



# Overplaying Welfarism and Social Security: The Case of the Karnataka Building and Other Construction Worker's Welfare Board

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## Abstract

The Union Ministry of Labour and Employment notes that the unorganized sector of workers constitutes about 93% of India's labour workforce. Despite this, the role of welfare policies and their impact on the unorganised labour workforce has largely been ignored. Using data from the annual reports of the Karnataka Building and Other Construction Workers Welfare Board, this paper finds glaring inconsistencies in the current schemes formulated by this Board. The paper compares the schemes along with the International Labour Organisation's (ILO) Convention 102 on Social Security, asserting that despite India being a non-signatory to the convention, its mandate on the minimum standards of social security needs to be followed. The paper recommends significant policy reforms such as the removal of schemes contrary to both the Model Welfare Scheme and the ILO Convention 102 on Social Security and larger transparency on scheme-wise expenditure for better implementation of welfare schemes by the Karnataka Building and Other Construction Workers Welfare Board.

**Keywords:** Constitution of India, ILO, Inequalities, Public Policy, Social Security

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## 1. Introduction

Social Security is a fundamental pillar of workers' rights and dignity. The International Labour Organization (ILO) defines Social Security as a "human right which responds to the universal need for protection against certain life risks and social needs."<sup>1</sup> Dreze and Sen define it as the "social means to prevent deprivation and vulnerability to deprivation."<sup>2</sup> The Beveridge Report of 1942, which was established to review social insurance in the United Kingdom, reported that the "five giants of want, disease, ignorance, squalor and idleness must be addressed to ensure a social security net that is impactful".<sup>3</sup> This reductionist needs to list the various parameters of social security resulted in the ILO Social Security (Minimum Standards) Convention, 1952.<sup>4</sup> The Convention lists medical care, sickness, unemployment, old age, employment injury, family, maternity, invalidity and survivors' benefits as the "9 Contingencies of Life." Therefore, countries must design schemes to ensure that these contingencies are met.

The Organization for Economic Co-operation and Development (OECD) defines social security schemes as the schemes that are imposed and controlled by government units for the purpose of providing social benefits to members of the community as a whole, or of particular sections of the community. Construction workers in India are left out of the

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<sup>1</sup>International Labour Organization, International Labour Standards on Social Security, International Labour Organization, <https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/social-security/lang-en/index.htm#:~:text=Social%20security%20is%20a%20human,life%20risks%20and%20social%20needs>.

<sup>2</sup> Dreze J. And A. Sen, *Hunger and Public Action* 15 (Oxford Clarendon Press, 1989).

<sup>3</sup> Sir William Beveridge, *Social Insurance and Allied Services* (Beveridge Report): UK Parliamentary Archives BBK/D/495, UK Parliament Nov. 1942 <https://www.parliament.uk/about/living-heritage/transformingsociety/livinglearning/coll-9-health1/coll-9-health/>

<sup>4</sup> Social Security (Minimum Standards) Convention, C102, International Labour Organization (Jun. 28 1952), [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C102](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C102)

social security net as they are not classified as workers or employees under most labour statutes. Therefore, the Government established a Construction Board at the Center and multiple State boards in order to regulate employment and provide social security to these workers. The Karnataka Building and Other Construction Worker's Welfare Board (KB&OCWWB) is one of the State Welfare Boards established under Section 18 of The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.<sup>5</sup> (BOCW Act)

The paper aims to ascertain whether the schemes employed by the KB&OCWWB are being used to benefit the building and construction workers and whether the current schemes align with the ILO's mandate on social security and to explore potential policy reforms in the appropriate direction.

## 2. Literature Review

A 2011 empirical study<sup>6</sup> showcased certain barriers in the implementation of social security schemes for building and other construction workers in Karnataka. In this regard, the study showed that 76 per cent of workers are not aware of the schemes by the KB&OCWWB. It additionally showed a negligible number of contractors registered with the KB&OCWWB, and lower payment of minimum wage, to name a few. A 2021 working paper<sup>7</sup> of The Indian Institute of Social and Economic Change used surveys of building and other construction workers in Karnataka to show that 98 per cent of

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<sup>5</sup> Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, No. 27 of 1996 INDIA CODE (1996), <https://www.indiacode.nic.in>

<sup>6</sup> R.S. Nithin Prasad, K Vittal Rao and H.N. Nagesh, Study on Building and Other Construction Workers Welfare Schemes/Amenities in Karnataka, 10(1) SASTech Journal 59, (2011)

<sup>7</sup> Channamma Kambara and Others, *Education and Nutrition among the Migrant Construction Workers' Children – A Case Study of Bengaluru City* (Indian Institute of Social and Economic Change, Working Paper No. 521, 2021)

workers in the sample set were not registered with the KB&OCWWB. The study observed that while a general awareness about welfare schemes was present, workers did not know, specifically, any schemes that they claimed benefits from. While this study lists the schemes provided by the KB&OCWWB, it does not focus on the framing of the schemes. An assessment of the cess collection of the KB&OCWWB for a period of 11 years, from 2006-2021, observed that the welfare fund had a very low level of expenditure (8%) on welfare schemes. On the contrary, a large expenditure was made on administrative expenses.<sup>8</sup> The assessment also expressed caution that the multiplicity of schemes also led to an increase in instances of spurious benefits.<sup>9</sup>

Lastly, the assessment concludes that the KBWWCB's inefficiency has reduced the social security grant to workers and largely impacted migrant workers. A large source of literature<sup>10</sup> is present on the functioning of the KBWWCB, such as the nature of cess collection, manner of expenditure and disbursement. Little or no literature is present in assessing how the welfare schemes were framed and the impact of such policies on the welfare of buildings and other construction workers.

### **3. Labour, Social Welfare and Social Security under the Indian Constitution**

Social welfare forms an integral feature of the Indian Constitution. The founding members of our nation realized that an economically drained, newly decolonized and impoverished nation could not guarantee social welfare as a right. Therefore,

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<sup>8</sup> G. K. Karanth, *Managing Unspent Funds when Money is Scarce: Karnataka State Construction and Other Workers Welfare Board*, 14.1 *International Development Policy* 2022 <https://doi.org/10.4000/poldev.5053> at 16,26

<sup>9</sup> *Id.* at 43-45.

