

ANALYSING INDIA'S MIGRANT LABOURERS' CRISIS APROPOS OF COVID-19: FROM THE CONSTITUTIONAL AND LABOUR LAWS' PERSPECTIVE

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ABSTRACT

A democratic society is often marked by the presence of constitutionalism, social justice and human rights. Another essential feature associated with a democratic community is the absence of inequality and injustice in treatment. India is, however, still struggling to avoid gross violations of the aforesaid principles. Recently, a great human tragedy struck during the period of COVID lockdown, when the migrant workers were compelled to abandon their places of work due to shutting down of industries. In light of suspension of all activities and means of commute, they were forced to cover the distance to their native places afoot. The abject poverty and lack of employment opportunities had pushed them into migrating to cities in the first place. As a result of the ongoing crisis, most migrant labourers lost whatever meagre jobs they had and were driven to starvation. This garnered the attention of media, NGOs and other human rights activists who condemned the government for being oblivious to the hardships of such workers. The author aims to analyse, from the perspective of constitutional and labour laws, the condition of migrant labourers in times of COVID.

Keywords: Human Rights, Migrant labourers, COVID crisis, Government, Lockdown, Labour Code.

INTRODUCTION

“No work is insignificant. All labour that uplifts humanity has dignity and importance and should be undertaken with painstaking excellence.”ⁱ

– Dr. Martin Luther King Jr

The Prime Minister of India, Narendra Modi, declared a nationwide lockdown on 24th March 2020, in light of the deadly COVID-19 pandemic. This was done on the suggestion of National Disaster Management Authority (NDMA), which reasoned that in order to stall the spread of the virus, strict social distancing and proper hygiene were required to be observed. The unprecedented virus (SARS Cov-2) compelled the Indian government to impose strict lockdown by suspending all activities across the nation. The number of increasing COVID-19 cases and the subsequent unplanned lockdown created an economic havoc in the lives of many.

Millions of migrant workers were impacted severely, as the risk of death and mental trauma struck them. A lot of them lost their jobs and were stranded outside their native places, with no means to reach back. They ran out of their food stock and had to leave for their homes by whatever means of transportation was available to them. The government should have been more sensitive to their plight and made appropriate arrangement to ensure their well-being. Rather, people, media, courts along with the governments remained mute spectators to their sufferings. The claims of media gradually turning into an apparatus in the hands of the aristocrats or the elites, was proved accurate to an extent.

The Apex Court was prompted to take *suo-motu* cognizance of the issue of migrant labourers and went on to direct the government at both levels- to announce relief measures and ensure welfare of the workers. The Delhi High Court also directed the Central and State governments to address the painful plight of workers by taking appropriate measures. Similar directions were issued by the Madras HC to the Tamil Nadu state government. Adding to the woes of the migrants, several relief camps kick-started by the state governments had poor facilities, denying them access to basic human rights.

The harsh reality is that India is still struggling to provide a decent living to the poor people. The State is learning to adopt a humanitarian approach to address the issues by designing a socio-economic structure which is friendly for all. The Indian courts must be vigilant of such

instances of violations and ensure that the welfare measures promulgated by State must work for the wellbeing of people. Another way to deal it with would be the setting up of a Worker's Welfare Board / Commission which examines the problems and resolves them on a priority basis. Hence, these deep-rooted issues and challenges lying therein must be addressed, in order to prevent more such unfortunate occurrences.

IMPACT OF COVID-19 ON INFORMAL SECTOR IN INDIA

India's informal sector is one of the largest in the world, employing close to ninety per cent of its working population and contributing more than forty-five per cent to its overall GDP. The livelihood of informal sector workers was at risk as the agro-food supply chains and markets were disrupted due to the restriction on movement across the nation. Certain classes of workers that fall under this category emerged as the worst affected class during the lockdown, including street vendors, tiffin services, domestic helpers, daily wagers, auto rickshaw drivers, weavers, factory workers, construction workers, tailoring services, *feri tokri* workers and other home based workers.ⁱⁱ As a result of large-scale unemployment, specific groups of workers, viz., women, children, indigenous people, and migrant workers experienced more vulnerability than before.

Despite being huge contributors to India's GDP, the informal sector was one of the most neglected in respect of relief packages, in times of crises. There has been constant rallying by governments, policymakers and medical personnel to maintain 'social distance' and sanitation at all times, considering the deteriorating public health condition. Maintenance of hygiene means taking necessary precautions, for example, avoiding contact with people, using hand sanitizers, wearing mask at all times etc. Such advisories may sound simple to carry through, but they are exclusionary towards the informal sector workers. Based on the socio-economic standing of the workers, it is practically impossible for them to observe the aforesaid measures.

