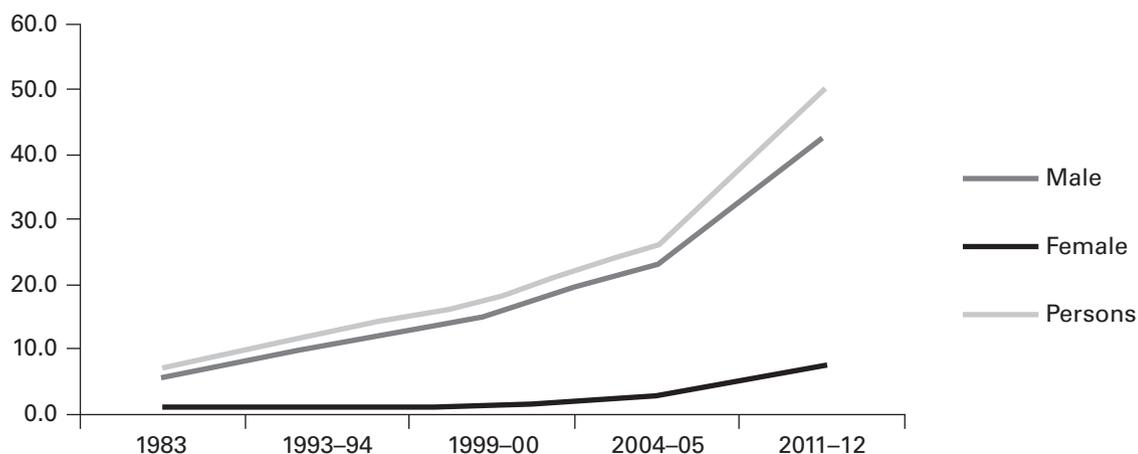


Fig. 1: Employment in the Construction Industry, 1983 to 2011–12

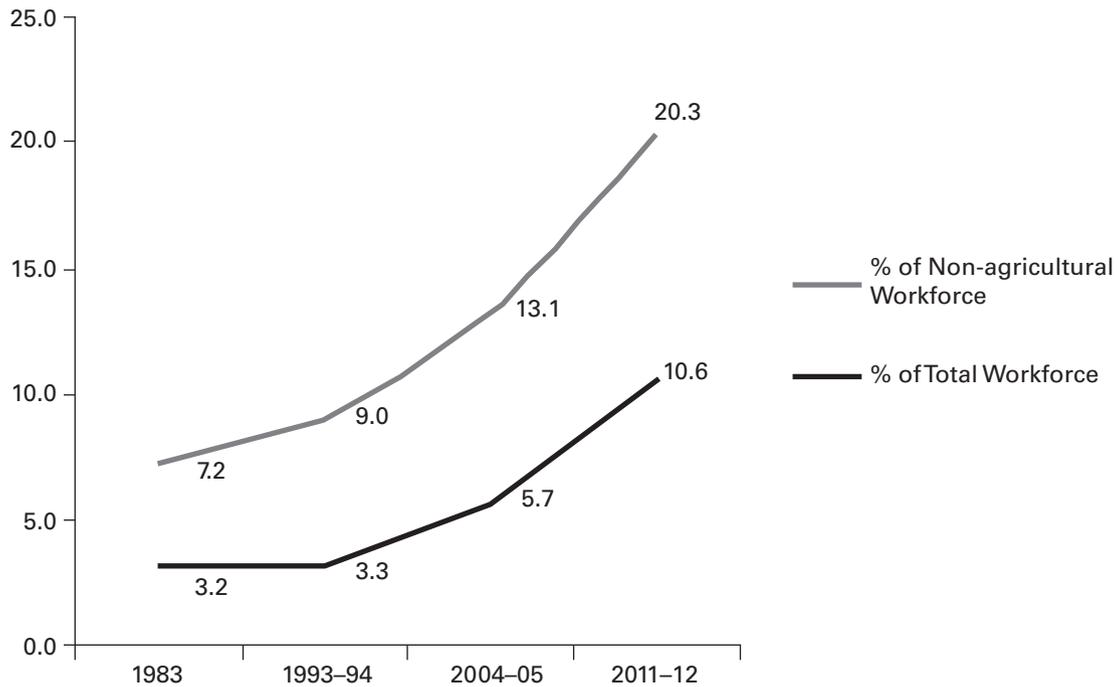


Fig. 2: Share of Construction Workers among the Non-agricultural and Total Workers (%)

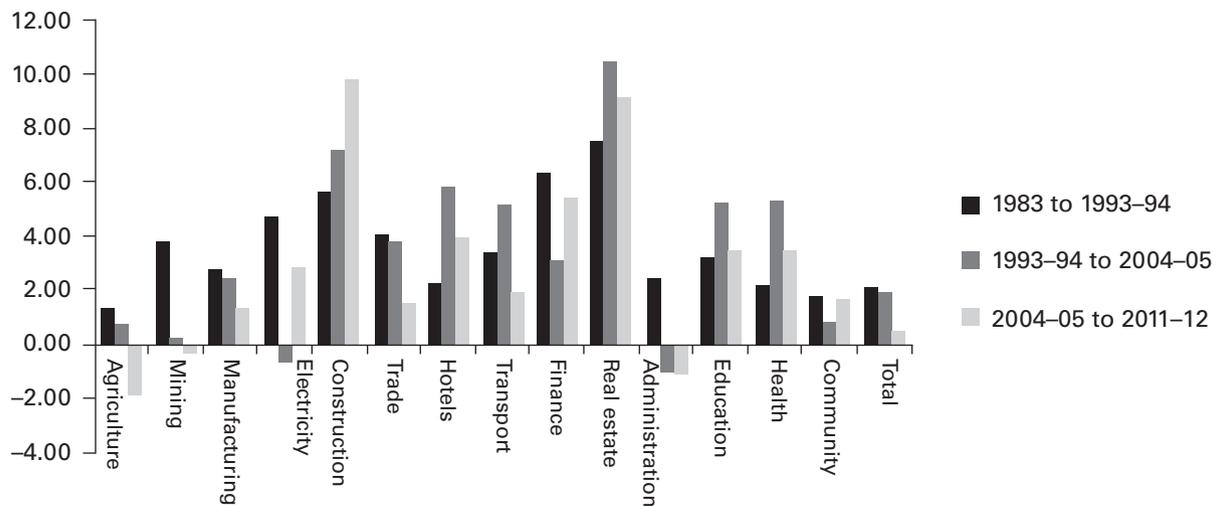


Fig. 3: Annual Growth Rate of Employment across Major Industry Groups

only matched or exceeded by the sector’s partner industry, viz., real estate, in which employment grew at 9.38 per cent over the same three-decade period. But the real estate sector’s share in total employment is much smaller: only 1.7 per cent in 2011-12.

### Social Background of Workers

The data from field studies shows that construction workers come from all religious and social backgrounds but with a higher representation of Scheduled Castes and Scheduled Tribes compared to their share in the population. This is also borne

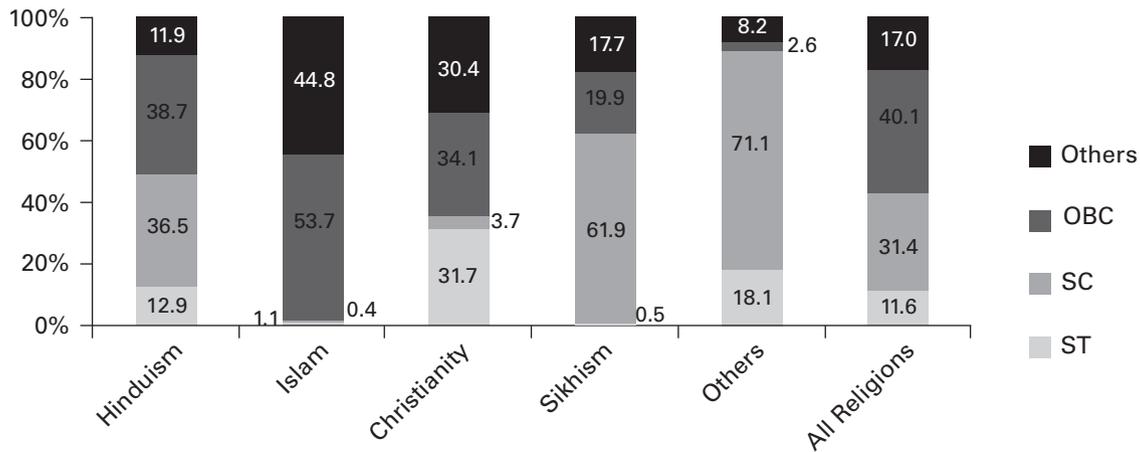


Fig. 4: Socio-religious Composition of the Construction Workers, 2011-12

out by the NSS employment data for 2011–12, which shows that 80.9 per cent of workers were Hindus and 14 per cent were Muslims. Among Hindus, almost half were SC or ST. For all workers taken together, 44 per cent were either SC or ST.

### Female Employment in the Construction Sector

The construction industry is male dominated throughout the world with the percentage of female workers being negligible to small. In India, too, the industry is dominated by male workers.