<sup>10</sup> See Ajit Jha, *Vulnerability of Construction Workers During COVID-19: Tracking Welfare Responses and Challenges* 64 *Indian J. Labour Econ* 1043 (2021) <https://doi.org/10.1007/s41027-021-00348-4>; Shamindra Nath Roy and Others, *Evaluating the Welfare Framework for Building and Other Construction Workers* (Centre for Policy Research, Policy Brief, 2017)

Directive Principles of State Policy (DPSP) were introduced in the Constitution to ensure that as our country would progress, we would be able to implement and make welfare a matter of right. It was suggested that future leaders of independent India would be able to ensure economic democracy in reality.<sup>11</sup> The 1944 Philadelphia Declaration by the ILO suggested that labour was not a commodity and that social welfare must be given to all persons irrespective of race, creed or sex. This had a profound impact on the Indian Constituent Assembly, which included the principles of equality and welfare. Furthermore, Jawaharlal Nehru's speeches at the 1947 and 1957 Asian Relations Conferences stressed on the need for an economic revolution to accompany a political revolution to ensure true equality.<sup>12</sup> The Constitution of India and the Welfare policies implemented thereon represented this ambition.

The Directive Principles of State Policy (DPSP) is a key tool in guiding the social welfare net in India. Through Article 38, the Indian Constitution imposes a positive obligation on the state, both to secure a social order for the public and to minimize inequalities in income. Article 39 obligates the State to secure an adequate means of livelihood for its citizens. Article 43 imposes on the State, an obligation to secure a living wage and decent standard of life for all workers. The Supreme Court has held the right to livelihood as a fundamental right, subject to reasonable restrictions<sup>13</sup>(Supreme Court of India, 1985). Since DPSPs are not enforceable under the law, the duty is on the Government to design policies and schemes that provide welfare, in harmony with fundamental rights. In *Minerva Mills v Union of India*<sup>14</sup> the Supreme Court asserted the need for a harmonious construction

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<sup>11</sup> Constituent Assembly Debates, 19th November 1948, at 494-95

<sup>12</sup> S.K. SASIKUMAR, ILO And India: A Century of a Shared Quest for Social Justice, 26(1) (Labour & Development 2019).

<sup>13</sup> *Olga Tellis & Ors vs Bombay Municipal Corporation & Ors*, 1986 AIR 180.

<sup>14</sup> *Minerva Mills Ltd. v. Union of India*, AIR1980 SC1789

between fundamental rights and directive principles of state policy.

The Indian Constitution mandates labour as a subject on the concurrent list which allows for both the Union and States to regulate labour. Furthermore, welfare schemes for Indian citizens can be designed and implemented by both the Central and State Governments or in partnership between the two. The schemes of the Center and State often overlap to cover the maximum number of beneficiaries. However, there might be instances where policies provide the same benefits to the same beneficiaries. The lack of coordination between bodies in India and the absence of portability measures leads to duplication of resources, *in arguendo* the case of the schemes designed by the Construction Board in Karnataka.

#### **4. Jurisprudence by the Karnataka High Court**

In *Srirama Babu v Department of Labour*,<sup>15</sup> the High Court issued directions to eradicate the practice of child labour. Opining that the main cause of child labour is poverty, the Court ordered the creation of a social security fund for child labourers. It also ordered periodic inspections by the Department of Labour and Department of Health at industrial and commercial establishments, hotels to name a few. In *Sou Moto v Department of Labour*,<sup>16</sup> the High Court initiated *sou moto* proceedings against the Department of Labour. This was on the basis of news reports submitted by the Karnataka State Legal Services Authority (KSLSA). The first incident was related to the electrocution of one worker and the subsequent injury to two other workers in an under-construction residential project. The second incident was regarding the accidental drowning of a construction worker's child. The High Court closed the proceedings as the Department provided details of

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<sup>15</sup>*Srirama Babu v Department of Labour*, ILR 1997 KAR 2269.

<sup>16</sup>Unreported Judgement, *Sou Moto v Department of Labour*, Writ Petition (Civil) No 26143 of 2012, Judgement Dated 13th November 2013, High Court of Karnataka [https://karnatakajudiciary.kar.nic.in/repository/rep\\_judgmentcase.php](https://karnatakajudiciary.kar.nic.in/repository/rep_judgmentcase.php)

compensation as per the 2011 Karnataka Victim Compensation Scheme.

In *Samuel Satyashelan v Union of India*,<sup>17</sup> the petitioner submitted before the Court, the issues concerning non-compliance of labour law by the Union of India and the State of Karnataka regarding multiple projects of Bangalore Metro Rail Corporation Limited. The High Court ensured a multitude of directions regarding worker safety, and payment of wages, to name a few. One of these directions was the mandatory registration of workers engaged by contractors under the BOCW Act of 1996. In *Karnataka State Legal Services Authority v Department of Labour and Ors*<sup>18</sup>, the KLSLA initiated a writ petition against the Department of Labour concerning the implementation of the BOCW Act, 1996. The prayer for a writ of mandamus was denied by the High Court, as the Department filed an affidavit stating that the registration of 70% of workers was completed. In *Lakshmi Devi v KB&OCWWB and Ors*<sup>19</sup>, the widow of a construction worker who died an accidental death during the course of employment contested the non-payment of compensation by the KB&OCWWB. The Karnataka High Court rejected the submission made by KB&OCWWB that solely because Lakshmi Devi's husband was not a registered workman under Section 12 of the BOCW Act of 1996, at the time of the accident, no compensation can be paid.

