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Lipin Ram



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Funds Spent: The Lessons and Challenges of Kerala's Exceptional Experience

Lipin Ram

1. Introduction

- ¹ In March 2018, the Supreme Court (SC) of India issued a judgement on a Public Interest Litigation (PIL) filed by the National Campaign Committee for Central Legislation on Construction Labour (NCC-CL), forcefully revealing the full extent of state apathy towards unorganised workers in the country, especially in the burgeoning construction industry. The highest court noted with regret that despite multiple judicial and parliamentary interventions, the States and UTs (Union Territories) of India had failed to take the matter of ensuring basic social security for the workers seriously. This was despite two laws enacted specifically to fulfil this need, i) the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (the BOCW Act), and ii) the Building and Other Construction Workers' Welfare Cess Act, 1996 (the Cess Act). Shocking statistics—out of the INR 37,482 crore (approximately USD 4,946,800,000)¹ collected for the benefit of construction workers, only about INR 9,491 crore (approximately USD 1,252,600,000) have been spent to their benefit²—submitted to the court left the judges wondering what was being done with the remaining amount (Lokur, 2018, 2). Taken together with the similar state of affairs in other special purpose funds such as that provided by the DMF (District Mineral Foundation),³ this paradigm of unspent funds shines a damning light on the larger reality of the Indian welfare state—ineffective, bloated, and apathetic.
- ² Complementing anthropologist Akhil Gupta's claim that the Indian bureaucratic state facilitates the structural violence of poverty and immiseration through its 'contingent' nature (Gupta, 2012), the paradigm of *unspent funds* describes the general state of affairs in large parts of the country with regard to the functioning of the Indian welfare state.

This chapter will, however, present empirical research on the southern Indian State of Kerala to provide a 'counterexample' to this story, and analyse the different implications of the State's exceptionality when it comes to the question of unspent funds that other chapters in this thematic volume take up. The chapter foregrounds the fact that Kerala stands in complete contrast to the general picture in India⁴ when it comes to the spending of such funds, especially the BOCWWF (Building and Other Construction Workers' Welfare Fund); it is the only State in the country to have spent nearly all the money collected in the said form of cess. As of 31 May 2017, out of the 1,474.73 *crore* rupees (approximately USD 194,630,000) collected, Kerala had spent 1,455.88 *crore* rupees (approximately USD 192,146,000).⁵ In fact, just as the nation was witnessing the painful exodus of migrant workers rendered jobless and shelterless by the world's largest nationwide lockdown, that imposed in India, the Kerala construction workers' Welfare Board declared a financial package worth INR 200 *crore* (approximately USD 26,396,000) to help its members during the crisis, in the first week of April 2020. The package saw to it that the family of each member of the construction workers' Welfare Board who had completed two years of membership received 1,000 rupees (approximately USD 13) in their bank accounts as emergency aid during the COVID-19 crisis (Information and Public Relations Department, 2020). This was in addition to the extensive benefits and social security provisions for construction workers—pension, pension for dependents (upon the death of the member), invalidity assistance, relief for the bereaved (upon the death of the member), funeral assistance, assistance for medical expenses, maternity benefit, marriage assistance, scholarship (for the children of members), housing assistance, old age housing, and so on—that the Kerala Board already provided for its members prior to the pandemic. As per 2018-19 figures, the Board has a membership of 1,534,013.⁶

- 3 This contrasting picture of social security and workers' welfare in Kerala, especially the comprehensive welfare coverage offered by the BOCWWF, is not an accident. Decades of sustained collective action and organised labour militancy have been key in bringing it about, succeeding, to a large measure, in addressing the problem of workers' rights and social security in the so-called informal sector (Kannan, 2002). But equally important is the fact that there has also been an attempt at the level of the State to reciprocate such mobilisation on the street, as different State governments over the years have sought to strike compromises with labour from time to time. The history of welfare boards in Kerala—beginning with the Toddy Workers' Welfare Board in 1969—chronicles this process of institutionalising the dynamic between labour militancy and governmental response. Kerala's counter-paradigm—of *funds spent*, rather than the national paradigm of 'unspent funds'—must therefore be understood in the context of this specific history.

2. 'Monitoring' as a Sociopolitical Process

- 4 While the *collection, allocation, use, and monitoring* of funds may be identified as the four phases in the flow of the public monies under consideration, this chapter will use the Kerala case study to understand the complexities involved specifically in the fourth of these phases. The chapter will attempt to conceptualise 'monitoring' more broadly than how it is usually thought of—that is, in terms of advisory and monitoring committees constituted at different levels of the government that draw on technocratic expertise and bureaucratic experience.

- 5 The Supreme Court, for instance, is quite optimistic, in an otherwise despondent judgment (Lokur, 2018), that the newly created Monitoring Committee of the central government will be able to address the hapless state of affairs of the Welfare Fund:

[...] It was stated before us by the Secretary in the Ministry of Labour & Employment that a Monitoring Committee had been set up sometime in 2015 (actually vide order dated 9th September, 2015) for effective implementation of the BOCW Act. The Monitoring Committee consists of the Labour Secretary of each State/Union Territory and the first meeting of the Monitoring Committee was held in November 2015 (Lokur, 2018, 39). [...] The Monitoring Committee which has had quite a few meetings so far should pro-actively ensure full compliance of the provisions of the BOCW Act, the Cess Act and the directions issued by this Court. It needs to meet far more frequently, and in any case once in three months, considering that thousands of crores of rupees are not being gainfully utilized, and in some instances, misutilized.

Lokur, 2018, 54.