This sector was hit by *two consecutive shocks* in a short span of three years (from 2016 to 2019). Back in November 2016, owing to the PM's announcement and the hasty implementation of '*Demonetisation or Notebandi*' the lower strata were impacted massively, as 86% of the cash in circulation became unusable overnight. In the year that followed, the faulty introduction of the *Goods and Services Tax (GST)* added to the hardships of people.

Demonetisation was a monetary debacle which created a temporary dearth of payment methods but *did not perennially damage the demand and supply mechanism.*

The tragic pandemic struck the world even before the Indian economy could recover from the depression brought in by the reforms. Both, the COVID-19 pandemic and demonetisation may be equated on the ground of economic shocks they caused, which went on to create a crisis-like situation in the country. In the abovementioned circumstances, people discovered workarounds in the form of electronic payments, informal credit, converting black money into white, using old notes etc. However, unlike the 2016 situation, the nationwide lockdown of 2020 disrupted the demand and supply chain because of which no revenue could be generated. The situation became increasingly problematic for the already struggling informal sector that was attacked disproportionately by the deadly outbreak.

A major chunk of the Indian population is still dependent on the informal sector for their survival. Still, the labourers' share has declined marginally, from 94 per cent in 2004-05 to 91 per cent in 2017-18 (including those engaged in agricultural work). According to International Labour Organisation (ILO) and World Economic Forum (WEF), out of a total work force of 465 million in 2018, nearly 422 million were engaged in the informal sector of workⁱⁱⁱ. The distribution of self-employed, casual workers and regular workers was 51.3%, 23.3% and 23.4% respectively. These classes of people work in an informal capacity and consist of unorganised labour. Around fifty million seasonal migrant workers *assist in the construction of urban buildings, roads, factory production apart from participating in various service activities.* The deplorable state of daily wage workers was worse as compared to other informal workmen and shall continue to be so even when the lockdown is relaxed. With nil economic activity, particularly in urban areas, the national shutdown has resulted in loss of jobs, income and livelihood for these workers. It shall take a while for the economy to pick up the pace, even after the virus period comes to an end and unlock is complete. The element of uncertainty, however, shall exacerbate for informal workers in future- particularly the migrants. The formal sector provides a better sense of security because firms / companies do not shut down on short notices. There, the employees often end up retaining their salaried jobs as they can work on online platforms too, but this luxury is not available to those who are involved in physical labour.

IMPACT OF COVID-19 ON MIGRANT WORKERS

Most migrant workers are daily wage earners who engage chiefly in MSME sector and construction activities. As per the international organisations, around 40 crore migrants in India hail from U.P., Rajasthan, Orissa, Bihar, M.P., Jharkhand and Orissa. They have *little or no access to food security, healthcare, lodging, social protection and government-initiated measures*. Not having any savings to rely on incapacitates them in several ways. Migrants are left exposed to exploitation at the hands of employers, simply because they are more vulnerable to poverty than any other class. All this happens despite the legal cover extended to them by the Inter-State Migrant Workmen Act, 1979.

The *Working Group on Migration* was set up by the Ministry of Housing & Urban Poverty Alleviation (HUPA) in 2015, to analyse in detail, the predicament of migrants in the country^{iv}. The Report that was submitted to the Central Government in 2017, suggested necessary legal and policy framework that must be adopted in order to protect the interests of migrant workmen. Most of them had little or no access to basic needs comprising of food, shelter, education, and proper wages by employers.

Migrants majorly comprise of youth drawn from either backward classes or BPL families. The lockdown rendered nearly 40 million workers jobless. *The human rights of labourers were openly flouted by the employers during the time of this grave crisis.*^v Apart from fighting poverty, migrant workmen are constantly under tremendous pressure to travel from place-to-place in search of employment. The frequent relocation impacts their health adversely. In times of COVID-19, there is fear of getting infected, anxiety about job security and so on. Consequently, lakhs of migrants started fleeing from their cities of work to their hometowns after suffering from a sense of isolation. Absence of transportation forced them to cover long distances on foot or catch unsafe transportation means like lorries and trucks, only to meet with a series of accidents. A large number of workers died due to hunger, accidents, suicide, gruelling tiredness from walking thousands of kilometres etc.