But the absolute numbers of female workers employed in the construction industry is large and its proportion in the workforce has been growing over the years. As pointed out earlier, there were 7.6 million female workers in the construction industry in 2011–12. Female workers in India are still largely concentrated in agriculture. But manufacturing and construction are their two next biggest employers. The percentage of female workers in construction with regard to all female workers has increased from only 1 per cent in 1983 to 5.9 per cent in 2011–12, i.e., a six-fold increase in the share in female workforce. However, the

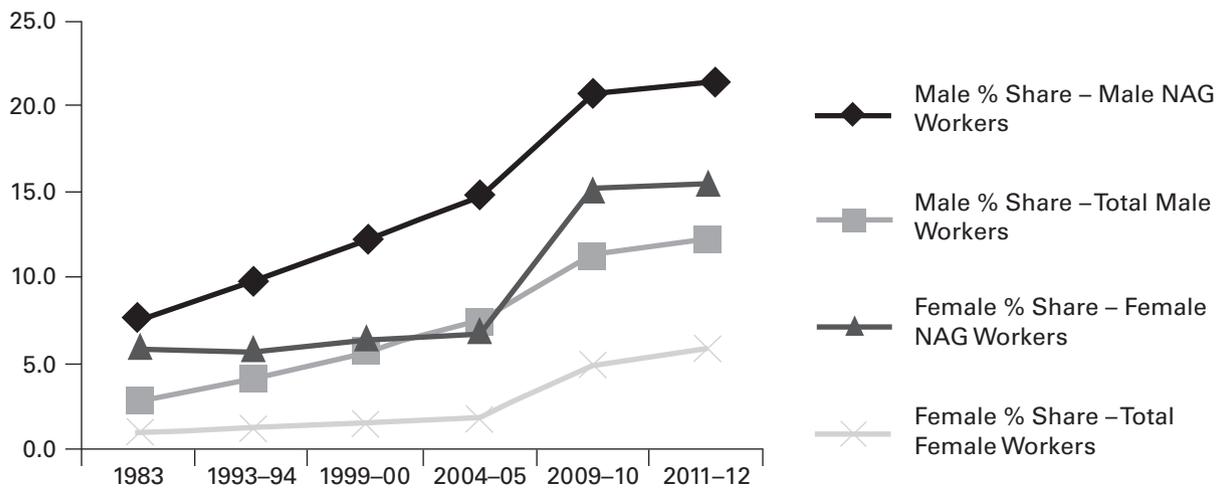


Fig. 5: Male & Female Share among Total and Non-Agricultural Workers by Sex

share of male workers in the male workforce was more than twice as large in 2011–12 (12.3 %).

The construction sector has also been the major avenue of employment for female labourers moving out of agriculture. In 1983, female workers in the construction industry comprised 5.8 per cent of all female non-agricultural workers. By 2011–12, 15.6 per cent of all female non-agricultural workers were in the construction industry. Among males, more than one out of five non-agricultural workers (21.5 %) were engaged in the construction industry. If self-employed non-agricultural workers are excluded, then as much as 27.2 per cent and 35.3 per cent of all female and male non-agricultural wage workers were engaged in the construction industry.

However, field studies and long-term data suggest that there is a secular tendency for the share of female workers in the construction industry to decline. Given the important role of female employment in this industry, this is a matter of concern. Paradoxically, NSS data show an acceleration of female employment in construction in the recent period. Female employment in construction grew at a slower rate than male employment in all sub-periods till 2004–5. However, during 2004–5 to 2011–12, the growth rate of female employment accelerated to 16.02 per

cent while male employment grew at the rate of 8.94 per cent.

An analysis of NSS figures indicates that the share of female employment in construction has declined secularly in urban areas: from 13.8 per cent in 1983 to 9.9 per cent in 2004–5 and 8.4 per cent in 2011–12. But in rural areas, this share increased from 10.6 per cent in 2004–5 to 16.7 per cent in 2009–10 and further to 17.5 per cent in 2011–12, reversing the long-term secular decline.

How and why did this happen? To understand this, we have depicted the female share in construction employment to total rural female employment, including, as well as excluding, their employment in MGNREGA public works which is also counted as construction activity. Without MGNREGA, the female share in construction employment has continued to show a secular and systematic decline, right up to 2011–12. But MGNREGA, which was introduced in 2005, boosted women’s participation in construction activity in rural areas, increasing their employment share in the industry from 10.3 per cent in 2004–5 to 15.2 per cent in 2011–12.

However, as shown below, female workers are confined to less skilled manual work, and are much less likely to move up the ladder compared to their male counterparts.

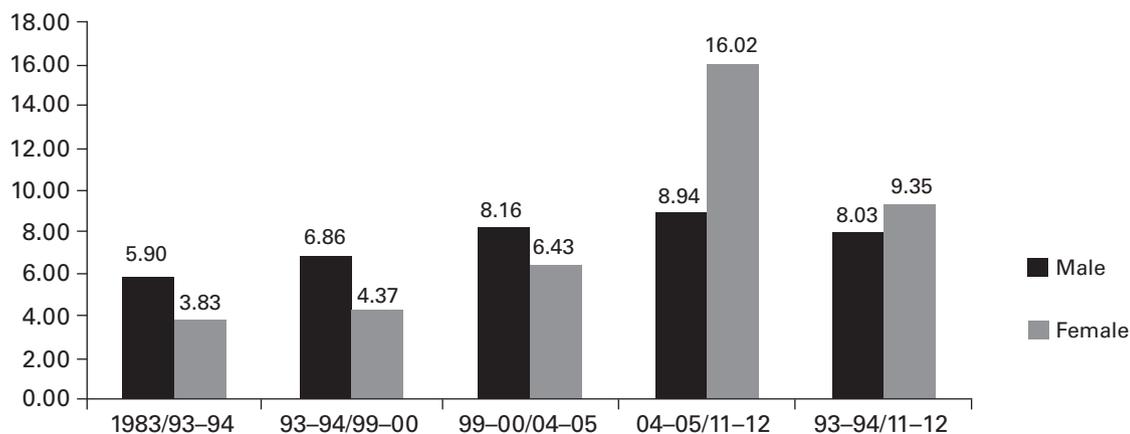


Fig. 6: Period-wise Growth Rate of Construction Employment, by Sex

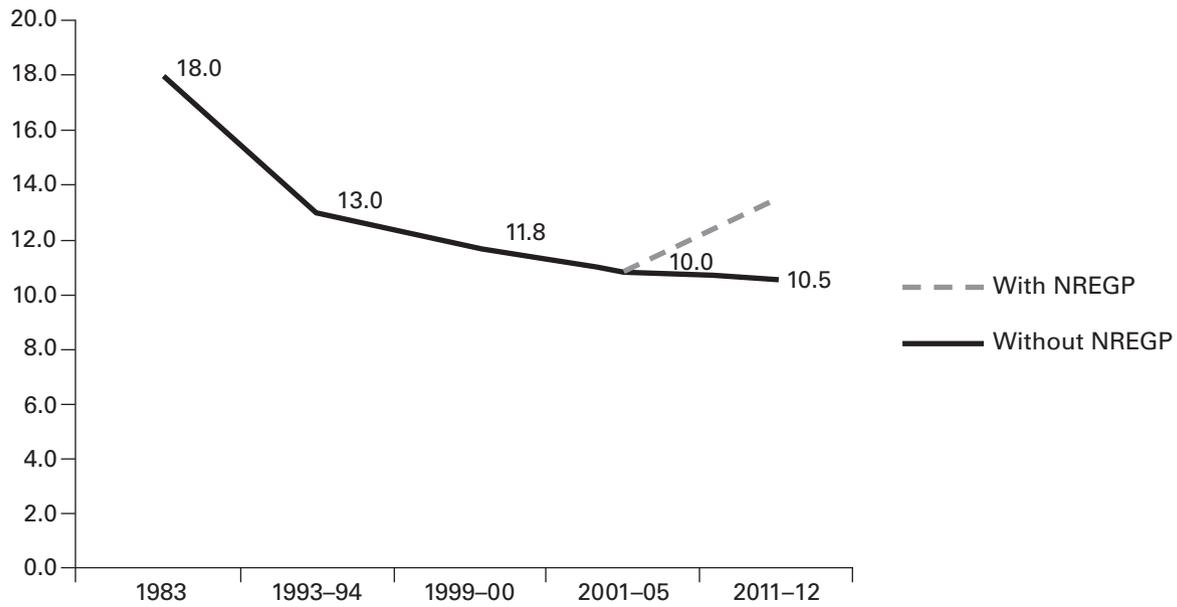


Fig. 7: Share of Females in Construction Industry Employment – with and without MGNREGA

### How the Construction Industry has Facilitated Employment Diversification

The expanding construction sector has absorbed workers from the agricultural sector and other declining or slow growing industries. Between 1993-94 and 2011-12, agricultural employment declined by 12.8 million while employment in all other sectors increased by 111.8 million, amounting to a net increase of 99 million employed persons. Out of this net increase, construction employment contributed 38.2 per cent (real estate contributed another 7.1 %), while Trade and Manufacturing were the other two major industry segments contributing 19.5 per cent and 18.4 per cent respectively. In other words, the construction industry emerged as the leading provider of employment since the 1990s, and the leading source of employment to rural workers exiting agriculture.