- 6 There is, however, scant evidence for the said Committee's performance between the years of 2015 and 2020 having differed significantly from the underwhelming experience delivered by similar Monitoring Committees in the past.⁷ On the other hand, the Kerala experience with the BOCWWF challenges us to rethink the very idea of 'monitoring' itself. This chapter argues that beyond advisory and monitoring committees constituted at the level of the judiciary and the executive, *monitoring can also take a sociopolitical dimension*. This involves concerted action that combines elements and processes of both the 'street' and the 'state': trade unions, agitational politics, political parties, lawmaking, legislators' interventions and so on. The trade union *dharnas* (sit-in demonstrations) of the 80s, 90s and 2000s have played as significant a role, as have the Private Members' Bills and Question Hour interventions of MLAs (Member of the Legislative Assembly),⁸ in shaping the institutional character of the Kerala BOCWWF. The 'monitoring' of the Kerala Building and Other Construction Workers' Welfare Fund (KBOCWWF), therefore, has been the result of the complex dynamics of these various elements over the last three to four decades; it has *not* been the undertaking of one or more committees constituted to address specific deficiencies. As the following sections of this chapter will show, the KBOCWWF has benefited from the combined pressure of these various elements in all its relevant aspects, including the pioneering legislation passed in the Kerala Assembly in 1989, the ever-widening scope and benefits provided by the Board, and the facilitation of relatively easy access to benefits for the members to date.
- 7 This 'Kerala model' is, admittedly, far from a quick fix for the current crisis of the welfare state in India that the 'unspent funds' paradigm elucidates. For 'monitoring' to assume such a sociopolitical dimension, as in the case of the KBOCWWF, requires many years of sustained attention and focused campaigning from both state and non-state actors, as well as a minimum threshold of strength and legitimacy for pro-labour politics. This chapter will demonstrate the idea of 'monitoring' as a sociopolitical process, and sketch the historical, political, and institutional factors responsible for the exceptional state of affairs in Kerala with regard to BOCW Funds.
- 8 But first, a brief word on the relevant characteristics of Kerala's development politics is in order, to help us situate this specific exceptionality within, it may be argued, the larger exceptionality of the trajectory of politics and society in Kerala. Over the years, a shorthand for the latter has been the formulation 'the Kerala model of development'. It denoted Kerala's consistently high performing social development indices such as

health, literacy, infant mortality, fertility, and sex ratio, all achieved in the face of low growth and income. Policy analysts have called the Kerala model a picture of ‘multiple improbabilities’ (Meyer and Brysac, 2011).

- 9 Among the many factors that have contributed to this unique development story, an ever-expanding welfare state defended and bolstered by working class politics is a key one. Decades of labour militancy—organised under the aegis of various trade unions, which are affiliated with different political parties, who in turn alternate in capturing state power—have led to a State–society consensus where Welfare Funds in general, and Funds for labour welfare in particular, have been seen as an integral element of the State’s functioning. To be sure, Kerala has seen its share of the discourse of state disinvestment and austerity, even in the education sector (Mathrubhumi, 2016). But the above-mentioned State–society consensus has largely survived the impact of the liberalisation of the Indian economy in the 90s and the subsequent hegemony of neo-liberalism.
- 10 Table 1 lists the different Labour Welfare Fund Acts, both statutory and non-statutory, that have led to the establishment of Welfare Boards in Kerala over the years, in chronological order.

Table 1 Statutory and non-statutory Welfare Funds and schemes in Kerala

Statutory Welfare Fund Acts	Non-statutory welfare schemes
Kerala Toddy Workers’ Welfare Fund Act, 1969	Kerala Artisans and Skilled Workers’ Welfare Scheme, 1986
Kerala Agricultural Workers’ Welfare Fund Act, 1974.	Kerala Auto-rickshaw Workers’ Welfare Scheme, 1991
Kerala Labour Welfare Fund Act, 1975	Kerala Barber and Beautician Welfare Scheme, 2004
Kerala Head Load Workers Welfare Act, 1978	Kerala Laundry Workers’ Welfare Scheme, 2004
Kerala Cashew Workers’ Relief and Welfare Fund Act, 1979	Kerala Automobile Workshop Workers’ Welfare Scheme, 2004
Kerala Motor Transport Workers’ Welfare Fund Act, 1986.	Kerala Domestic Workers’ Welfare Fund Scheme, 2011.
Kerala Handloom Workers’ Welfare Fund Act, 1989	
Kerala Abkari Workers’ Welfare Fund Act, 1989	
Kerala Beedi and Cigar Workers’ Welfare Fund Act, 1995	
Kerala Building and other Construction Workers’ (Regulation of Employment and Conditions of Service) Act, 1996.	

Kerala Bamboo, Kattuvalli and Pandanaus Leaf Workers' Welfare Fund Act, 1998	
Kerala Shops & Commercial Establishments Workers' Welfare Fund Act, 2006	
Kerala Jewellery Workers' Welfare Fund Act, 2009.	

Source: Compiled by the author based on the Kerala State government's official document, *Materials for Indian Labour Year Book 2016*, published by the Kerala Labour Commissioner (Labour Commissionerate, 2016).