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<sup>17</sup>Unreported Judgement, Samuel Satyashelan v Union of India, Writ Petition (Civil) No 48094 of 2012, Judgement Dated 18th August 2014, High Court of Karnataka [https://karnatakajudiciary.kar.nic.in/repository/rep\\_judgmentcase.php](https://karnatakajudiciary.kar.nic.in/repository/rep_judgmentcase.php)

<sup>18</sup>Unreported Judgement, Karnataka State Legal Services Authority v Department of Labour and Ors, Writ Petition (Civil) No 21855 of 2012, Judgement Dated 27th June 2016, High Court of Karnataka. [https://karnatakajudiciary.kar.nic.in/repository/rep\\_judgmentcase.php](https://karnatakajudiciary.kar.nic.in/repository/rep_judgmentcase.php)

<sup>19</sup>Unreported Judgement, Lakshmi Devi v KBCWWB and Ors, Writ Petition (Civil) No 51777 of 2015, Judgement Dated 28th March 2018, High Court of Karnataka. [https://karnatakajudiciary.kar.nic.in/repository/rep\\_judgmentcase.php](https://karnatakajudiciary.kar.nic.in/repository/rep_judgmentcase.php)

In *Ramesh Babu v State of Karnataka*,<sup>20</sup> a PIL was filed before the High Court asserting the State of Karnataka's non-compliance with the Supreme Court directives in the *National Campaign Case*. A Division Bench of the High Court headed by then Chief Justice Oka, observed that submissions of the State of Karnataka in its rejoinder on June 2nd 2020 - "As on April 2020, 2180394 construction workers have been registered as beneficiaries, and the State Government has granted the benefit of grant of Rs.5,000/- to each beneficiary. It is noted that the benefit of grant of Rs.5,000/- has been extended so far to 12,39,450 construction workers."<sup>21</sup> The Bench subsequently was satisfied with the compliance report dated 29th August 2020 and the reply dated 29th September filed by the State Government. It dismissed the PIL as the State had provided details of its assistance to construction workers during the covid-19 pandemic.

### **5. The Enforcement of the Building and Other Construction Workers Act, Cess Act and Social Security Schemes in Karnataka**

The BOCW Act of 1996 was implemented to cater to the social security needs of the workers in the Construction Sector. An informal, unorganised and unregulated part of the economy, workers in construction were forced to endure often exploitative and inhuman working conditions and were not protected under laws that prevented exploitation or ensured that employers contributed to Social Security. Therefore, the BOCW Act, of 1996 was implemented to regulate employment conditions and to provide for their safety, health and welfare measures.<sup>22</sup>

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<sup>20</sup>Unreported Judgement, *Ramesh Babu v State of Karnataka*, Writ Petition (Civil) No 6742 of 2020, Judgement Dated 22nd December 2020, High Court of Karnataka [https://karnatakajudiciary.kar.nic.in/repository/rep\\_judgmentcase.php](https://karnatakajudiciary.kar.nic.in/repository/rep_judgmentcase.php).

<sup>21</sup>Unreported Judgement, *Ramesh Babu v State of Karnataka*, Writ Petition (Civil) No 6742 of 2020, Judgement Dated 22nd December 2020, High Court of Karnataka [https://karnatakajudiciary.kar.nic.in/repository/rep\\_judgmentcase.php](https://karnatakajudiciary.kar.nic.in/repository/rep_judgmentcase.php) at 2.

<sup>22</sup>Supra note, 5.



In the *National Campaign Committee for Central Legislation on Construction Labour v. Union of India*,<sup>23</sup> the Supreme Court of India noted that the

BOCW Act of 1996 is a welfare legislation intended and enacted for the benefit of the unorganized sector of building and construction workers. It has a strong flavour of social justice and is a serious attempt by Parliament to ensure that building and construction workers are not exploited because of their poverty and their children do not suffer their fate in terms of education, healthy living and whatever it takes to live a life of dignity

Section 2(e) of the BOCW Act, 1996 defines a “building worker” as a person who is employed to do any skilled, semi-skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be expressed or implied, in connection with any building or other construction work but does not include persons in managerial, administrative or supervisory capacities who draw wages over one thousand six hundred rupees per mensem. The definition is specifically crafted to exclude “workmen” as defined under the Factories Act of 1948, given that they are already encompassed by the provisions outlined in the Factories Act of 1948. The BOCW Act of 1996 also creates State Level Boards and empowers them to frame rules and schemes for the welfare of Construction workers as noted below.

The Karnataka Building and Other Construction Worker’s Welfare Board (KB&CWFB) was established under Section 18 of the BOCW Act, 1996. The Building and Other Construction Workers Welfare Cess Act, 1996 (hereinafter the ‘Cess Act’) empower the respective State Welfare Boards to collect

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<sup>23</sup> *National Campaign Committee for Central Legislation on Construction Labour (NCC-CL) v Union of India & Ors*, (2018) 5 SCC 607 at ¶8.

construction cess<sup>24</sup> from sources permitted by the Central Government and use them accordingly to formulate and implement welfare schemes and other allied functions enshrined in Section 22 and 24 of the BOCW Act 1996. In *K. Gowspeer v State of Karnataka*,<sup>25</sup> the State of Karnataka submitted before the High Court that the cess collected by the KB&OCWWB cannot be used for purposes other than those mentioned in Section 24 of the BOCW Act, 1996.

Tables 1 and 2 showcase the scheme-wise expenditure of welfare schemes implemented by the KB&OCWWB for the years 2019 and 2020, respectively. The source of the data is the annual reports of the KB&OCWWB for the years 2020 and 2019, respectively.

**Table 1:** KB&OCWWB Scheme Wise Expenditure for the year 2020

Social Welfare Scheme	Beneficiaries	Amount Spent Per Scheme (In Rs)	Amount Spent Per Beneficiary (In Rs)
Educational Assistance	96272	637782590	6,625
Marriage Assistance	11694	299010000	25,570
Accidental Death	117	19284000	164,821
Funeral - Expenses	26562	142717000	5,373
Major Ailments	855	29370580	34,352
Medical Assistance	214	3418002	15,972
Maternity	60	1225000	20,417

<sup>24</sup> Supra note 5, at Section 3.