### Pull or Push: What does Construction Employment Offer?

The increasing engagement of workers in the construction sector raises another question: given the reduced possibility of employment and livelihoods of workers in the agricultural sector, is employment in the construction industry purely distress driven? This is a difficult question to answer as the conditions of employment in this huge industry are not uniform. But past studies show that despite uncertainty of employment, workers in the sector are able to find employment for durations longer than is possible in the agricultural sector (Srivastava and Jha, 2016). Moreover, on average, wages reported by workers in construction are higher than those in agriculture. Thus compared to agriculture, the construction sector offers higher average earnings to workers.

We have compared the average daily earnings of wage workers across major industry divisions in Table 1 in two periods, viz., 2004-5 and 2011-12. The wages/earnings reported here cannot take into

Table 1: Average Daily Earnings across Major Industries (Rs/day), 2004–5 and 2011–12						
Industry	NSS 61 Round			NSS 68 Round		
	Male	Female	Persons	Male	Female	Persons
Agriculture	51	35	45	136	100	124
Mining	187	60	169	495	201	458
Manufacturing	120	53	110	279	141	259
Electricity	290	207	286	588	740	600
Construction	79	55	76	191	130	183
Trade	88	83	88	214	175	211
Hotels	99	90	99	243	181	237
Transport	147	196	149	327	406	330
Finance	385	310	373	729	649	716
Real estate	243	263	246	595	671	608
Administration	258	199	251	616	469	598
Education	247	164	213	564	382	486
Health	209	163	189	533	339	440
Community	99	61	93	265	130	212
Household	77	41	52	188	97	127

Source: Computed from NSS 61<sup>st</sup> Round and 66<sup>th</sup> Round, Employment-Unemployment Surveys.

account work intensity, i.e., total hours worked per day. The lowest daily earnings are reported for agricultural labourers in both 2004–5 and 2011–12. This is followed by earnings of workers engaged by households. The third lowest wages are in the construction industry, both for male and female labourers. Nevertheless, these wages were 69 per cent and 49 per cent higher than agricultural wages in 2004–5 and 2011–12, respectively. Wage workers engaged in the construction industry would conceivably draw higher incomes than their counterparts who work only in agriculture, both on account of more employment days, and higher daily earnings.

### Has the Construction Boom Ended?

Construction sector activity is affected by upswings and downswings in general economic activity, patterns and trends in investment, particularly

public investment in infrastructure, and by sudden shocks to the economy which slow it down. Following the global economic crisis of 2008–9, construction activity slowed down dramatically but it revived following the economic stimulus package. The evidence on growth in GDP for recent years suggests that construction sector activity has been very weak. Although the NSS Employment-Unemployment Survey results are only available till 2011–12, a comparison of the NSS results with the most recent round of the employment-unemployment survey carried out by the Labour Bureau shows that construction sector employment growth has petered out. Between 2011–12 and 2015–16, construction employment was almost stationary, at about 50 million workers. Demonetisation in November 2016 led to a sharp decline in construction activity and the subsequent tardy revival has taken place in the context of a long-term slowdown in the growth of the sector.

Consequently, the sector's ability to absorb a part of the growing labour force in the economy seems to have petered out in the last few years.

### **Understanding the Nature of Construction Sector Employment**

The construction industry is very different from other industries, given the nature of its production, and the structure of its capital. The real estate industry is closely related to the construction industry. It consists of transactions in land and its property, including buildings and is further subdivided into residential, commercial, industrial, and vacant land. Real estate development consists of development of residential, commercial or industrial properties on land for sale or rent. Real estate developers can undertake construction on land directly, through their subsidiaries, or through outsourced contractors or construction companies. The construction industry is divided into two broad segments, viz., engineering or infrastructure, and buildings (including both commercial and residential buildings). The latest 2008 industrial classification classifies construction into 'Buildings', 'Engineering' and 'Specialised Construction' (which includes finishing work), and the 2011–12 NSS Employment Survey shows that 72.8 per cent workers were engaged in the Buildings segment, 17.6 in 'Engineering construction' and 9.6 in 'Specialised construction'.

Unlike other types of production activity, construction activity is carried out on sites through temporary projects. Moreover, each project can have a number of distinct time-sequenced phases, which have different worker requirements. For example, residential and commercial buildings, start with an excavation phase, followed by the building of the foundation and structure, and finally, the finishing stage, which itself consists of a number of distinct activities. The requirement for equipment, and skilled and unskilled workers

is different in the different phases of construction. This also influences the employment of women in different types of construction activities as women workers in construction are mostly engaged in low skilled work.

Further, along with the scale of construction, the scale of capital involved in the construction (and real estate) sector also varies. Along with small-scale and informal construction activity, mostly in the residential and commercial sector, the industry also has large-scale activity controlled by medium-large firms, with a regional or national character. These firms have grown in size and real-estate and construction firms are among the largest in the country (Srivastava and Jha, 2016).

These developments, along with the concentration of construction activity in and around centres of economic agglomeration, lend themselves to two opposite tendencies. First, the industry needs to mobilise large numbers of workers for construction sites, often from far-off places, which accentuates and sets into motion forms of large-scale contractor-based recruitment. Second, construction activity can be split functionally or sub-product-wise, encouraging small sub-contracting by work-contractors, thus bringing into existence chains of contractors.

### **Rural-Urban and Long-distance Circulation of Construction Labour**

A migrant status is central to the formation of construction labour. Migrant workers gain centrality in the construction industry both because of the spatial disconnect between labour supply and demand, and because systems of labour recruitment and employment favour labour importation rather than reliance on locally available labour.

Since construction activity is correlated with economic activity, it is concentrated in rapidly developing high income states and in centres

of agglomeration in these states. Spatially, these centres are situated in and around large urban centres, although they cut across this rural-urban dichotomy. A much larger amount of construction activity also takes place in developed states.

The labour requirements of the construction industry are met through the following channels: (a) local urban or rural labour (including commuting workers); (b) long-term migrant workers who join the labour force in (a); (c) short-term circulatory migrant workers who migrate autonomously or through social networks and operate in local labour markets at labour *chaurahas/nakas* or through contractors; (d) circulatory labour migrants who are brought in through labour contractors, sometimes over very long distances.

Strictly speaking, the employment data should capture local employment, commuting workers, seasonal migrants, as well as workers migrating from one area to another, providing workers stay at the destination for more than six months. This is a tall order, and there is strong reason to believe that employment (and migration) data does not capture labour circulation/migration properly and that a large number of migrating construction workers are reported in their areas of origin which are rural and located in poorer states/regions. An analysis of NSS migration data for 2007–8 shows that only 7.6 per cent of rural male workers and 26.9 per cent of urban male workers in the construction sector are reported as migrant workers. This is lower than the total percentage of all male migrant workers (20.1 % of rural workers and 35.3 % of male migrant workers). On the other hand, there is a steady increase in the proportion of rural construction workers, despite the growth of urban economic agglomerations. The rural-urban share of construction employment analysed from the NSS Employment-Unemployment Surveys shows that a rising proportion of construction workers are reported in rural areas. Their percentage was 58.9 in 1983 and rose to 72.3 per cent in 2011–12. Does

this mean that almost three-fourths of construction activity, private or public, is located in rural areas? This is not the case because commuting, short-term migration, and other labour circulation is not captured properly by location data. Overall, a rising proportion of construction work in developed states is carried out by circulating workers from the rural areas in poorer states, which is not adequately captured by location data.

Estimates of short-term out-migration (migration for employments for periods between two to six months) show that 45 per cent of such migrants migrated to other states, and the construction industry was the largest employer of such migrants, accounting for 36 per cent of all short-term migrants.

But there are many more inter-state circulating migrant workers engaged in the construction industry. Assuming that construction activity has a similar labour intensity across states, the percentage of workers employed in the construction industry (including long-term circulatory migrants) should be proportional to construction activity. The gap between construction activity and the percentage employed at the state level should give us a rough estimate of unreported inter-state migration.