- 11 As per the response given by the Minister for Labour and Excise in the 14th Kerala Legislative Assembly,⁹ there are 28 Labour Welfare Boards in existence under the State government. Add to this the most recent addition, the Kerala Farmers' Welfare Fund Board, which came into existence in October 2020 following the Kerala Karshaka Kshemanidhi Act, 2019 (see *Kerala Gazette*, 20 December 2019), and the number of Welfare Boards in Kerala now stands at 29.
- 12 Hence, it is important to understand that the Welfare Fund for construction workers in Kerala—which was first formed as the Kerala Construction Workers' Welfare Fund (KCONWWF) in 1990, and then became the Kerala Building and Other Construction Workers' Welfare Fund Board (KBOCWWFB) in 1998 following the central government legislation passed in 1996—has had a very different trajectory than its national counterpart, which came into being six years later, in 1996. Unlike the latter, the Kerala construction worker's Fund was not a stand-alone piece of legislation. It followed in the footsteps of a series of Labour Welfare Funds beginning with the Kerala Toddy Workers' Welfare Fund, established in 1969. The toddy workers—who constituted some of the most radicalised sections of the rural proletariat in Kerala in the 60s—had found themselves at a disadvantage as wage bargaining led to a situation where employers started leaving the business. And it was to address this situation that a welfare fund was mooted for the first time exclusively for the toddy workers in Kerala by the Communist Party-led State government in 1969 (Kannan, 2002). This was conceived at the time as a unique solution to the problems faced by the toddy workers and not as something that could potentially be applied to workers in the rest of the informal sector. No other Funds were proposed for nearly a decade after the establishment of the toddy workers' fund.
- 13 In 1977, however, a welfare fund for workers in small-scale factories, plantations, shops and co-operative institutions came into being, called the Kerala Labour Welfare Fund (Kannan, 2002). The early 80s proved critical, as the unionisation of workers exploded in the informal sector, including for the *chumattu thozhilali* (porters) or the loading and unloading workers, motor transport workers, clerks working with lawyers, artisans, fishing workers and handloom workers. This unionisation of the informal sector was largely the outcome of the split in the All India Trade Union Congress (AITUC), affiliated with the undivided Communist Party of India (CPI). As new trade unions—along the lines of the CPI, the breakaway Communist Party of India (Marxist) (CPI[M]), the Indian National Congress (INC) as well as other regional political parties—competed in organising and unionising workers in the informal sector, the demands for setting up Welfare Boards for each of these sectors (transport workers, artisans, fishing

workers, etc.) also grew strong (Kannan, 2002). Thus, in the 80s, nine Welfare Funds were set up by the State, followed by seven more in the 90s, to include workers (mostly women) in the fields of coir processing and the cashew industry (Kannan, 2002).

- 14 The general story of Labour Welfare Funds in Kerala, therefore, is one of collective labour action that was able to largely overcome the 'formal'/'informal' distinction that has marred labour welfare in the rest of the country and establish and spread, over the years, a pattern of State-assisted Welfare Funds to ever more sections of the labouring poor (Kannan, 2002). Patrick Heller, a long-time observer of Kerala's political economy and development trajectory, emphasises the synergy between State and labour in bringing about this transformation—the evolution of the social status of head-load workers in the State, who were at one point one of the most casualised labour forces in Kerala, is a case in point (Heller, 1996). Heller argues that it is this synergy that has led to the creation of institutional forms and political processes necessary for reconciling redistribution and growth in Kerala, while negotiating the class compromises required (Heller, 1996).

3. The Unique Story of the KBOCWFF

- 15 Placed against this background, then, the exceptional performance of the KBOCWFF can now be better understood as part of an already well established politics and the attendant institutions that embody it. However, it is also important to understand the specific circumstances leading to the institution of the KBOCWFF.
- 16 The mid-70s in Kerala saw a substantial jump in construction activity, largely in the housing sector.¹⁰ As far as increasing production and growth was concerned, this was largely a missed opportunity, since Kerala was heavily dependent on other States for the necessary raw materials. However, the housing boom played a huge part in cushioning the impact of the decline faced in traditional industries, as well as loss of employment in agriculture, resulting from the shift to cash crops at the time (Gopikuttan, 1990). By the 1980s, union organisers came to realise the need to separately organise construction workers, whose ranks had steadily burgeoned. CITU (the Centre of Indian Trade Unions) called the first all-India meeting of construction workers for 15 September 1980 in the north Kerala district of Kannur, a long-time hotbed of peasant radicalism and labour militancy. Eventually, in April 1989, the Construction Workers Federation of India (CWFI) was formed, at the Foundation Conference organised at Farakka in Murshidabad (West Bengal). These organisations played a major role in putting pressure on the State to enact measures for the welfare of construction workers through a series of agitations. An All India Demands Day was observed on 20 November 1980 and a report on the working conditions of construction workers was sent by CITU to the ILO (International Labour Organization) in May 1982. On 22 July 1984 a Kerala State convention of construction workers was held at Kozhikode, attended by 250 delegates from ten districts.
- 17 These and similar mobilisations were critical in forcing the government to appoint the single-member Mahabala Rao Commission in 1984 to look into the possibility of constituting a Welfare Board exclusively for construction workers. The Commission summarised the general state of affairs pertaining to labour welfare in the construction sector at the time:

The Construction Workers are scattered throughout the State. These workers are not registered with any Government agency. Though some of the trade unions are trying to organise these workers, it cannot be said that they were well organised even now. A good majority of the workers are working for individual employers for a few days and leave the employers when the work is over. So much so, a good majority of them have no permanent employer. The contractors who engage them for a sufficiently longer period also do not accept them as their permanent employees.¹¹

- 18 The Commission also noted that the existing welfare mechanism was insufficient to meet the needs of construction workers:

At present there is a Welfare Scheme for construction Workers and Quarry Workers issued by Government in G.O.(P) 79/61/LBR Dated 1/10/1981. This is only an executive order by Government. This scheme contemplates only for the payment of an Ex-gratia financial assistance of Rs.5,000/- [approximately USD 66] by Government to a Construction worker or Quarry worker in the event of his/her becoming permanently and totally disabled as a result of an accident arising out of and in the course of his/her employment.¹²