<sup>25</sup> Unreported Judgement, Sri K Gowspeer v State of Karnataka, Writ Petition No.57818/2013, Judgement dated 27<sup>th</sup> March 2018 (High Court of Karnataka) <https://indiankanoon.org/doc/55227342/>

Social Welfare Scheme	Beneficiaries	Amount Spent Per Scheme (In Rs)	Amount Spent Per Beneficiary (In Rs)
Tayi Magusahaya Astha	14	84,000	6,000
Pension	91614	18982000	207
Disability Pension	285	2288000	8,028
Family Pension	6	7,000	1,167
Creeches	759	8763296	11,546
Unregistered Worker Assistance	1	50000	50,000
BMTC	35989	415184700	11,536
Training cum tool kit (shramasamartya)	0	0	0
Housing	0	0	0

**Table 2:** KB&OCWWB Scheme Wise Expenditure for the year 2019

Social Welfare Scheme	Beneficiaries	Amount Spent Per Scheme (In Rs)	Amount Spent Per Beneficiary (In Rs)
Educational Assistance	66,754	362896900	5436.331905
Marriage Assistance	7,727	300700000	38915.49113
Funeral Expenses	1331	73088972	54912.82645
Major Ailments	2,627	11902796	4530.946327

Social Welfare Scheme	Beneficiaries	Amount Spent Per Scheme (In Rs)	Amount Spent Per Beneficiary (In Rs)
Accidental Death /Permanent Disablement	32	10865000	339531.25
Maternity	307	5331000	17364.82085
Medical Benefit	27	723322	26789.7037
Pension	493	16923000	34326.57201
Partial Disability	11	1909000	173545.4545
Training cum tool kit (shramasamart ya)	5712	90170239	15786.10627
Housing	0	760000000	0
Creche	0	3000000	0
	66,754	362896900	5436.331905
	7,727	300700000	38915.49113
	1331	73088972	54912.82645
	2,627	11902796	4530.946327

In the National Campaign Committee for Central Legislation on *Construction Labour v. Union of India*,<sup>26</sup> the Supreme Court of India expressed grave concerns about the utilization of funds collected as construction cess by various States. The Supreme Court noted that there was both “non-utilization of the large amounts collected that was repeated in State after State” and “There were a multiplicity of schemes in operation, apparently for the benefit of construction workers”. In this regard, the Court noted that framing a composite Model Scheme for the benefit of construction workers by the Union Ministry of Labour and

<sup>26</sup>Supra note, 5.

Employment (MoLE) will help curb inter-state disparities in scheme allocation by different State governments.<sup>27</sup> The Draft on Construction Workers Model Welfare Scheme<sup>28</sup> which was released by the Union Ministry of Labour and Employment has been revised once<sup>29</sup>. In 2016 the MoLE directed states and Union Territories to comply with the Supreme Court's 2015 judgement<sup>30</sup>.

The Model Welfare Scheme prepared by the MoLE pursuant to a Supreme Court directive asserts that the various schemes mentioned under it "will hold precedence over all other existing benefits and that only after meeting these priority expenses, any balance of funds may be utilized for giving additional benefits under section 22 (h) of the Act"<sup>31</sup>

The primary schemes under the Model Welfare Scheme are Life and Disability Cover, Health and Maternity Cover, Education, Housing, Skill Development and Awareness programs and Pension.

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<sup>27</sup> Supra note 23, at 71.

<sup>28</sup> Union Ministry of Labour and Employment, *Model Welfare Scheme and Action Plan for Strengthening Implementation Machinery*, Government of India, 2018 <https://labour.gov.in/whatsnew/model-welfare-scheme-building-and-other-construction-workers-and-action-plan-strengthening>.

<sup>29</sup> Union Ministry of Labour and Employment, *Modified Model Welfare Scheme and Action Plan for Building and other Construction Workers*, Government of India, 2018 [https://labour.gov.in/sites/default/files/draft\\_model\\_welfare\\_scheme\\_as\\_modified\\_upto\\_13.7.18\\_0.pdf](https://labour.gov.in/sites/default/files/draft_model_welfare_scheme_as_modified_upto_13.7.18_0.pdf)

<sup>30</sup> Ministry of Labour and Employment, *Order No Z-20011/08/2014-BL*, Government of India, June 7, 2020 <https://karbwvb.karnataka.gov.in/storage/pdf-files/Notification/07-06-2016.pdf> ; <https://www.uklmis.in/MediaGallery/GovDirection/GD1.pdf>

<sup>31</sup> Supra note, 29.

**Table 3:** Schemes of the KB&OCWVB that fall under the Model Welfare Scheme but are contrary to the Model Welfare Scheme

Social Welfare Scheme and Rule	Provision of Model Welfare Scheme	Nature of Compliance	Comment
Accident Benefits (Rule 47)	Life and Disability Cover	Violative	Benefit amount lower than that the Model Welfare Scheme combines cover for both accidental death and natural death.
Maternity Benefit (Rule 43)	Health and Maternity Cover	Partially Compliant	Exceeds the benefit limit under Model Welfare Scheme
ThayiMagu Sahaya Hasta (Rule 43-A)	1331	Violative	Does not mention the period of maternity leave mandated under the Model Welfare Scheme
Educational Assistance (Rule 45)	Education	Violative	Benefit amounts exceed the limit under the Model Welfare Scheme. Does not contain the qualifying criteria.
Karmika Gruha Bhagya (Rule 42)	Housing	Violative	Provides for loan advances while the Model Welfare Scheme moots for the provision of temporary housing
Pension (Rule 39)	Pension	Violative	Violative of eligibility criteria under the Model Welfare Scheme

Social Welfare Scheme and Rule	Provision of Model Welfare Scheme	Nature of Compliance	Comment
ShramaSam arthya-Tool Kit-Cum Training Programme (Rule 41)	Skill Development	Partially Compliant	Provides monetary benefit instead of skill development
ShramaSam arthya Toolkit (Rule 42)		Violative	Provides for skill upgradation. Not merged with existing State skill development programme.
Accident Benefits (Rule 47)	Life and Disability Cover	Violative	Benefit amount lower than that of the Model Welfare Scheme combines cover for both accidental death and natural death.