In Figure 8, we show the percentage of total GDP of each major state, and the percentage of state to total employment in the construction industry. A positive gap between percentage employed and percentage GDP denotes inter-state outmigration. The data shows that the states of UP, Rajasthan, Bihar, Jharkhand, Odisha, Madhya Pradesh and West Bengal accounted for most of the inter-state out-migrant labourers in the construction industry. These inter-state out-migrant workers were about a quarter (23.3 %) of all construction workers and are over and above the construction workers recorded in the destination states. These workers circulate between origin and destination states for various periods of time. The rapid growth of the construction

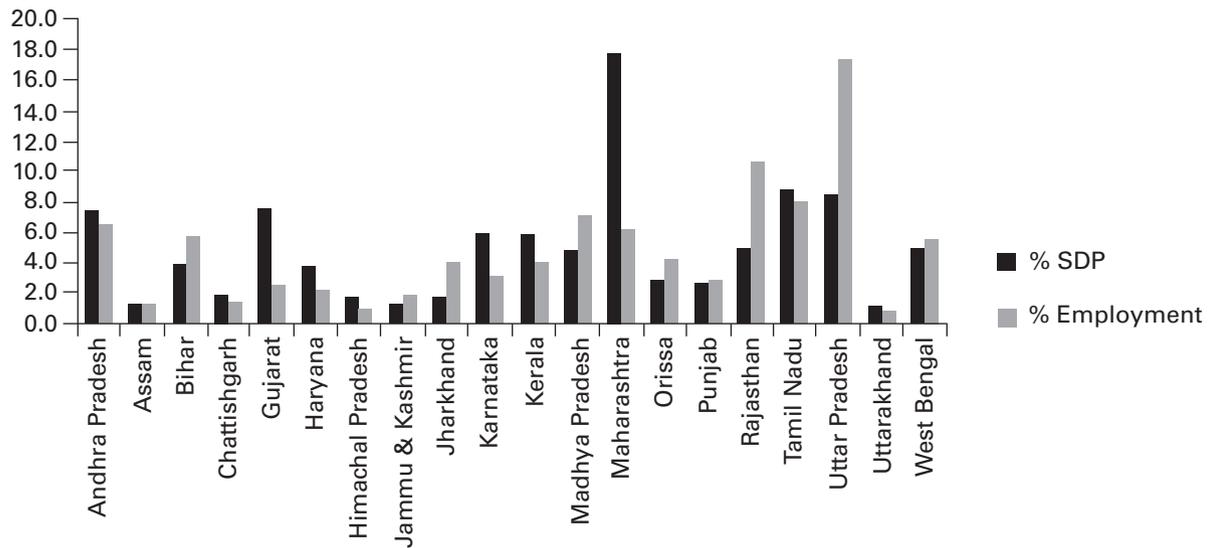


Fig. 8: State-wise % of GDP & Construction Employment, 2011-12

industry has required the mobilisation of more and more workers from rural areas in poorer, labour surplus regions. The states which account for the largest number of inter-state in-migrant workers were Maharashtra, Gujarat, Karnataka, Kerala, Haryana, Andhra Pradesh, Himachal Pradesh and Tamil Nadu. To put it in an alternative manner, the eight developed states accounted for 59 per cent of construction GDP in 2011–12 and only 33.9 per cent of employment (including long-term migrants enumerated by NSS). On the other hand, the seven poorer states accounted for 36.2 per cent of construction activity and 59.5 per cent of employment. Thus about 12.5 million workers, nearly a quarter of all construction workers, may be moving from poorer states to developed states as circulatory labour to participate in construction work. These estimates exclude workers who circulate within the state for employment in the industry. We have no estimates of intra-state labour circulation in construction. But these figures are unlikely to be lower than the figures for inter-state circulatory migrants. Taken together, it is likely that 50–60 per cent construction workers are circulatory migrants while 10 per cent are long-term migrants, and 30 to 40 per cent workers are local or commuting workers.

As a matter of fact, all available studies show the industry’s reliance on migrant labour, as well as inter-state migrant labour. Srivastava and Jha (2016) and Srivastava and Sutradhar (2016) found that in Haryana, Uttar Pradesh and Delhi and NCR, all construction workers in the sample sites (both small and large) were migrants who had started migrating for work at various periods of time. While some workers were recruited for a specific duration or seasonally, and went back to their places of origin at the end of this period, others stayed on, rotating between one site and another, and returned occasionally to their places of origin. The workers came from eight states and the neighbouring country of Nepal (ibid.). There were fewer migrant workers from states contiguous to Delhi and more from distant states. Srivastava and Jha (ibid.) found that only 28 per cent sampled workers were from the states adjacent to the NCR (MP, UP and Rajasthan) while 72 per cent were from Orissa, Nepal, West Bengal, Bihar, Chhattisgarh and Jharkhand. The largest share of workers was from West Bengal (33.3 %) and Bihar (31.3%). There was a higher proportion of workers from adjacent states present in the unorganised construction sites.

The fact that the construction industry is dominated by labour circulation, and that about a quarter of the workforce are inter-state circulatory labour, has very significant implications for recruitment, labour regulation, and access to social security for these workers.

## Recruitment of Workers in the Industry

The pattern of recruitment of workers in the construction industry is linked to their remuneration and conditions of work of the labourers. Most construction workers are exposed to large uncertainties in the potential job market. They have very little knowledge about these markets and often risk high job search costs. On the other hand, employers need to hire workers in very large numbers in large construction sites. They also need strategies which can ensure low wage costs and a disciplined workforce. Recruiters step in to provide these services both for workers and employers.

Studying organised sector construction sites, Srivastava and Jha (2016) found that labour contractors operated either in origin areas or in destination areas. In the case of the former, labour was recruited through smaller contractors, aggregated at source, and deployed at worksites in destination areas, where attendance was supervised by Munshis. On the other hand, where the principal contractors operated at destination, labour was recruited at source by their sub-agents or Sardars. Smaller labour contractors or work contractors/team leaders recruited workers directly from source areas, or through labour chaurahas or other local channels.

Srivastava and Sutradhar (2016) and Srivastava and Jha (2016) have noted how the intermediaries, known as jamadar/thekeedar (contractor) or munshi play an important role in mediating employment as well as in determining the conditions of work. Interestingly, the use of such recruitment systems

is practised with greater intensity in the organised sector. Workers in the unorganised construction sector often arrive at the destinations having heard about the recruitment via their kinsfolk or family members, and sometimes through smaller contractors. Most of the construction workers for smaller projects are recruited locally through personal contacts by smaller work-contractors or from the labour chowk, a term used to denote areas where unemployed workers arrive each day to seek employment, or through social networks by *mistries*. Across all types of sites, most workers see contractors as their employers, responsible for wage payments as well as work supervision.

The jamadar/sardar also give the workers advances either in the source area or after reaching the destination area. Such advances not only help the workers in smoothening out consumption in the lean season but also signal a guaranteed job once they reach the destination. Advances are rarely settled against wage dues till final settlement occurs and are often used by the contractors to ensure availability of workers. Interestingly, the percentage of workers obtaining advances from contractors and the amount of such advance obtained by them also varies across sector and skill level. Fewer workers from the unorganised sector receive such advances, perhaps because of a less organised pattern of recruitment in this sector.

Because of the risk involved in such payment, not all workers get advances. Those availing advances are either known to the contractor or assurances are given on their behalf by the concerned middleman. In emergency situations, workers can avail loans from the contractor at the monthly interest rate which is sometimes as high as 5–10 per cent. Focus Group Discussions conducted with construction workers and contractors (Srivastava and Sutradhar, 2016) confirm our findings that the recruitment of workers for construction works in the unorganised sector is less organised, with the contractor playing a relatively passive role and as already discussed,

payment of advances is less common in the recruitment of labour in the unorganised sector.

### Neo-bondage in Construction

In a sense, the recruitment of labour through the jamadar/contractor suits the poorer migrants, but they trade their freedom of making individual contracts with employers for the relative comfort of securing advances and promises of secure employment from contractors. The outsourcing of labour recruitment to the jamadar also suits the employers, particularly those in the formal sector, who use such mechanisms to get away with any responsibility that comes with recruiting a mass of informal workers. In fact, such a mode of recruiting labour is suited to sidestepping the basic standards relating to hiring of informal workers such as payment of minimum wages. The debt-labour bind can take different forms and has been described by us and various other authors as neo-bondage in conditions when contractors use deceit to underpay workers and to restrain them over defined but temporary periods from exiting the contract (Srivastava, 2009; Breman and Guerin, 2009; Picherit, 2009). These conditions are also described as 'forced labour' (outlawed by Article 23 of the Indian constitution), bondage or modern slavery, all of which are subject to ILO Conventions.

Neo-bondage is extensive in industries manufacturing or mining material for the construction industry, such as brick-kilns and quarries but it is also known to exist among workers in the building construction industry. Indeed, both in India and globally, the numbers of those in bondage/neo-bondage are considered to be quite significant. Labour in large public works and construction sites is often organised through middlemen and contractors, based on the established system of advances and this results in bondage (Srivastava, 2005). The case of contract labour from areas around Mahboobnagar district

in Andhra Pradesh (often called *Palamuuru* labour) has drawn the attention of a number of scholars in this regard. Olson and Murthy (2000) estimated that in the early 1990s nearly 150,000 labourers seasonally migrated from this district of whom nearly 50,000 were bonded. In a survey of contract labour households in 1991 and 1994, they found that these labourers, who hail from landless or small farm households in an endemically drought-prone and unirrigated region, increasingly relied on advances and loans from mistries (contractors) who procured their labour for construction companies on public work sites. The workers worked for about 12 hours each day, and were paid a small wage which is adjusted against advances and loans at the end of the eight to nine month contract period. During this time, they were provided food for themselves and their dependents, and a packet of bidis and hair oil (all adjusted against wages).<sup>1,2</sup> Women labourers, who have to hand over their advances to the menfolk, were also sometimes subjected to sexual exploitation at the sites (ibid., cited in Srivastava and Jha, 2016). The PUDR (2010) report and its case in the Supreme Court of India<sup>3</sup> cited earlier brought to light the fact that similar practices were prevalent in the recruitment of workers employed to build the facilities for the Asian Games. Cases of construction workers in conditions of bondage/neo-bondage continued to be reported from time to time and continued to persist in the construction of facilities for the Commonwealth Games, decades after the Asian Games (Kara, 2012). These workers are predominantly from Scheduled Castes and Tribes.