- 19 After consulting with trade unionists, employees and other stakeholders, the Commission submitted a report—with 15 recommendations on the various issues involved, including the collection of cess, employee contribution, benefits and so on—suggesting the creation of new legislation. This was an important precursor to the pioneering legislation Kerala Construction Workers Welfare Act (KCWWA), which was passed in 1989, followed by the creation of the Kerala Construction Workers Welfare Fund (KCWWF) in 1990. Preceding the central government legislation by six years,¹³ this law aimed ‘to grant relief, to promote the welfare of, and to pay pension to, the construction workers in the state’, with the construction worker defined as ‘any person who is employed for wages to do any work in connection with a construction work, and who gets his wages directly or indirectly from an employer or from a contractor including supply of materials for construction works’¹⁴. By 1999, merely three years after the central legislation was enacted, the Kerala Board had managed to enlist more than 7 *lakh*¹⁵ members,¹⁶ a number that more than half the States in the country had not attained even by 2017 (Standing Committee on Labour, 2017).
- 20 It is worth noting that, in the interviews conducted by the author with stakeholders, all the respondents emphasised the comprehensive nature of the welfare provisions provided under the schemes of the KBOCWWFB as a matter of pride, but they were equally concerned that the current model is fraught with the risk of becoming unsustainable.¹⁷ It was abundantly clear that they were well aware of the day-to-day functioning of the Welfare Fund—in Kerala, unlike the rest of the country, the crucial work of registering workers at the Board is almost entirely carried out by trade unions. But the respondents also displayed a firm grasp of the socio-historical lineages of the Board, as well as of the role of *dharnas* and agitations in keeping the Board and its Fund functioning to an acceptable standard.¹⁸
- 21 However, as noted earlier, the Kerala experience is also characterised by the unique balance struck between organised labour militancy and the institutions of parliamentary democracy. Over the years, the Kerala legislature has made an active attempt to keep pace with the organised labour movement—in the form of lawmaking, but also in the key role of a monitoring force demanding accountability from the Board, the concerned ministry, and the related bureaucracy. The people’s representatives in the Kerala Legislative Assembly have performed a wide range of functions, from

pushing for new legislation to monitoring the everyday functioning of institutions—in this case, the construction workers' Welfare Board.

- 22 Table 2 provides a picture of the interventions in the Kerala Niyamasabha (Kerala Legislative Assembly (KLA)) pertaining to the issue of the construction workers' Welfare Fund over a period of 20 years. This selection, drawn from the archives of the KLA, demonstrates the bipartisan and consistent interventions of lawmakers on the entire range of issues relating to the Fund, from as early as 1983 to more recent years. KLA proceedings from 1983 to 2014 reveal the consistent intervention of legislators on almost all the relevant aspects concerning the construction workers welfare fund.

Table 2 Kerala Legislative Assembly debates concerning the construction workers' Welfare Fund

Date	Selected interventions	Response/Outcome
21 March 1983	Question Hour: CPI (Communist Party of India) MLAs push the government on the Bill of Rights 'submitted to the government by the Thiruvananthapuram District Construction Worker's Union that raises the urgent demands of the workers' during the Question Hour.	The Minister of Labour informs that the government is giving consideration to the demands.
15 March 1985	Private Member's Business bill (by CPI's Kanam Rajendran): Resolution to present The 1984 Construction Workers Welfare Fund Bill	Bill presented.
19 July 1985	Private Member's Business Bill: 'The honourable minister has expressed doubts on the different aspects of the bill, but Sir, he is not even present here today. It is as if he will neither read the bill properly nor pay attention when the discussion on the bill takes place here.' The member invokes yet again the precedent offered by the toddy workers' Bill, the head-load workers' Bill and so on.	n/a
13 Sept 1985	Private Member's Business Bill: The 1984 Construction Workers' Welfare Fund Bill is presented in the House once again.	Permission to table the Bill.

27 July 1987	<p>Submission: Unionised workers have launched agitations at the State's secretariat (State administrative headquarters in Thiruvananthapuram) and at the collectorates of various districts, demanding the implementation of the Mahabala Rao Commission report (appointed to study the issues of construction workers); they have 12 demands, including a separate welfare fund for construction workers, pensions, a separate plan for housing, the collection of the data of those involved in construction work to be undertaken by the labour dept., the financial aid for accident and death during work to be raised to 25,000 rupees [approximately USD 330], pass the Construction Workers' Welfare Bill and so on; the government must take urgent measures to address this bill of rights.</p>	<p>Government in receipt of the Commission's report and a draft of the construction workers' Welfare Fund Act. In consultation with concerned depts. on the draft, and hoping to take a decision on the matter as soon as possible.</p>
28 December 1990	<p>Question Hour: (M.V. Raghavan, CMP¹⁹)</p> <p>a) What is the number of workers enlisted in this government's Construction Workers' Welfare Fund so far (district-wise breakdown)?</p> <p>b) What is the amount deposited by the workers in the banks for this purpose so far?</p> <p>c) What is the amount the government has withdrawn so far?</p> <p>d) Have the members been given their passbook yet, and is the government aware of the complaint that not all members have received passbooks?</p> <p>e) Has the government examined the complaint that the banks are not accepting membership fees due to the absence of passbooks?</p> <p>f) Would the government direct the banks to change their current system and accept membership fees on all working days?</p>	<p>a) 1,750 workers have been registered until 21 June 1990, and the registration process [...]started only in Thiruvananthapuram district as of now.</p> <p>b) Around 5,000 rupees [approximately USD 66] have been deposited by the workers in the banks so far.</p> <p>c) The members receive their passbooks upon the second payment of the fees.</p>

22 Dec 1997	<p>Question Hour:</p> <p>What is the amount currently paid to the workers who die while holding the membership?</p> <p>b) Has the Board submitted recommendation for increasing this amount, and if yes, by how much?</p> <p>c) Has the government accepted this recommendation, and if not, what is the delay in the matter?</p>	<p>Rs. 10,000 [approximately USD 130] paid in the event of death, and Rs.1,000 [approximately USD 13] released as immediate aid for funeral expenses.</p> <p>The Board has recommended to raise the payment to Rs 50,000 [approximately USD 660] in the event of death due to work-accident, and Rs. 15,000 [approximately USD 198] in other cases.</p> <p>The central act for the welfare of construction workers have come into existence and the State is currently in the process of implementing it; therefore the Board's recommendations will be considered in accordance with the central legislation.</p>
21 December 1999	<p>Question Hour: Would the Minister for Labour kindly answer the following questions:</p> <p>The number of workers registered under the Kerala Building and Other Construction Workers until 20 November 1999?</p> <p>Please provide district-wise statistics.</p> <p>Has it been taken into cognizance that many individuals who are not related to the construction sector are obtaining membership?</p> <p>Would the government take adequate steps to prevent those not related to the construction sector from obtaining membership in the welfare fund?</p>	<p>a) 731,622 members.</p> <p>b) District, No. of workers</p> <p>Thiruvananthapuram, 107,142</p> <p>Kollam, 42,239</p> <p>Pathanamthitta, 31,701</p> <p>Alappuzha, 39,209</p> <p>Kottayam, 32,663</p> <p>Idukki, 20,286</p> <p>Ernakulum, 64,485</p> <p>Thrissur, 67,653</p> <p>Palakkad, 75,657</p> <p>Malappuram, 61,778</p> <p>Kozhikode, 69,211</p> <p>Wayanad, 9,929</p> <p>Kannur, 85,685</p> <p>Kasaragod, 23,984</p> <p>c) No.</p> <p>d) Steps taken.</p>