**Table 4:** Schemes of the KB&OCWWB that do not fall under the Model Welfare Scheme

Social Welfare Scheme and Rule	Comment
BMTC Bus Pass (Rule 49E)	Not envisaged under the Model Welfare Scheme
KSRTC Bus Pass (Rule 49F)	Not envisaged under the Model Welfare Scheme
Marriage Assistance (Rule 49)	Not envisaged under the Model Welfare Scheme

Social Welfare Scheme and Rule	Comment
LPG Connection or Karmika Anila Bhagya (Rule 49D)	Not envisaged under the Model Welfare Scheme
Treatment of Major Ailments (Rule 48)	Not envisaged under the Model Welfare Scheme
Medical Assistance (Rule 46)	Not envisaged under the Model Welfare Scheme
Family Pension	Not envisaged under the Model Welfare Scheme
Crèches	Not envisaged under the Model Welfare Scheme

Tables 3 and 4 show that the KB&OCWWB's schemes are in excess of the Central mandate, and in this regard, eleven schemes of the KB&OCWWB violate the criteria imposed by the Model Welfare Scheme (*See* Table 3). The above table makes it clear that eight KB&OCWWB schemes have not been envisaged under the Model Welfare Scheme (*See* Table 4). However, what is more alarming is that the KB&OCWWB's expenditure on schemes is often contrary to the limits mandated.

Regarding housing, the Model Welfare Scheme mandates that State Welfare Boards should spend an amount not exceeding 10% of the total cess for housing.<sup>32</sup> The Model Welfare Scheme elucidates that this 10% limit also includes any loans/advances given to building and construction workers for the purposes of housing. For the year 2020 (*See* Table 1), no amount was spent on housing by the KB&CWVB. For the year 2019 (*See* Table 2),

<sup>32</sup> The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Karnataka Rules 2006, Rule 42.



an amount of Rs 7,60,00,000 was spent by the KB&OCWWB, with no beneficiaries. Using the fund for the issuance of any loans/advances for the purchase of a house is also envisaged under the Karnataka Construction Workers Rules.<sup>33</sup> This is again contrary to the Model Welfare Scheme that only asserts temporary housing provision. The Model Scheme notes that the benefit of pension should be provided only to those beneficiaries who have been registered for a minimum period of 10 years.

The KB&OCWWB, under Rule 39<sup>34</sup> of the Karnataka Construction Workers Rules, provides pensions to those beneficiaries who have been registered for a period of minimum 3 years. This is again violative of the Model Welfare Scheme. Under Rule 49, the benefits provided by the KB&OCWWB such as educational assistance, exceed the limits mandated by the Model Welfare Scheme. The Model Welfare Scheme mandates that Rs 4 Lakhs must be provided in case of accidental death and Rs 2 Lakhs for natural death. The KB&OCWWB however, through Rule 47, provides a cover of Rs 2 Lakhs for the occurrence of accidental death or natural death in a single scheme instead of complying with the Model Welfare Scheme.

Under Rule 42, through the Karmika Gruha Bhagya or Housing Scheme, the KB&OCWWB provides for a loan amount of up to 2 Lakhs Rupees as a means of housing assistance. This Housing Scheme gives a time of 20 years for the beneficiary to repay the loan amount with no interest. This is again opposite to the Model Welfare Scheme that emphasizes the provision of temporary or transit housing with all amenities, charged with a user fee. However, the housing scheme in Karnataka is vexed with controversies and is yet to take off though funds have been released to Karnataka Housing Board.

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<sup>33</sup> *Id.* Rule 44.

<sup>34</sup> *Id.* Rule 39.

The social security schemes relating to that of marriage<sup>35</sup>, funeral assistance<sup>36</sup>, BMTC bus pass<sup>37</sup>, unregistered workers assistance<sup>38</sup>, and KSRTC Bus Pass<sup>39</sup> to name a few, are not envisaged under the Model Welfare Scheme (See Table 4). This again raises the question of excess expenditure on schemes that do not have a direct benefit to the health and life of construction and building workers. Such concerns on the expenditure borne by the KB&OCWWB on marriage are also expressed by the Karnataka Evaluation Authority (KEA) which noted that – “should funds be spent on social functions such as marriages and not on more lifetime opportunities such as education, skilling, employment, and those related to physical well-being such as treatment of diseases, accidents”<sup>40</sup>

Additionally, the Model Welfare Scheme notes that awareness should be spread “by way of grass root level awareness programs rather than by advertisements in newspapers or TV channels”. It also promoted the use of mobile numbers of construction and building workers to create awareness about welfare schemes<sup>41</sup>. It asserted that the expenditure incurred on public awareness should be made within the 5% limit for administrative expenses as stipulated under Section 24(3) of the BOCW Act 1996. The 2020 Annual Report of the KB&OCWWB notes the use of newspaper ads, special editions in newspapers, calendars, posters, hoardings, banners and pamphlets as to promote awareness. This is again contrary to the Model Welfare Scheme. The 2020 Annual Report mentions the majority cited activities as ‘work in progress’ with only one being cited as

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<sup>35</sup> Supra note 32, Rule 42.

<sup>36</sup> *Id.* Rule 44.

<sup>37</sup> *Id.* Rule 49 (E).

<sup>38</sup> *Id.* Rule 47A.

<sup>39</sup> *Id.* Rule 49 (F).

<sup>40</sup> Karnataka Evaluation Authority, *Welfare Impact of Usage of Construction Workers Welfare Board Cess in Karnataka*, Government of Karnataka, 2020, <https://kmea.karnataka.gov.in/storage/pdf/Reports%20and%20Other%20docs/Construction%20workers%20ES.pdf>

<sup>41</sup> Supra note 29, at 13-14

'completed'. The KB&OCWWB has not added the expenditure amount for the same. Despite being a 'work in progress' - the least the KB&OCWWB could have done is at least mention the draft tender amount for transparency. With no mention of the amount spent, it will be difficult to ascertain if the expenditure incurred on advertisements coupled with the administrative expenditure does not exceed the 5% limit as mandated under the Act.

## **6. The International Labour Organization on Contingencies of Life**

The International Labor Organization (ILO) has prescribed a list of minimum standards that are necessary to be provided as social security, in Convention 102 titled Social Security (Minimum Standards), 1955. The purpose of this convention was to guarantee workers certain benefits, like medical care, sickness, unemployment, old age, employment injury, family, maternity, invalidity and survivors' benefits. The Convention lists out basic standards for each of these nine branches but states that countries ratifying the convention at least ought to adopt three of the branches and fulfil the minimum standards under them following which they can begin to adopt the others. India has not ratified the Convention, but has made a constitutional promise and also has generated robust schemes to implement social security protection in the country. The BOCW Act of 1996 is a tool to ensure that the contingencies of life are met. The cess so collected by the State Boards is utilized to design social security schemes for the benefit of unorganized workers in the construction sector.