The study of the construction sector in the Delhi NCR (Srivastava and Jha, 2016) also showed that the system of taking an initial advance from contractors is still deeply embedded in the industry. Around 61.5 per cent of the workers reported that they received advances from the labour contractors. Among ST workers, 78 per cent had taken advances. The average amount of advance taken was Rs 5,244.

A majority (59.3%) of them took these to meet the regular expenses of their family.

The study further delved into the issue of restraints on workers' mobility. About 4 per cent of the workers, mostly tribal workers from Chhattisgarh, said that they would need to clear the debt and advances that they had taken from the present employer before joining a new employer. These findings suggested that while advances were quite widespread, the more serious constraints were confined to a small percentage of the organised sector workforce: those who faced greater deprivation and suffered from greater asymmetry due to higher levels of illiteracy and isolation.

The study also explored the genesis of the contract between the worker and the contractor at origin. It appeared that the increasing demand for construction labour had led to more competition among contractors to mobilise labour and hence also a greater degree of choice with labourers to choose 'good' contractors. Rising levels of literacy, more widespread use of cell-phones, and various forms of workers' organisations in the source or destination areas could also impact on the isolation and lack of information of workers which influences their conditions of employment, but there are few studies that detail the impact of these or other factors or workers' extreme vulnerabilities.

### **Living Conditions and Access to Basic Amenities**

The living conditions of workers and access to entitlements are major challenges in the construction industry. According to a report prepared for the Second National Commission on Labour (2002), production activities in the construction industry take place in the open and therefore workers are exposed to scorching heat, rain, cold, dust and hazardous materials.

Being predominantly migrants, construction workers mostly live in construction sites in temporary shelters, in huts or under canvas, or in rented rooms in shanties which lack basic amenities, sanitation and safe drinking water. In metropolitan cities like Delhi, with high-rise buildings, contractors arrange accommodation for them in camps in the urban periphery, from where they are transported to construction sites. Accommodation and other facilities to be provided to them are regulated by all three legislations: the Contract Labour (Regulation & Abolition) Act, 1970, Interstate Migrant Workmen Act, 1979, and the The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, but standards laid down by these legislations are rarely met by the contractors/employers.

Studies also show that a majority of construction workers, both recent urban settlers and seasonal migrants, lack proof of urban citizenship, denying them those entitlements that are available, at least in principle, to poor urban citizens (Srivastava, 2011). Workers' access to health facilities and basic facilities are also very poor and, in any case, treatment costs have to be borne by the labourers (Srivastava, 2011; Borhade, 2012; PUDR, 2010). However, on the positive side, except when they are living in rented accommodation, labourers have accommodation free of charge, thus saving on rent and transportation costs.

Srivastava and Jha (2016) found that about 70 per cent of total workers and 83 per cent of female workers reported that they live in a room/shed provided by employers at the worksite. Fifteen per cent of workers in the sample—16.3 per cent of the male workers and 11.7 per cent of the female workers—live in rooms/sheds provided by the employer which are some miles away from the construction site. This was a particularly visible trend in Delhi where worksites are small in area and contractors house the workers in camps set up

in urban or peri-urban villages and then transport them to the sites. Workers who were long-term migrants or had migrated autonomously often managed to rent some accommodation.

The housing accommodation for the workers at the worksite is very poor. Sixty-nine per cent of workers reported living in jhuggi-jhopri (temporary hutments and sheds) where the per capita room space was even less than 50 square feet. These workers had access to water and electricity through the connections provided at the site. In Delhi, workers in two sites lived in camps; in one case the camps, consisting of semi-pukka structures with asbestos roofing, were rented to the firm and, in the other, land was rented in the peri-urban periphery by tier two firms which then constructed semi-pukka rooms for workers. The camps had rudimentary facilities for workers, and one was exclusively for male workers. More than 97 per cent of workers, however, do not have adequate sanitation facilities and use insanitary latrines or open spaces for defecation.

The asset ownership structure of the industry workers at the destinations is poor. This study found that the cell phone was the most widely owned asset with more than 79 per cent workers reporting that they had one.

Only one worker in the sample (0.4% of the total) possessed a local ration card, which was an APL (above poverty line) ration card. With no access to Public Distribution System shops, 93.9 per cent workers purchased their requirements from the open market, while 6.1 per cent went to shops specified by the contractor or sourced their food purchases through the contractor. In fact, 87.2 per cent workers in this study did not possess any form of identification and only 32 workers (12.8%) possessed some form of identification. Of these workers, 24 (9.6%) possessed identity cards given by employers which are principally used to regulate entry and exit into/from the sites. Six workers

(2.4%) only possessed the newly issued Aadhar card (biometric identification number issued by an agency of the Government of India) in 2012–13, and 4 workers (1.6% of the total) possessed more than one form of identification. Thus, 96 per cent of the workers did not have a form of proper identification at the destinations and, not surprisingly, bank penetration at destinations was abysmal among these workers, with only 4 workers (1.6 per cent of the total) reporting having bank accounts.

Children of workers could not avail of any facilities, including those constitutionally guaranteed, such as schooling. Of 43 responses received, only 23.3 per cent of children in the age group 0 to 3 years went to a crèche. Only one child (3.7%) went to an Anganwadi. And only 27.6 per cent of workers with children in the schoolgoing age group sent them to school (*ibid.*).

### **Wages and Working Conditions**

Workers report facing a number of work-related problems. Srivastava and Sutradhar (2016) asked workers in the NCR about the problems faced by them and they provide multiple responses. The most pressing reason reported was analysed first. Low wages were reported as the most pressing problem by 65.2 per cent of workers followed by irregular payments (18%), long working hours (11.5 %) and strenuous work (4.9%). When the total responses were analysed, low wages still figured as the most reported problem (36.2%), followed by irregular payments by employer and contractors (27.7%), long working hours (24.4%), and strenuous work (10.6%). Overall, the workers seemed more concerned by level of remuneration and regularity of payments, although poor working conditions, reflected in the responses relating to long working hours and strenuous work, also figured importantly.

The determination of wages, working hours, and other aspects of working conditions is a varied

exercise, since as discussed earlier, the workers are segmented along patterns of recruitment, and wage offers and bargaining take place between contractors and workers in different settings (Srivastava and Sutradhar, 2016; Srivastava and Jha, 2016; Cessou, 2017). In cases where recruitment takes place in source areas, wages are settled at source, and are more in relation to prevailing labour market conditions in those regions than the labour market conditions at destination. The net result is that at a construction site, wages of workers often differ between migration streams and types of recruitment patterns.

The other dimension is that wages actually received by workers are finally determined by the intermediaries who are their effective employers after deductions made by them. It is hard to determine the exact financial relationship between the final employer and the chain of contractors, and the contractor/sub-contractor at the lowest end of the recruitment/supervision chain and the worker. But in a large number of cases, workers receive wages which are lower than the prevailing minimum wage (Srivastava and Jha, 2016; Srivastava and Sutradhar, 2016). Interestingly however, wages appear to be higher for locally settled and directly recruited workers than for seasonally migrant workers, and are higher for workers in smaller unorganised sector construction projects than in large projects.

Workers are usually paid an amount at the end of a period. Usually, some amount is given to them at the end of each week. But as discussed earlier, final settlements with migrant workers take place at the end of the working season, after adjustment of advances, and this can also be the cause of considerable friction.

Some of the principal aspects of working conditions in the large construction sites in India are long working hours (usually 10 to 14 hours), non-payment of overtime and legally stipulated minimum wages and poor safety conditions

(Srivastava and Sutradhar, 2016). But while non-payment of minimum wages and overtime and poor safety conditions are widely prevalent across almost all types of sites, they vary in nature across different types of sites. Smaller sites have poorer facilities for workers, including safety conditions. On the other hand, the general working hours on small sites were lower at around eight hours, except where piece-rated and sub-contracted work was involved (van der Loop, 1992; Srivastava and Sutradhar, 2016). The latter study also notes that wages paid for an eight hour work day were higher in the smaller sites compared to larger sites, where organised recruitment processes dominated.

On large construction sites, working hours tend to be usually long, ten to twelve hours, and construction activity could extend 24x7 under flood lights. Srivastava and Jha (2016) found that in their study only about 20.4 per cent of the workers reported to be working for eight hours a day. Almost a similar percentage worked for nine or ten hours a day, while nearly sixty per cent workers worked for 11 or 12 hours a day.