<p>29 Feb 2000</p>	<p>Question Hour: a) Has the government acquired the land for building the office for [the] Kerala Construction and Other Workers' Welfare Board? b) If yes, at what stage is the construction? c) Would the government take necessary action to expedite the construction of the building?</p>	<p>a) Yes. b) Steps are being taken to grant permission for the construction of the building.</p>
<p>18 July 2003</p>	<p>Question Hour: a) Number of members registered with the Board at present? b) The [funds] available with the Board at present? c) What are the different sections contributing to this Fund? d) Are there any dues? e) And if so, what is the due amount?</p>	<p>a) As of 31 March 2003 there are 1,001,803 individuals registered with the Board b) 143 crore rupees [approximately USD 18,820,000] is the current fund available c) The funds of the board are composed of the fees collected from the members as well as the 1 percent cess collected out of the construction of buildings and other construction activities exceeding 10 lakh rupees [approximately USD 13,200] in expenditure. d and e) Yes, there is delay in assessing the cost of construction activities as well as in collecting the dues. There is also the issue of appeals and stay orders obtained from the courts. [A] moratorium has been announced for those members who have defaulted on the payment of membership fee [,] until 31 August 2003 so that their membership may be restored after the dues are paid. For the above reasons, it is difficult at this time to accurately state the due amount.</p>

12 March 2008	<p>Submission</p> <p><u>Construction Workers' Federation Agitation</u></p> <p>Sir, I am inviting the attention of this assembly to the serious issues faced by over 15 <i>lakh</i> construction workers of the State. As we speak, the workers are marching and sitting on <i>dharna</i> in front of district collectorates as well as the State secretariat under the leadership of the Construction Workers' Federation.</p> <p>The most serious problem that the construction sector in Kerala faces today is the unregulated rise in prices of the construction raw materials. Cement prices have gone up from Rs 150 and Rs 190 [approximately USD 2 and USD 2.50] in the past to Rs. 260 [approximately USD 3.40] today. While the manufacturing cost of a bag of cement has risen by Rs. 6.80 [approximately USD 0.09], the association of cement manufacturers [has] raised the price of a bag of cement by Rs. 80 [approximately USD 1.06]. [The] cost of iron has increased from Rs. 28,000 [approximately USD 369,54] per tonne to Rs. 40,000 [approximately USD 527,92] tonne today. Cost of tar per tonne has increased from Rs. 18,500 [approximately USD 244] [...] six months [ago] to Rs. 27,500 [approximately USD 363] today. The stone quarries have all ceased to work due to the intervention of the bureaucrats, resulting in unregulated increase[s] in the price of stone. The price of sand is in the hands of the sand mafia, and [...] prices have also been increasing due to regulations on sand mining. Brick and tile manufacturing have also come to a halt. Another serious issue that the construction sector faces is the influx of migrant labourers, who are being employed for lesser wages and without providing identity cards. Also, there is a due of 800 <i>crore</i> rupees [approximately USD 105,580,000] to be collected towards the construction workers' Welfare Board. The cess collection currently is being done by the Labour Department. There should be a provision to have the funds transferred to the Board directly.</p> <p>These are the main demands raised by the agitating workers. I request the urgent intervention of the government on these issues that affect more than 15 <i>lakh</i> families as well as the rest of the people in the State of Kerala.</p>	
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13 August 2009	<p>Question Hour:</p> <p>Would the Minister for Labour and Excise kindly answer the following questions:</p> <p>What is the due amount in cess to be collected for the Construction Workers' Welfare Fund till date?</p> <p>Will the government take strong against the building owners unwilling to pay the cess on time?</p>	<p>There is a due of Rs. 297,983,042 [approximately USD 3,933,000] in cess till date.</p> <p>Action is being taken against building owners unwilling to pay cess on time,</p>
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<p>10 September 2014</p>	<p>Unstarred Question</p> <p>Has it been mandated for all the houses and buildings constructed in the State to pay the stipulated amount to the Workers' Welfare Fund; if yes, what is the cut off (in square feet) for houses/buildings for cess to be payable?</p> <p>In what way does the Welfare Board collect information regarding the houses and buildings that have been completed?</p> <p>What are the criteria adopted by the Welfare Board to levy cess from buildings and houses? And is the luxury/decorative work taxed separately?</p> <p>In what ways does the Board spend the money thus collected? Do workers who have suffered accidents at work receive any share of this money? What are the criteria for workers receiving compensation after suffering injuries?</p> <p>What was the amount received by the Welfare Board during the previous financial year? How many workers received benefits from the Board last year? What else, other than benefits for the workers, was the money spent on?</p>	<p>Yes. The building cess is not levied on the basis of the area of the building. The law stipulates that [1 percent] of the total construction costs are to be paid as cess. Cess has been exempted for houses that are constructed for self habitation under the cost of Rs 10 lakh [approximately USD 13,160]. This exemption is not applicable for buildings constructed for commercial purposes.</p> <p>The assessing officers (Deputy Labour Officer/Assistant Labour Officer) under the State government's Department of Labour are responsible for this. The assessing officers are to collect the necessary information from the concerned Local Self Governing Body (<i>panchayat</i>/Municipality/Corporation), or from the offices of the concerned officers.</p> <p>Assessing officers levy cess on the basis of the guidelines issued to them by the government. Luxury/decoration works of the buildings are levied a separate amount</p> <p>The revenue from [...] cess is turned into an annual fixed deposit, and the interest accrued from it is used for providing benefits to the workers. However, if the interest is not sufficient to meet the payment of (once every three months) workers' pension, the said deposit is used for this purpose and the balance converted to a fixed deposit once again. The workers suffering from injury at work are compensated on the basis of the certificate provided by the medical board.</p> <p>A sum of Rs. 1,456,732,949 [approximately USD 19,177,000] was received in cess in the last year to the Welfare Fund. A total of 250,826 persons have been provided benefits including</p>
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Source: archives compiled by the author.