The social security schemes devised by the board cater to some of the nine branches specified by the ILO. The following table contains the branches, and the different schemes of the KB&OCWWB followed over the years.

**Table 5: ILO's 9 Contingencies of Life and Schemes of KB&OCWWB**

ILO's 9 Contingencies of Life	Schemes of the KB&OCWWB
Medical Care	Major Ailments, Medical Assistance
Sickness	-
Unemployment	-
Old Age	Pension
Employment Injury	Permanent Disablement, Partial Disability, Disability Pension
Family	Family Pension, Housing, Child Care, Crèches
Maternity	Thayi Magu Sahaya Astha, Maternity Benefits
Invalidity	Permanent Disablement, Partial Disability, Disability Pension
Survivor Benefits	Accidental Death.

## 6.1 An analysis of the Minimum Standards Prescribed by ILO and the Schemes of the KB&OCWWB

### 6.1.1. Medical Care

Part II of the Convention covers Medical Care. Medical care has been defined to include all instances of morbidity and pregnancy and any confinement/ hospitalization that is necessary. The above table flags the schemes of the KB&OCWWB that correspond to the Medical Care requirements under the ILO Convention. The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) (Karnataka) Rules, 2006, under Section 46 provides for Medical Assistance Scheme (*Karmika Arogya Bhagya*), and Section 48 provides for Assistance for Major ailments (*Karmika Chikitsa Bhagya*). These two schemes provide for morbidity-related coverage.

### 6.1.2 Medical Assistance

The Scheme of *Karmika Arogya Bhagya* provides Medical Assistance of 300 INR per day of hospitalization to a maximum of 10,000 INR for a continuous period of hospitalization. The minimum period of hospitalisation must be 48 hours. Article 10 (4) of the Minimum Standards Convention requires that States must endeavour to encourage people to avail the general healthcare services already provided by the State. In the case of India, The Rashtriya Swasthya Bima Yojana, mooted in 2008, provides insurance benefits to unorganised sector workers and their families, as long as they are designated as Below Poverty Line by the Government. This scheme is run by the Center and State Governments in a 75:25 cost-bearing agreement and provides coverage of 30,000 per family in a year. Implemented in Karnataka in 2010, the scheme provides access to 179 public and private hospitals in the State.<sup>42</sup> The Scheme is also portable and therefore beneficial for migrant construction workers, whose population has been on the rise in Karnataka. This means that workers enrolled in the scheme can claim its benefits at any empaneled hospital in any part of India.

In Karnataka, the enrollment rates have been high, and the scheme has been declared a success.<sup>43</sup> Therefore, it is a sufficient alternative to the *Karmika Arogya Bhagya* since it provides the same degree of health coverage, and has greater portability than the KB&OCWWB Scheme, which is limited to Karnataka alone. Furthermore, India's public healthcare infrastructure ensures free access to general physicians. Therefore, the existence of multiple schemes that cover the same benefits as the *Karmika Arogya Bhagya* means that the scheme duplicates resources that can otherwise be used to provide other services.

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<sup>42</sup> Rajasekhar D and Ors, Implementing Health Insurance: The Rollout of Rashtriya Swasthya Bima Yojana In Karnataka, 46 Economic and Political Weekly (20), 56-63 (2011).

<sup>43</sup> P T Dinesha, Rashtriya Swasthya Bima Yojna (RSBY) In Karnataka: An Overview, Rediscovery of Inclusive Growth (ROAD Trust Publications, Mysore, 2017).

### 6.1.3. Assistance for Major Ailments

The Scheme of *Karmika Chikitsa Bhagya*<sup>44</sup>, defines a list of ailments with an inexhaustive list of operations, cancers and fractures that may be naturally occurring or are a result of occupational hazards. It covers tertiary healthcare left out by the Medical Assistance Scheme. Beneficiaries are given 2 Lakh Rupees as medical assistance. The Vajpayee Arogya Shree and the Rajiv Arogya Bhagya Scheme cater to BPL and APL families and their tertiary health care needs respectively. The scheme provides 1.5 Lakh INR and 50,000 INR as a buffer. The scheme can be availed in any empanelled hospital. Therefore, the two schemes provide the same coverage as the *Karmika Chikitsa Bhagya*.

### 6.2. Maternity Benefit

Part VIII of the Convention covers maternity benefits that require that the government pay for the costs of delivery, pregnancy-related confinement and any suspension of earnings as a result of pregnancy.<sup>45</sup> In India, access to health care for pregnant women in government hospitals is free. Therefore, the requirements of the Convention have already been met. However, the KB&OCWWB has implemented two schemes related to maternity benefits, namely the *Thayi Lakshmi Bond* and the *Thayi Magu Sahaya Hastha*.

**6.2.1. Maternity Benefit (*Thayi Lakshmi Bond*)** - Under Rule 43, the Scheme provides Assistance of 30,000 INR (female child) and 20,000 INR (male child), for the first two children only. It is

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<sup>44</sup>The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Karnataka Rules 2006, Rule 48.

<sup>45</sup>*Social Security (Minimum Standards) Convention, C 102*, International Labour Organization (Jun. 28 1952), Pt VIII, Art47 [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C102](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C102)

given as a Fixed deposit to women who have no dues payable to the board.<sup>46</sup>

**6.2.2. *Thayi Magu Sahaya Hastha*** - provides 6000 INR per year for 3 years to women as a means to ensure pre-school education & nutritional Support for children.

Both the Maternity benefit scheme and the *Thayi Magu Sahaya Astha Scheme* under the KB&OCWWB go beyond the minimum standards prescribed, as it allows direct transfer to beneficiaries, and provides for beyond pregnancy and confinement-related expenses.