The extraordinarily high intensity of work in these sites was also reflected in the number of days of work per week, as well as per month, put in by the workers. Almost half the workers (49.2%) reported working for all seven days in the reference week, while 43.2 per cent reported working six days a week and 7.6 per cent reported working less than six days in the reference week. Moreover, as many as 27.2 per cent workers reported working all 30 days in the reference month, while 26 per cent reported working 27–29 days in the month, and 36 per cent worked for 25 or 26 days in the month, with 10.8 per cent workers reporting that they had worked for 24 days or less in the previous month (*ibid.*). Significantly, the work intensity of workers hired by contractors is significantly higher than those hired by firms in terms of working hours (10.4 and 9.8 respectively), but the number of days worked per week and per month was marginally higher for

directly hired workers, reflecting greater stability in their employment. Overtime payments, as per law, are rare, and total working hours per week are also not regulated as per law. Srivastava and Jha (2016) found that 73.6 per cent workers in their sample reported that they worked overtime, which varied between two to four hours a day depending upon the intensity of the work. Women workers did not prefer to work overtime because of their involvement in household work. About 15 per cent of the workers from Murshidabad were contracted to work for longer work hours on a lump sum wage contract for a fixed period and yet they did not consider the issue of overtime as being applicable to them. All other workers received an overtime rate of 100 per cent rather than the legally stipulated rate of 200 per cent.

As shown earlier, the normal working hours in the construction industry vary from 8 to 12 hours. During this time, Srivastava and Jha (*ibid.*) found that workers get one break of about an hour for lunch. Breaks for tea vary but about a fifth of the workers report that they had no tea-break. While 23.6 per cent workers reported getting a day off every week, the weekly day off was unpaid. While 94 per cent workers responded that they got public holidays, these were also unpaid in all cases. Workers were not entitled to any other kind of paid leave, whether casual leave, earned leave, sickness leave or maternity leave.

Occupational health and safety are major concerns for workers in the construction industry. In Srivastava and Jha's (2016) study, workers reported cough (18.4%), back pain (19.2%) and exhaustion (10.8%) as the most common health problems. The major causes of occupational health risk that the workers faced were reported to be due to dust particles and pollution (63.9%), followed by accidents (28.4%) and eye strain (4.4%).

Around 82 per cent workers in organised sector sites said that there were some safety signs put up at

the sites (Srivastava and Jha, 2016). The firms also provide some safety equipment. Workers generally get to use safety helmets (85.6%) on the sites. The other less used safety equipment are gloves, safety belts (0.4%), earplugs (0.8%), shoes (0.4%) and dust masks (0.4%). On smaller sites, the use of safety equipment is not a priority (Srivastava and Sutradhar, 2016).

The probability of industrial accidents is high in this industry. A careful investigative report prepared by Srinivasan Jain and Sonal Matharu (Jain and Matharu, 2017) showed that in 24 cities alone, 452 workers died in accidents, while 212 were injured on construction sites between 2013 and 2016. Based on NGO sources, the report estimated 1,092 accidental deaths and 377 workers injured between 2013 and 2016. In a submission before the Delhi High Court in 2010, the DMRC admitted to 109 fatalities in its activities. No details of compensation paid were available in nine cases. In another report made to the Lok Sabha, the Government admitted to 65 accidents causing 35 fatalities in four DMRC projects occurring between 2013 to 2016. Patel and Jha (2016), after perusing a number of sources on accidents in the construction sector, have estimated that 276 fatalities occurred in the industry in the Delhi NCT during 2008 to 2012, while they estimate that the number of fatal casualties nationally could range between 11,614 and 22,080 between these years. In field studies, workers have recounted incidents of fatal accidents during interviews which had been dealt with quite summarily by employers and firms, with no protocol in place, and no policy or legislation covering these accidents (Srivastava and Jha, 2016).

### **Regulation of Working Conditions**

As we have discussed in the introductory part of this chapter, the construction industry has a large formal segment, and the concentration of capital has increased significantly in the last decades. But

the assignment of the main production activity to sites which are temporary in nature, the use of sub-contracting, and the use of a migrant and temporary workforce, has turned this workforce into informal workers.

Laws meant to protect the rights of association of informal workers as well as laws meant to secure minimum conditions of work and social protection for such workers are also applicable to the workers in the construction industry. The state has also legislated specific laws for the construction industry. The payment of adequate wages and overtime rates is regulated as per the Minimum Wages Act. Prompt payments are ensured by the Payment of Wages Act. The Contract Workers (Regulation and Abolition) Act (CLRAA), 1970, regulates the condition of recruitment of workers by contractors and the registration of the latter. The Interstate Migrant Workmen's Act (ISMWA) regulates the employment of inter-state migrant workers and provides for the registration of contractors and workers. The other important laws applicable to construction workers are the Trade Union Act, 1926; the Equal Remuneration Act, 1976; and the Workmen's Compensation Act, 1923.

In addition to the above laws and regulations there are special laws applicable specifically to the construction industry. Prolonged workers' struggles resulted in the adoption of a comprehensive legislation regulating the conditions of work of Construction workers (The Building and Other Construction Workers Act or B&OCWA, 1996) and for providing for the creation of state-level welfare boards, the collection of cess for the Welfare Fund, and the payment of social security benefits to the workers through the accompanying legislation (*ibid.*). These Acts were passed by the parliament after intense mobilisation by the National Campaign Committee on Central Legislation for Construction Labour (NCC-CL) and other workers' organisations for several years.

B&OCWA, 1996 regulates various aspects of construction workers' employment and establishes regulatory bodies to administer the Act. It covers workers in all construction activity except construction by an individual where the cost of construction is below a certain ceiling. The Act provides for Central and State Advisory Committees. It also provides for the registration of the establishment and the registration of the building workers as beneficiaries of the welfare fund. The Act provides for the registration of every building worker who has completed 18 years of age, but has not completed 60 years of age, and who has been engaged in any building or other construction work for not less than 90 days during the preceding 12 months (Section 12). It provides for the creation of a welfare fund and the constitution of welfare boards to provide for accident relief, group insurance premia, children's education expenses, medical expenses, maternity benefit, and other welfare measures as may be prescribed.

The Act further prescribes through rules framed under the Act: normal working hours; a rest day every week on payment of prescribed remuneration; overtime rates; basic facilities including drinking water, latrines and urinals, accommodation and crèches (on sites where more than 50 female workers are employed); canteens, if the number of workers employed is more than 250; and safety committees and safety officers, if the numbers employed are more than 500. Each establishment is required to maintain records and registers. The implementation of the Act is to be carried out by inspectors and supervised by a Chief Inspector.

B&OCWA, 1996 enables the states to levy a cess which shall not be more than 2 per cent but not less than 1 per cent of the construction cost incurred by an employer on all new construction activity. The amount has to be deposited with the Construction Workers' Welfare Board for the welfare of construction workers including pensions, assistance in case of accident, housing loan, education, health,

and safety of the workers and their families, and is applicable to the establishment employing 10 or more workers and to the project costing more than Rs 10,00,000.

There is clearly an overlap between the Contract Labour Act, 1970, B&OCWA, 1996, and the Interstate Migrant Workers' Act, 1970, given the preponderance of contractors and interstate migrant workers in the construction industry, with each of these legislations having requirements of different types of registrations, record keeping, and compliance mechanisms. But in practice, the B&OCWA has emerged as the main regulatory law for the sector. However, implementation of the various provisions of this as well as other Acts is very weak. Proactive regulation by the state seems virtually non-existent in the industry. Srivastava and Jha (2016) find that only 3.3 per cent workers knew of inspections at their worksite.

### **Weak and Regionally Uneven Unionisation**

Poor regulation is also the result of weak unionisation of construction workers. The informality of the conditions of employment, the conditions of isolation under which they work, the fear of being thrown out of a job, on the one hand, and the inaccessibility of the workplaces, combined with its temporary nature in any single location and even city or state, results in a very low penetration of trade unions. Large-scale union federations are relatively less interested in organising construction workers because of the difficulties in doing so (van der Loop, 1992). The activities of unions are mainly restricted to the more sedentary or the more privileged segment of this workforce (Vaid, 1999; also Srivastava and Jha, 2016). Undoubtedly, a number of unions like the SEWA union, the Nirman Mazdoor Panchayat, IFTU, and several others have focused on organising construction workers, but these efforts have only touched a small number

of these workers at a national level. Moreover, the picture is regionally varied.

Trade union membership, filed annually by the registered trade unions, and published by the Labour Bureau in India provide one source of data on unionsation. In 2002, only 430 unions reported a total membership of 5.6 lakhs. In 2012, only 281 unions provided returns, but the total membership reported was 1.2 million. The number of states and unions filing returns varies from year to year, and hence no firm conclusion on trends can be drawn. The National Sample Survey on Employment-Unemployment also solicits a question on membership of unions/associations. In 2011–12, our estimate based on responses shows that 5.33 million or 10.68 per cent of the construction workers gave positive responses regarding membership of any association or union. This percentage was higher in the major southern states, in states with a strong left movement or government, and in Punjab. We do not have enough fine-grained studies that can tell us how the higher membership of collective associations has impacted recruitment or working conditions in some states.