- 23 The issues presented in the table may be broadly classified into two phases. Up until 1989-90, legislators were mostly concerned with the push for new legislation and the constitution of a Welfare Board exclusively for construction workers. During this phase, different versions of the Kerala Construction Workers' Welfare Fund Bill were presented in the Assembly, and the ongoing mobilisations and agitations led by the workers' unions out on the streets were represented in the assembly with urgency and force. In the second phase, the legislative interventions clearly shift to the role of 'monitoring'. Although the street agitations continue to be reflected in the Assembly with regularity (see, for instance, the Submission on 12 March 2008), the focus is more on addressing the administrative issues vital to the day-to-day functioning of the Board and the dispersal of funds to the beneficiaries. Here we see the entire gamut of administrative issues represented and brought to the attention of the government, including membership of the Fund, the scope of benefits (and attempts to widen it), the misuse of the Fund, cess collection and dues, criteria for cess collection, delayed transfer to the Kerala BOCWW Board of collected cess, or insufficient transfers of the same, and so on. These interventions played a crucial role in auditing the different governments in power in the given period on their commitment to the BOCWWF. They ensured that the agitations and mobilisations of unions and pro-labour organisations on the streets were effectively followed up, recorded, and eventually institutionalised within the sphere of governance. This is a key feature of the Kerala BOCWWF story, and the Fund's successes cannot be fully accounted for without acknowledging this 'sociopolitical monitoring'.

4. The Courts and the KBOCWWF

- 24 The COVID-19 crisis has proved to be the last straw for the Indian workers. As the world's largest lockdown came into effect, thousands of migrant labourers stranded in cities without food or shelter were left with no other option than to return to their native towns and villages, many resorting to walking hundreds of kilometres in the absence of public transportation. The government has washed its hands of the suffering of migrant workers, declaring in the parliament that it has no data concerning either the tragic exodus undertaken by them or the deaths occurring as a result of it (Navas and Prakash, 2020). Independent sources such as the Stranded Workers Action Network (SWAN) have estimated at least 971 deaths of migrant workers as of 4 July 2020 due to the crisis (SWAN, 2020). The situation is rendered even starker in the light of the SC judgement mentioned at the beginning of this chapter, revealing the drastic underutilisation of the funds collected in the form of cess for the welfare of workers.
- 25 The role of the judiciary as a vital monitoring institution in an institutional arena that is otherwise apathetic must be acknowledged. This chapter began by noting the intervention of India's highest court in highlighting the pitiable state of affairs in the area of construction workers' welfare. Despite central legislation passed decades ago and the setting up of administrative bodies in the States, the SC judgement regrettably noted that:

[...] The benefits and entitlements that have accrued to the construction workers (millions of whom have not been identified) cannot be passed on to them due to the passage of time, with the whereabouts of some of them not known. Accordingly, a

decision will have to be taken by the Union of India on the gainful utilization of the cess already collected so that the Welfare Boards are not unjustly enriched – the beneficiaries having unfortunately lost out.

Lokur, 2018, 55.

- 26 As a result of combined pressure from the Court, media, and civil society, the Ministry of Labour & Employment issued an advisory on 24 March 2020 for States to disburse money from their BOCW funds. In a press release dated 23 June 2020, the Ministry of Labour & Employment stated that a sum of INR 4,957 crore (approximately USD 652,360,000) in cash assistance had been released to approximately 2 crore (so, 20 million) registered construction workers, out of which around 1.75 crore (so, 17.5 million) transactions involved money being transferred directly into the bank accounts of workers through Direct Benefit Transfers (DBTs) (PIB Delhi, 2020). This is welcome, and the role of the judiciary in forcing the hand of the apathetic Executive is indeed to be lauded. But it remains a fact that such hasty and forced interventions cannot substitute for the kind of comprehensive and sustained care and attention to workers' welfare adopted by States like Kerala, where decades of sociopolitical monitoring and institutional robustness have recast workers' welfare in the language of rights.
- 27 Moreover, in the case of Kerala, the judicial process seems to have been playing a different role, especially when it comes to a key part of the puzzle with regard to the BOCWWF. This has to do with the question of cess, specifically the collection of cess—a topic that the SC itself took up in detail in its March 2018 judgement, expressing concern that the actual cess to be collected might be a much larger sum than that which the government had declared (Lokur, 2018, 42). However, in Kerala excessive litigation has emerged as a serious problem hampering cess collection, as private individuals and businesses use the courts to contest the procedural and legal aspects of the 1996 legislation as well as the actions of the Construction Workers' Welfare Board. This was a key issue raised in the interviews conducted by the author with trade union activists, political party leaders and Board members on the features and challenges of Kerala construction workers' welfare provisions.
- 28 These interviews featured four recurrent themes/issues. Firstly, the question of the financial burden on the Board was raised. The large amount of pension alone, it was pointed out, imposed a heavy burden on the Board.²⁰ The second and related concern was that ineligible individuals availed the benefits and schemes of the Board. Thirdly, the point was also raised that the current institutional apparatus was simply incapable of efficient cess collection, which many thought was absolutely necessary to sustain and further the hard-fought gains of the labour movement of yesteryear. And finally, the respondents, especially the trade unionists, brought to the author's attention the issue of excessive litigation, arguing that it constituted a stumbling block for effective cess collection in Kerala. In order to grapple with a key shortcoming of the Kerala experience with the BOCWWF—namely, the adequate collection of cess—we will look at the problem of excessive litigation by private interests in this, concluding section.
- 29 The most common and the most successful petitions before the courts are those based on contestations of the cess amount. Cess is contested on a variety of grounds, including whether the levy applies retroactively, but most often petitioners challenge the cess levied on them on the grounds that the 'assessment'—a key step in the collection of cess, often performed by the Deputy Labour Officer or other bureaucrats

of the Labour Department—has been conducted unfairly. Table 3 shows a sample of the court cases brought by private interests challenging cess collection.