### **6.3. Old-Age Benefits**

Part V of the Convention discusses old-age benefits that must be given to persons above the age of 65 Years.<sup>47</sup> The Convention suggests that one must be made eligible under the Scheme only if they have worked for a period of 30 years, or have been resident for 20 years. However, a reduced pension can be provided to persons who have worked for 15 years.<sup>48</sup> Under Rule 39, the KB&OCWWB has implemented a pension scheme for workers above the age of 60 years, making them eligible if they have paid a subscription fee for a continuous period of 3 years before they turn 60. This scheme does not overlap with other pension schemes because persons who receive other pension benefits are not eligible for pensions by the KB&OCWWB. However, the coordination between State authorities to prevent such abuse is questionable. Furthermore, the time period of contribution to the workforce of the country is significantly lower than the Convention's requirement.

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<sup>46</sup>The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Karnataka Rules 2006, Rule 43.

<sup>47</sup>Supra note 45, at 5.

<sup>48</sup> Supra note 45, at Art 47 and Art 29.

#### 6.4. Employment Injury Benefit

Under Part VI of the Convention, employment injury benefit has been defined as the existence of work-related morbidity, the incapacity to work resulting in loss of earnings, loss of earnings due to disability and the loss of support to widows and children.<sup>49</sup> The Convention requires that medical care be provided,<sup>50</sup> and rehabilitation and vocational training must be provided.<sup>51</sup> Only in cases of total incapacity or death will a periodic payment be given.<sup>52</sup>

**6.4.1. Accident Benefits** - Under Rule 47, it covers death or permanent incapacitation, total or partial disablement. The scheme supplements the employer's liability to compensate under the Employee's Compensation Act. It provides 2 Lakh rupees. A key feature of this scheme is that it provides benefits even in the case of natural death and non-natural death or diseases like suicide, self-harm, pregnancies, miscarriages, sexually transmitted diseases, intoxication, crimes etc.<sup>53</sup> This broad definition and coverage under "Accident" benefits results in two things- firstly, that the aforementioned diseases and non-natural deaths can be covered under the medical care schemes, and secondly, that the scheme does not account for actual instances of injury at the workplace.

**6.4.2. Disability Pension** - Under Rule 40, a disability pension of 2000 INR per month may be paid to a partially disabled worker. Further, a 2 Lakh ex-gratia payment may also be made. However, he must not have available benefits under Rule 47 on Accident benefits in order to be a beneficiary under this scheme. This scheme leaves out key persons defined under the ILO Convention, namely those with work-related morbidity, the

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<sup>49</sup> *Id.* at Art 47 and Art 32.

<sup>50</sup> *Id.* at Art 47 and Art 34.

<sup>51</sup> *Id.* at Art 47 and Art 35.

<sup>52</sup> *Id.* at Art 47 and Art 36.

<sup>53</sup> The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Karnataka Rules 2006, Rule 47(2).



incapacity to work resulting in loss of earnings, loss of earnings due to disability and the loss of support to widows and children. Instead, it limits itself to partially disabled workers only. Therefore, the two schemes cover persons who are not injured in the course of employment and leave out key workers who ought to be beneficiaries.

### **6.5. Family Benefit**

Under Part VII of the Convention, family benefits are supposed to cover the maintenance of children. Under Rule 39A, a family pension is given to workers (and in case of the worker's death, their family).<sup>54</sup> This pension is the same as an old-age pension, and the eligibility for the same has been aforementioned.

## **7. Going Above and Beyond the Minimum Standards and Model Schemes: Is overplaying welfare necessary?**

Apart from the Schemes discussed above, the KB&OCWWB has implemented schemes that go beyond the 9 Contingencies of Life prescribed by the ILO as well as the Model Schemes Prescribed by the Government. The schemes reflect the KB&OCWWB's tendency to design schemes to cover every aspect of one's life.

For example, under Rule 45, the board provides educational assistance to the children of workers. The scheme is unnecessarily elaborate. It provides the children of workers 2000 INR every year from 1st-3rd Standard; 3000 INR every year from 4th-6th Standard, 4000 INR for 7-8th Standard, 6000 INR for 10th-1st PUC, and 8000 INR on completing 2nd PUC. Furthermore, it provides assistance to students even after formal schooling, by providing assistance to students on every year of passing in ITI/Diploma Courses, MBBS, Degree Courses/ Post-Graduate Courses and Doctoral Programs. It makes a further monetary grant if the student secures marks above 75% in their

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<sup>54</sup>The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Karnataka Rules 2006, Rule 39A.

school or college course. In April 2021, the KB&OCWWB announced that it will train the children of construction workers for UPSC /KPSC exams<sup>55</sup> With government schools and colleges providing education free of cost or at minimal rates, the tendency to incentivise education beyond the school level appears as a waste of Cess Funds meant for construction workers and their families facing distress. Especially for post-graduate, doctoral or even competitive exam coaching, it is unclear as to why students who are equipped with one tertiary qualification cannot fend for themselves or pay for their further education if they so desire to acquire one.

Other schemes like the travel allowances given to construction workers in the form of free passes for the Bengaluru Metropolitan Transport Corporation 'BMTC' buses that fly in the capital city of Bangalore,<sup>56</sup> and the training cum tool kit scheme (*ShramaSamartya*)<sup>57</sup> that is aimed at reskilling workers, who are either already aware of their line of work, or will be able to learn the same on the job. Furthermore, providing tool kits to construction workers who ought to be provided kits by their employers, means the duplication of resources available in the construction industry, which results in the wasteful use of the cess. For unregistered workers, the boards aim to provide financial assistance. Instead of such a measure, mandating that each employer must pay their employees benefits would ensure that the collected resources be utilized better. In the case of housing, the Model Welfare Scheme only requires that temporary housing be made available to workers who migrate. The KB&OCWWB Scheme however, provides for financial assistance to workers who wish to build houses. Furthermore,

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<sup>55</sup>Janhavi R, *Karnataka Labourer's Children to Be Trained for UPSC* (Deccan Herald, April 2021) <https://www.deccanherald.com/state/top-karnataka-stories/karnataka-labourers-children-to-be-trained-for-upsc-978746.html>.

<sup>56</sup>The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Karnataka Rules 2006, Rule 49-E.