The upsurge in capital in the sector, the withdrawal of the state from virtually any semblance of regulating capital-labour relations, and the low presence of worker's collective organisations, tilts the balance firmly in favour of large capital in determining labour market outcomes in the industry, and the importance of establishing some countervailing bargaining strength cannot be underestimated.

### **Social Security**

Given the harsh working conditions, temporariness of employment, poor safety and occupational health status of construction workers, it is germane to ask whether, and to what extent, construction workers have recourse to formal social security.

On paper, a number of Central social security laws are applicable to construction workers. These include the Fatal Accidents Act, 1855; Workmen's Compensation Act, 1923; Employees State Insurance Act, 1948; Employee's Provident Fund and Miscellaneous Provisions Act, 1952; Maternity Benefit Act, 1961; Personal Injuries (Compensation Insurance) Act, 1970; Payment of Gratuity Act, 1972; Building and Other Construction Worker's (Regulation of Employment and Conditions of Service) Act, 1996; and the Building and other Construction Worker's Welfare Cess Act, 1996.

These social security Acts (other than the last two) cover defined groups of establishments, usually employing a minimum number of workers, and cover the important areas of injury and accidents; retirement benefits; health insurance and treatment; and life cover. However, doubts have been raised on whether they cover workers in the kind of sites that have been studied here, despite the fact that these workers may have been employed by organised sector entities. This is tantamount to saying that if formal sector entities carry on part of their business in temporary or mobile premises (or indeed without such premises, as is often the case with service sector enterprises), either by directly engaging workers or through contractors, their workers would be exempt from the coverage under these laws. This is a question which needs to be debated at length.

In any case, after a historic struggle, as we have discussed in the preceding section, workers' organisations succeeded in getting two laws passed by the Central government which specially aimed at providing social security to workers in the construction industry. Of these laws, The Building and other Workers (Regulation of Employment and Conditions of Service) Act, 1996 is the major instrument of social security and social welfare for construction workers. It provides for the registration of the establishment and the registration of the building workers as beneficiaries of a welfare fund.

It further provides for creation of welfare boards at the state level which are responsible for transferring prescribed benefits to workers. The funds for these benefits are to be drawn from state welfare funds instituted under the Act. Its companion legislation, The Building and Other Construction Workers Welfare Cess Act, 1996, enables the states to levy a cess on the construction cost incurred by builders on construction projects. The amount has to be deposited in the Construction Workers' Welfare Fund and is to be used for the welfare activities of construction workers including pension, assistance in case of accident, housing loan, education, health, and safety of the workers and their families as prescribed under the companion Act and framed in relevant rules by the state welfare boards.

This important piece of legislation remained on paper till the Supreme Court started monitoring its implementation after a case was filed in 2006. It is only now that the state welfare boards have been formed in all the states and registration of workers has picked up. The latest data compiled by the Central Advisory Board under the Act shows that as on 30 June 2017, 27.7 million workers had been registered with the Boards, a Cess of Rs 37,482 crores had been collected, and benefits of Rs 9,491 crores had been dispensed. Arguably, these figures convey an incomplete picture since registration figures are required period-wise and cumulative figures do not convey much. Moreover, we need to distinguish between short-term benefits, and long-term benefits, such as pensions, which also require a different financial architecture. But even in their present shape, the data convey a great deal of inter-state variation in all three figures (cumulative figures of registration, cess and benefits defrayed). The states of Kerala and Chhattisgarh appear to be good practice outliers in some respects. Kerala has 1.46 million registrants and its benefit disbursal (Rs 1579 crores) exceeds its cess collection (Rs 1535 crores). Chhattisgarh, with 1.20 million registrants has disbursed Rs 614 crores out of Rs 798 crores

collected by it. On the other hand, the developed states of Gujarat, Maharashtra, Karnataka and Haryana appear to have done poorly on most fronts. Gujarat registered only 0.57 million workers and collected a cess of Rs 1690 crores, of which only 5 per cent was expended. Maharashtra registered 0.61 million workers and collected a cess of Rs 5,483 crores but provided only 7 per cent as benefit. Haryana registered 0.70 million workers and collected a cess of Rs 1,973 crores, spending 10.6 per cent as benefit, while Karnataka registered 1.16 million workers, spending only 21 per cent of the Rs 4,375 crores collected by it as cess.

The poor performance of the Boards is a combined consequence of several issues: lack of administrative and political will, administrative constraints, and most importantly, design weaknesses in the Acts. Although these twin Acts have extremely important consequences both for the regulation of working conditions of the construction workers and for their social security, it is a germane point whether they are suitably designed for construction workers who are migrant and mobile, and who may also take up employment in more than one sector. Registration of workers on a continuing basis remains a pitfall in the scheme. Although several states have taken the help of certified trade unions and other organisations, this has increased the registration of ineligible workers. The more serious issues are due to worker mobility, within and across the borders of the state. Since the scheme is compartmentalised at the state level, inter-state migrant workers, who are the most vulnerable, are excluded from it in most states. Re-registration is also a problem. The coverage of the scheme remains higher among more sedentary urban or peri-urban workers, a higher proportion of whom are likely to be skilled and/or members of unions. Electronic registration with unique identifiers can provide a better database, but issues of identification and inter-state portability remain more intractable problems. It is not surprising

that grassroots surveys find little evidence of the implementation of these Acts. Another major issue now is the implementation of the new Goods and Services Tax (GST) since July 2017. Since the tax covers the construction sector, the cess levied under the Welfare Act is likely to be eventually phased out.

### **Skill Acquisition and Upward Mobility in the Sector**

Skills are closely related to the possibility of upward occupational mobility of workers. The expansion of the construction industry and the increasing technological sophistication of segments of the industry has raised the demand for skilled workers whose wages are higher than unskilled workers. Results of field studies (Srivastava and Jha, 2016; Srivastava and Sutradhar, 2016; Jha, 2017) show that the majority of skilled workers in the industry acquire their skill in the process of working as helpers to skilled workers. Those workers who work as helpers to skilled workers have a better chance of acquiring skills on the job, and since such jobs are more likely to be segmented along lines of gender and social networks, some groups have a distinctly lower possibility of moving up by acquiring skills.

When workers were asked about their chances of acquiring skills (Srivastava and Jha, 2016; Srivastava and Sutradhar, 2016; Jha, 2017), only a small percentage of workers saw a chance of becoming skilled. No woman worker thought she could become skilled. General caste workers rated their chances as the highest and ST workers, followed by SC workers rated their chances as the lowest. The Government of India supported by the industry has taken a number of steps to increase the scope of formal skill training and placement of trained workers. But as Jha (2017) shows, issues such as the opportunity cost of training and the informal nature of the labour market, dominated by labour contractors, have proven to be significant barriers in expanding formal training.

## More on Women Workers in the Industry

As we have shown earlier in this paper, the construction industry is an important avenue for women, but they face increasing barriers in the industry. First, as we have shown, women workers are unskilled and unlike male labourers, women in the construction sector have virtually no chances of acquiring skills and moving up the job ladder. There have been efforts by unions and other organisations to provide skills to women in states such as Kerala, Tamil Nadu and Gujarat, but the acceptance of such women workers by employers is low.

Even as unskilled workers, they are usually paid even less than the male migrants. Further, as shown by Srivastava and Jha (2016), large employers, including public sector employers avoid employing women workers for two other reasons. First, to avoid regulatory oversight, since the employment of women workers requires the provision of required facilities for them and for accompanying children. Second, employers prefer male only employment due to the 24x7 nature of work in some sites, and the housing of workers in camps.

Apart from issues of segmentation, discrimination etc. in the labour market, women workers face a number of other problems. They continue to have the responsibility of cooking and looking after young children who often accompany them to sites. The sites usually do not have crèche facilities nor do they have basic facilities such as separate toilets. As mechanisation increases, women have fewer chances of being employed in the industry.

A separate set of questions relating to social reproduction responsibilities, autonomy, sexual harassment and abuse was addressed to women in the NCR study cited earlier (Srivastava and Jha, 2016). When women workers were asked who kept their wages, a little less than half (49.8%) reported that they kept their own wages while in

more than half the cases, their wages were kept by their spouses. About 15 per cent of women with infants said that they did not get sufficient breaks to breastfeed their child. More than 61 per cent women workers did not have access to an enclosed toilet. Fifty per cent of the women said that they faced domestic violence while 11.7 per cent were not willing to answer (ibid.).