Table 3 Year and case verdicts on cases contesting cess collection in Kerala

Year and case	Petition	Judgement
2000 (Mohamed Sali Kasim vs [The] State Of Kerala)	Avoid liability under the Cess Act for reason of the petitioner having employed a contractor, who alone employed the employees in the construction of the building of the commercial complex under question.	Petition dismissed, and petitioner allowed to pursue remedy against the contractor.
2008 (P. Prakash Kumaran vs Asst. Labour Officer)	Cess is not applicable since the building was constructed prior to 1996.	Dismissed.
2012 (Lilly Varghese vs The State Of Kerala)	Not sufficient notice given pre-assessment of cess.	Assessment quashed and reassessment ordered.
2012 (P.J.Sabu vs District Labour Officer)	Wrong assessment of [...] cess under the Building and Other Construction Workers' Welfare Cess Act, 1996.	Assessment quashed.
2014 (Hamsa vs The Tahsildar)	Contention to release vehicle taken [in]to custody for not satisfying the amounts due from the petitioner under the Kerala Building and other Construction Workers' Welfare Fund Act.	Ruled in favour of petitioner.
2015 (Sukumaran Unnithan vs The State Of Kerala)	Incorrect assessment of cess under [the] Building and Other Construction Workers' Welfare Cess Act, 1996; petitioner does not qualify [for] the status of 'employer'.	Petition allowed.
2018 (Fr. Dr.Abraham Thalotheil vs [The] State Of Kerala)	Discrepancy in assessment of cess.	Assessment quashed.

2020 (Hi-Life Builders Pvt.Ltd vs The Deputy Labour Officer	Quash the erroneous assessment	Assessment quashed, and [order] to re-assess the cess payable by the petitioner under the Building and other Construction Workers' Welfare Cess Act, 1996, after giving the petitioner an opportunity [of a] hearing and also after looking into the accounts of the petitioner.
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- 30 The excessive litigation regarding and contestation of the cess amounts collected by the Board, as table 3 shows, adds to Kerala's long list of woes concerning the under-collection of cess in the State. Serious concerns about such under-collection have been raised by all the relevant stakeholders, and the latest figures published by the Comptroller and Auditor General of India (CAG) in its audit of the State's finances bear these concerns out.

Table 4 Year-wise receipt of Building and Other Construction Workers' welfare cess (INR in crore)

Year	2015-16	2016-17	2017-18	2018-19	2019-20	Total
Building and Other Construction Workers' welfare cess received by the Board	189.11	203.8	192.45	248.95	232.84	1066.93

Source: Adapted by the author (with minor format changes) from *State Finances Audit Report for the year ended 31 March 2020* (Government of Kerala, 2021, 130).

- 31 The CAG has also been heavily critical of the lack of auditing rules for the administration of the Building and Other Construction Workers' welfare cess, especially its non-remittance to the Consolidated Fund—the Kerala BOCWW cess collected is, instead, credited directly to the Special Treasury Saving Bank account of the State's Board (Government of Kerala, 2021, 129).

5. Conclusion

- 32 This chapter has attempted to demonstrate, in the context of the construction workers' Welfare Fund, the historical and political grounds upon which the counterexample of the Kerala story has been erected. It has been argued that the Kerala counter-paradigm of *funds spent*, contrasting the national paradigm of unspent funds, is to a large extent the result of 'sociopolitical monitoring'. The comprehensive nature of the benefits received by construction workers, as well as the institutional robustness that facilitates the maximum utilisation of welfare funds, both owe their existence to this process of monitoring. At the same time the chapter has also pointed to the challenges faced by the Kerala example, most notably in the form of cess collection. It has shown the difficulties created by excessive litigation whereby cess collection is slowed down, and in some cases not allowed to proceed. It should also be noted that it has been a long-standing demand of labour unions in Kerala to decentralise cess collection. They have pushed for the responsibility of cess collection—which the Labour Department is allegedly too ill-equipped, too unmotivated, and sometimes too corrupt to perform

satisfactorily²¹—to be shifted to the local self-governing bodies (*panchayats*, municipalities and corporations) in the State. However, the COVID-19 crisis has seen these bodies on the front line of the government's measures to address the pandemic, and it remains to be seen if these overworked institutions would be able to carry out this additional responsibility at the current juncture.

- 33 In addition, the Kerala BOCW Board's attempt to extend the welfare scheme to the State's steadily burgeoning migrant worker population has largely fallen short of its goals. Kerala is the first State in the country to institute a separate welfare fund for migrant labourers—the Kerala Migrant Labourers' Welfare Scheme in 2010, to be administered by the Kerala BOCW Board. As of 2016, however, the number of migrant labourers registered was 53,000 out of an estimated 2.5 million.²² A lack of awareness among migrant workers, language barriers, the lack of interest shown by trade unions in mobilising migrant workers, the lack of availability of data concerning migrant workers, and the unwillingness shown by employers and contractors to enlist these workers in the relevant scheme are some of the reasons for these lagging numbers (Haseena 2015). Despite highly laudable initiatives such as the residential project for interstate migrants, *Apna Ghar* (Our Home), the problem of bringing migrant workers within the ambit of the welfare scheme remains another steep challenge for the Kerala model.