<sup>57</sup>The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Karnataka Rules 2006, Rule 41.

the KB&OCWWB also provides financial assistance to workers and their dependents at the time of marriage.<sup>58</sup> With the schemes designed by the KB&CWVB, a worker has no incentive to work, or agitate for better wages and working conditions, since he is covered by the Government/Board from cradle to grave.

### **7.1 The Policy Impact and misuse due to ‘Overplaying Welfare’**

The policy of multiplicity of schemes by the KB&OCWWB runs contrary to the Model Welfare Scheme and the Supreme Court’s directives and has now resulted in workers from other sectors aiming to get registered as construction workers to avail of the ‘social security benefits. This is evident by the fact that the KB&OCWWB in March 2022 rejected a massive 2.9 Lakh fake applications for registration as a construction worker<sup>59</sup>.

The 2020 Report by the Karnataka Evaluation Authority notes that some domestic workers and agriculture workers, including teachers and garment workers, were able to get fake identification documents to register themselves as construction workers, due to lack of field visits by assessment officers<sup>60</sup>. This Report also observed that the lack of a mechanism to remove old registrations- resulted in disparity regarding the number of actual beneficiaries.<sup>61</sup> The Comptroller and Auditor General of India in a 2020 Report noted a difference regarding the number of registered beneficiaries and actual beneficiaries provided by the Board.<sup>62</sup> The presence of these problems poses significant

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<sup>58</sup>The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Karnataka Rules 2006, Rule 49.

<sup>59</sup> Bharat Joshi, Deccan Herald. 2022. *Over 2 Lakh ‘Fake’ Membership Pleas to Karnataka Labour Welfare Board Junked*, Deccan Herald March 15, 2022. <https://www.deccanherald.com/state/over-2-lakh-fake-membership-pleas-to-karnataka-labour-welfare-board-junked-1091441.html>

<sup>60</sup> Supra note 40, at 81.

<sup>61</sup> *Id.* at 44.

<sup>62</sup>Comptroller and Auditor General of India. *Compliance Audit on Functioning of the Karnataka Building and Other Construction Worker’s Welfare Board*. Comptroller and Auditor General of India, Government of India, 2020 at 57-58

policy challenges in the implementation of welfare schemes under the Act as they not only remove new beneficiaries and result in a means of 'overplaying welfare', it also results in a waste of the State's available resources.

## 8. Conclusion

Currently, the Annual Reports of the KB&OCWWB just mention the number of total registered beneficiaries and the number of beneficiaries under each scheme. It does not mention how many applications were received for each scheme and how many were rejected. This again raises concerns over how the KB&OCWWB processes applications received or if applications were even filed at all. For example, the 2020 Report by the Karnataka Evaluation Authority notes that '*accident claims have been made only in Bengaluru Division and all the 10 claims in Bengaluru Division are from Davanagere district*'<sup>63</sup>. Similar disparities in other schemes by the KB&OCWWB are elucidated in detail in the report<sup>64</sup>. To combat the same, a detailed scheme-wise expenditure must be shown, for clarity in the number of claims made under a scheme, the breakup in claim amounts, number of claims rejected, to name a few.

This paper has already shown how a multitude of 'welfare' schemes by the KB&OCWWB not envisaged by the Model Welfare Scheme formulated by the MoLE, pursuant to a Supreme Court directive. The use of such schemes will be contrary to the functions of the Board as mandated under the BOCW Act 1996. For example, the scheme of marriage assistance<sup>65</sup>(KB&CWFB, 2021) can also be given to the first two children (dependents) of a construction worker this runs

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[https://cag.gov.in/uploads/download\\_audit\\_report/2020/6.Chapt\\_er%20III-05fd1cdd9cfd059.38190238.pdf](https://cag.gov.in/uploads/download_audit_report/2020/6.Chapt_er%20III-05fd1cdd9cfd059.38190238.pdf)

<sup>63</sup>Supra note 40, at 60.

<sup>64</sup> Supra note 40, at Ch 6.5

<sup>65</sup>KB&OCWWB, *Marriage Assistance: Karnataka Building and Other Construction Worker's Welfare Board*, Government of Karnataka, 2021. <https://karbwfb.karnataka.gov.in/info-2/Marriage+Assistance/en>

contrary to the definition of a beneficiary under Section 12 of the BOCW Act 1996- those mandates only a building or construction worker to be a beneficiary- and not his dependents. The trend of granting dependents benefits accrues in almost all the schemes of the KB&CWCB.

The KB&OCWCB should first ensure that there is effective utilization of the cess primarily for the schemes under the Model Welfare Scheme which are that of Life and Disability Cover, Health and Maternity Cover, Education, Housing, Skill Development and Awareness programs and lastly that of pension. The Model Welfare Scheme already covers the details of each scheme such as the amount of benefit that has to be disbursed, and implementation. The same will need to be followed. When such 'welfare' schemes are removed - the KB&OCWCB has to ensure that such action is prospective in nature and not retrospective. Additionally, the KB&OCWCB should ensure that the schemes formulated by it do not repeat or replicate an existing State or Central Government welfare scheme for which construction and building workers are eligible to do. For example, in 2021 the Karnataka Government utilized 15.68 crores from the Welfare Fund of KB&OCWCB to buy vaccines for construction workers <sup>66</sup> despite the Central Government offering free vaccination for all eligible adults. The Supreme Court itself has expressed similar reservations observing that 'It is quite clear, therefore, that the State Governments and UTAs are only interested in announcing one scheme after another without giving any thought to the formulation of these schemes, monitoring their efficacy and supervising their implementation. The implementation of these schemes appears to be only on paper.'<sup>67</sup>

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<sup>66</sup> Anusha Ravi Sood, Outrage in Karnataka as Government uses Worker's Fund to Buy Vaccines from Private Hospital, The Print, Sept. 9 2021. <https://theprint.in/in-dia/outrage-in-karnataka-as-govt-uses-workers-fund-to-buy-covid-vaccines-from-pvt-hospitals/730223/>

<sup>67</sup> National Campaign Committee for Central Legislation on Construction Labour v. Union of India (2012) 3 SCC 336 at 51.