## What can be Done?

The construction sector is one of the most important drivers of growth and investment in the Indian economy, one of the largest employers, and singularly responsible for the diversification of the rural workforce observed till 2011–12. Yet, the deficits in labour standards in this industry are eye-opening. Drawing from our previous work,<sup>4</sup> we have therefore put forward an agenda for decent work and improved labour standards in the industry for wider discussion:

### 1) *Harmonisation of Certain Labour Laws Applicable to Construction Industry Workers.*

There are three major laws viz. the CLRA, ISMWA and the B&OCWWA which provide for regulation of conditions of work of the labourers, provision of basic amenities, and safety and health. All these laws are applicable to construction labourers and have considerable overlap. They require the registration of establishment/principal employer, registration of contractors, and registration of specific categories of workers covered under these laws. But a close scrutiny of these laws reveals that not only do they have different coverage, they also differ in fixing liability as well as in defining different categories of employers and workers. For example, the CLRA makes a distinction between the principal employer and the contractor, as also does the ISMW. But the

B&OCWA only defines employers who can either be owners/occupiers if no contractors are involved, or can be contractors/sub-contractors. There is no liability on the part of the principal employer who is also not defined in this Act. None of these Acts specifies responsibilities and liabilities if there is a chain of contractors/sub-contractors, as is usually the case. As far as the registration of workers is concerned, each of these Acts refers to a different sub-group of workers and taken together, they still do not exhaust all categories of the workforce at an establishment/site. Similar ambiguities exist in the defining working conditions, amenities and benefits under these laws.

We believe that the harmonisation of these laws should aim at:

- Registration of all principal employers as defined in the CLRAA but with respect to the lower limits of investment as defined in the B&CWWA.
- Registration of all contractors and sub-contractors in the labour recruitment chain, with appropriate changes in law.
- Possible amalgamation of the CLRAA and the ISMWA, noting that there is almost total non-observance of this Act on the ground.
- In the construction sector, minimum conditions of work, amenities, and safety rules to be defined by the B&OCWA.

### **2) Registration of Workers**

As discussed above, the three labour laws provide for registration of specific categories of workers. In addition, the Unorganised Workers Social Security Act (2008) provides for universal registration of unorganised workers and the provision of smart identity cards, but this law has remained largely

unimplemented. A large percentage of construction industry workers are circulatory migrants, working in temporary sites, and often moving between occupations, and issuing them identity cards which are portable seems to be a basic requirement. Linking these smart cards with wage payments and social security deductions would be the next step.

### **3) Applicability of Social Security Laws**

A perusal of the social security laws which are meant for formal sector workers show that these laws are fully applicable to the construction industry workers employed by the formal segment of the industry. These include laws such as the Employees State Insurance Act, the Employees Provident Fund Act, and the Workmen's Compensation Act (specified in VIII B of Schedule II of the Act), but they are rarely applied to workers in the sector and there is limited enforcement of these laws. The Building and Other Construction Workers Welfare Act and the corresponding Cess Act currently provide the major social security framework for these workers. However, this overall framework has the following limitations:

- First, while in the formal sector, social security laws as well as the B&OCWA both apply to a segment of workers, there is an inherent contradiction. The former require proportional contributions from employers and workers, while the latter draw from the cess-based contributions, also borne by employers.
- Second, the B&OCWA Act as it exists today, treats construction workers as sedentary and mono-occupational. There is little awareness that a large number of workers are mobile, moving between jurisdictions and even states. In recent

years, due to expansion of the sector, workers tend to stay in employment in one place (some being non-migratory any way), and with a single contractor for longer periods but the basic problem remains. While we believe that the registration of these workers must be linked to a universal registration system, we also hold the view that a larger part of the funds should be used to provide public goods to workers (health facilities, crèches, shelters, housing, upskilling, etc.) as was also envisaged by the First National Commission on Labour Study Group.

- With the GST coming into force in July 2017, the B&CW Cess Act may come into conflict with it and may be withdrawn. In that case, the entire central social security framework for construction labourers will need to be re-drawn.

#### **4) Enforcement of Labour Laws**

The evidence in this study indicates that while employers do not take existing labour laws seriously, the state has virtually abdicated its responsibility in enforcing existing labour laws. While there is pervasive evidence of these laws not being observed, the filing of cases and prosecution of offenders takes place in very few cases. There has been a steady erosion in the capacity of the labour departments to enforce laws, but more importantly the state does not show any commitment to implement the laws. The temporary nature of the workforce and the lack of any collective voice also prevents any countervailing action on behalf of the workers from taking place.

#### **5) Skill Improvement**

In the last decade and a half, a number of reports have highlighted skill shortages in the construction industry. The Construction

Industry Development Council (CIDC) was set up jointly by the Planning Commission and the Industry to respond to these shortages and in the last few years the National Skill Development Corporation (NSDC) and the Ministry of Labour and Employment have also stepped in to expand training capacity. However, no impact of these initiatives was seen on the ground. All skills were reportedly acquired on the job, and this mode of skill acquisition reinforced the gender-based segmentation of the workforce. The evidence presented in this report indicates that there is a need to significantly upscale skill training initiatives in the sector and to make these accessible to the young workforce, particularly to women.

#### **6) Ending Illegal Wage Deductions**

As we have noted in this study, most workers receive very low wages, which are below the legal minimum. The gross margins of the contractors are high: an estimated 30–40 per cent of the wage bill in some cases. Contractors use these margins to cover costs and to earn profits/incomes. Instead of setting labour contracts on a wage plus commission basis, firms set up contracts to cover gross wages, with some additional amounts being set aside occasionally for workers' transportation, etc. Since contractors generate these margins from the wage bill, paid-out wages to workers are low (they are also low because contracts are set up without reference to legal stipulations). Employers do not fulfil their responsibilities of overseeing wage payments. In addition, contractors or their agents also retain part of the wages till the end of the contract/season and in many cases, the workers' dues are never fully settled. These problems could be reduced if contractors and employers were registered and if there was greater

transparency in the contract between the different tiers of employers/contractors/sub-contractors. There is also some need for regulating this relationship as has been done in the Ministry of Micro, Small and Medium Enterprises (MSME) sector.

### **7) Focusing on Gender-friendly Policies and Employment**

One of the main concerns in this sector, also highlighted in this study, is the status of women workers and the declining share of women's employment in the organised construction industry, as its work organisation, capital intensity, and provision of housing to workers is changing, discouraging the presence of women workers and workers' families. We had noted in the study that, unlike East Asia, women have a significant, though minority presence in the industry which is sustained by family-based circular migration. Such family-based migration has both positive and negative features. While, on the one hand, it increases household incomes and women come out of agriculture which is lower paying, on the other hand, it exposes young children to an unhealthy environment in which they are also deprived of education. If rural employment increases, including through the contribution of programmes like MGNREGA, women's outmigration may come down. However, given that the construction industry is still one of the major avenues of non-agricultural employment for women, every attempt has to be made to improve their working and living conditions, to reduce discrimination, and to improve their prospects for better jobs in the sector through skill acquisition and creating a demand for skilled women workers. This will require focused policy attention and also affirmative action on the part of employers.

### **8) A Trajectory for Decent Employment in the Construction Industry**

Although there is large-scale violation of minimum norms, given the high rates of investment and profits in the real estate and construction sectors, and year-round demand for labour, policy advocacy must focus on the creation of regular jobs with reasonably flexible contracts, and fair wages for workers, along with other decent conditions of work at the sites.

## **Conclusion**

The construction industry opened up the possibility for poor rural workers, unable to eke out a living in agriculture, to take up a few months of employment at wages somewhat higher than in agriculture. Over 50 million workers now commute or migrate to work in the construction industry, obtaining employment for a few months each year. There is a graded possibility that some (male) workers may acquire on-the-job skills and therefore have a higher possibility of upward economic and occupational mobility.

The incorporation of workers into the construction sector workforce has been at a cost, involving harder and riskier work, an exposure to harsh living conditions, and in many cases, a loss of freedom. The minimal living conditions offered by contractors/employers reduce the cost of social reproduction of these workers and their accompanying families. But without an identity at the working places, it is almost impossible for these workers and their family members to access social protection programmes such as ICDS, school education or subsidised grain.

Studies suggest that most migrant construction workers are able to save something and remit money to support their families in various ways. Undoubtedly, employment in the sector and income

from it supports these workers and their families at a level of subsistence which alternative available livelihood systems may not be able to provide. But construction workers have a small working life span in the industry. Studies show that nearly two-thirds of the workers are below the age of 30 and very few workers are in the age group of 50 years or more. No existing research examines what happens to their family's well-being once these workers retire from construction work. Moreover, fluctuations in construction activity make employment uncertain. All this calls for a social security support system for construction workers. The twin legislations which came into existence after years of workers' struggle

had to see another decade of struggle even before the first steps were taken for their implementation. But lack of administrative will, worker mobility and the temporary nature of jobs has impeded proper implementation. Moreover the Cess-based Acts face problems of extinction with the implementation of GST in the country.

Finally, to the extent that these large number of workers were able to coax a living out of employment in the construction industry, we need to ask whether the construction boom ended after 2012–13 or whether steps taken to revive the economy will put some life back into it.

## Endnotes

1. Judgment of the Supreme Court on 18/09/1982 in the *People's Union for Democratic Rights vs. Union of India and Others*, in a case relating to the employment of construction labour for sites for the Asiad Games.
2. In Parry's study of the construction sector in Bhilai

in Chhattisgarh, where mainly local labourers were employed, there were no advances and the tying in of labour is solely done through the withholding of their payment (Parry, 2014).

3. *People's Union for Democratic Rights and Others vs Union of India and Others* (1982).
4. This section draws on Srivastava and Jha (2016).

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