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NOTES

1. Conversions throughout this chapter are calculated based on the rate for April 2022, when 1 US dollar (USD) was worth approximately 75.77 Indian rupees (INR).
2. As of 30 June 2017 as per the statement of the Secretary, Ministry of Labour and Employment, quoted in the Supreme Court judgement *National Campaign Committee for Central Legislation on Construction Labour (NCC-CL) vs. Union of India and Ors.*, March 2018 (Lokur, 2018).
3. Out of the INR 41,650.98 crore (approximately USD 5,497,000,000) accrued by the District Mineral Foundation Trust, only INR 6,944 crore (approximately USD 916,000,000) have been spent. See the PMKKY Dashboard: https://mines.gov.in/writereaddata/UploadFile/Fund_Status.html
4. Chhattisgarh, a relatively young State with a predominantly tribal population, is another outlier to the general national trend.
5. Annexure 1, 28th Report of Standing Committee on Labour (2016-17) (Sixteenth Loksabha) Ministry of Labour and Employment (Standing Committee on Labour, 2017).
6. The only States—all much larger in terms of population—with comparable or higher worker registration numbers are Andhra Pradesh (1.5 million), Madhya Pradesh (2.6 million), Rajasthan (1.5 million), Odisha (1.7 million), Tamil Nadu (2.6 million), Uttar Pradesh (3.2 million) and West Bengal (2.8 million) (Standing Committee on Labour, 2017).
7. For instance, the disappointing performance of the Grievance Redressal Committees that were invested with high hopes by the Supreme Court in the *Narmada Bachao Andolan Public Interest Litigation* (PIL) (Majority Judgment by Kirpal and Anand (18th October 2000) (Kirpal and Anand, 2000)
8. To be illustrated in the following pages.
9. Unstarred question T 4275, 24.06.2019.
10. The sub-sectoral annual growth rate for the construction sector in Kerala in the 80s was 2.23 to 6.38, compared to the national growth rate of 3.34 to 5.54 (Kannan, 2005, Table 2).
11. Report of the Commission (8 August 1984-8 June 1985) for Welfare Fund for Construction Workers, 2.
12. Report of the Commission (8 August 1984-8 June 1985) for Welfare Fund for Construction Workers, 3.
13. Ram Vilas Paswan, the Labour and Employment Minister in the V. P. Singh Government (1989-90), sent a delegation to Kerala to study the State legislation as a model for the central legislation, which would eventually come into force in 1996 (interview, 17 June 2020, with Kerala BOCW Board member); also, see 'Construction workers concerned over move to repeal welfare act', *The Hindu*, July 14 2020: <https://www.thehindu.com/news/national/kerala/construction-workers-concerned-over-move-to-repeal-welfare-act/article32079571.ece> (Praveen, 2020).
14. 'Definition,' Kerala Construction Workers' Welfare Fund Act, 1989 (Kerala Act 20 of 1989).
15. So, 700,000.
16. See Table 2: QH on 21 December 1999.
17. Five interviews were conducted: three with trade union activists and two with Board members.
18. Interview with M. V. Padmanabhan, former trade union organiser, on 14 July 2020; interview with K. P. Sahadevan, trade union organiser and political party leader, on 16 June 2020; interview with R. Ramachandran, trade union organiser and BOCW Board member, on 17 June 2020.
19. The Communist Marxist Party, allied with UDF (United Democratic Front).
20. A member worker with an active membership of not less than five years and who has attained 60 years of age is eligible for a pension of INR 1,200 (approximately USD 16) per month. In the year 2016-17, a total of 258,316 (male: 141,086; female: 117,230) members availed themselves of such a pension (Government of Kerala, 2017, 112, Table LXIV). As of 2018-19, INR 23,314,713,912

(approximately USD 307,704,000) had been spent by the Board on various benefits for its members.

21. Interview with K. V. Sahadevan, trade unionist, on 16 July 2020.

22. James Mathew, MLA (CPM), KLA 14 (2016-2021), *Sradha kshanikkal prameyam* (Calling Attention Motion), from the archives of the Kerala Legislative Assembly (KLA14) (2016-2021).

ABSTRACTS

This chapter is a systematic examination of the phenomenon of the 'spending' of Welfare Funds in the Indian state of Kerala, which contrasts with the general picture of the underspending of similar funds in other States of India. Undertaken through an examination of parliamentary and judicial records, interviews, and a review of the available literature, it shows the evolution of Welfare Funds for construction workers and the sociopolitical processes that underpin it. This case is also an illustration of the 'monitoring' of public funds assuming a sociopolitical dimension, especially as the State reciprocated the politics of the street, where workers raised collective demands.

Ce chapitre présente une analyse systématique du phénomène de la dépense des fonds sociaux dans l'État indien du Kerala, qui contraste avec le tableau général de la sous-utilisation de fonds similaires dans d'autres États indiens. Réalisé à partir d'un examen des dossiers parlementaires et judiciaires, d'entretiens et d'une revue de la littérature disponible, il montre l'évolution des fonds sociaux pour les travailleurs du bâtiment et les processus sociopolitiques qui la sous-tendent. Ce cas illustre également le fait que le 'contrôle' des fonds publics revêt une dimension sociopolitique, d'autant plus que l'État a répondu à la politique de la rue, où les travailleurs ont formulé des demandes collectives.

INDEX

Keywords: funding mechanisms, income distribution, banking, empowerment, financing mechanisms, tax and development, work, regulatory institutions

Geographical index: India

AUTHOR

LIPIN RAM

Lipin Ram is Research Associate at the Albert Hirschman Centre on Democracy at the Geneva Graduate Institute. He works at the intersections of social anthropology and political theory, primarily researching the sociocultural elaborations of democracy in everyday life. He completed his doctoral dissertation from the department of Anthropology and Sociology at the Graduate Institute, and has Master's degrees in Political Science from the Central European University (CEU), Budapest, and the University of Hyderabad.