A telephonic survey of over 3000 migrants from North and Central India helped examine the issues faced by them during the period of lockdown. Some of the inferences drawn on the basis of the survey are as follows:

- Majority of them were daily wage earners

- 17% of them had no bank account
- After the imposition of lockdown, 42% of them had no ration to survive on
- 33% of them were stuck wherever they had been working, with no money or access to food, water, or money
- 37% did not know how to avail welfare schemes
- 94% of them were without their Worker's ID^{vi}.

Those who managed to reach their native places were identified as potential carriers of the infection, merely because of their level of poverty. Bihar government issued data in May 2020 which showed that out of 11,000 migrant workers that reached their state, over 550 were COVID positive^{vii}. Besides that, they were subjected to societal condemnation and police brutality. According to an incident reported recently, a group of workers were on their journey back home. On reaching the village, they were sprayed with chemicals disinfectants, from head to toe. The local administration of their village had to tender an apology for the same. In recent history, the condition of migrant workmen during corona virus is easily India's greatest human tragedy.

ISSUES FACED BY MIGRANT WORKERS DURING LOCKDOWN

i. Issues of food security:

- a) *Need for Food Security:* The lower strata suffer the most despite all the progress made in the industrial and economic field; since the advent of 21st century, the government shifted its focus from a patronage based to a rights based approach, the implementation of MGNREGA being a giant step. This approach has been strengthened by a few more legislations; it has played a vital role in creation of legal rights, especially in the field of education, information and employment. The National Food Security Act, 2013 was passed with the target of providing subsidised food grains to 2/3rd Indians.
- b) *Challenges on Food Security:* The new approach attempts to achieve the following: - i) Sustainable management of natural resources (including water bodies); ii) Movement of food grains access market without trade barriers; iii)

Adoption of modern technologies and financing facilities for modernising farming practices; iv) Public spending on social sector to be increased; v) Improving governance at the grassroots.

The production of food grains has been a prominent issue all through the lockdown, especially when it comes to providing ration to the poverty-stricken class. Unfortunately, India's efforts in this regard have been far from satisfactory of what the Food Hunger Index rank is reflective. In 2019, India ranked 102nd out of 117 countries as hunger in the nation got worse^{viii}. This has largely impacted the families that struggle to make ends meet.

To address this issue, the *National Food Security Act, 2013* has been passed^{ix}. This Act provides for food guarantee to more than eighty crore individuals, i.e. almost 67% of the Indian populace. The statute sets out that people, who are living below the poverty line, shall receive coarse grains, wheat and rice at ₹ 1, 2 and 3 for each kg, respectively. However, the lower strata have failed to benefit due to the faulty implementation of the Act.

ii. Reverse migration

Popular opinion is that the Central Government failed the state governments by not providing enough time to prepare for the Nationwide Lockdown and for not bearing in mind the struggles of the labourers employed in the unorganized sector. With no employment or money in hand, the migrants were compelled to leave for their homes. Most of them were forced to walk back to their places of origin or huddle up in a goods carrier to reach their homes. Even this choice cost them dearly as many of them died midway in various parts of Maharashtra, Uttar Pradesh and Madhya Pradesh. In Aurangabad, 16 migrant workers were killed on May 8, 2020, after a goods train ran over them^x. They fell asleep on the tracks while waiting to catch their *Shramik* train, only to meet their ill fate. Many were manhandled and beaten by the police for violating lockdown regulations in Rajasthan, Maharashtra and Madhya Pradesh, Gujarat and Bihar too. Many more were arrested for violating the lockdown regulations. Despite the movement of *Shramik* trains and special buses, the plight of workers did not seem to end.

iii. Issues of Social Security

For indigents, the issue of social security is linked to factors like gender justice, insurance cover, pension scheme, credit guarantee, education, health security and so on. Social Security schemes are aimed at the inclusion of socially disadvantaged classes that has been excluded for

a long time. The studies conducted by various government bodies and NGOs, including PRIA and NCAER, show that no scheme has proved to be efficient as should have been. Corruption has swallowed the gains made by certain schemes such as MNREGA, *Beti Bachao Beti Padhao*, *Jan Dhan Yojana* etc.

iv. Healthcare

The healthcare services accorded to the migrant workers at their workplaces have been substandard. As has been demonstrated during the workers' exodus to their homes, the employers have not taken enough measures to tackle the physical and mental plight of the workers.

v. Role of Media

During the lockdown, the rushed migration of workers was triggered by the panic that struck the whole country due to the *fake news* that lockdown may last for more than 3 months. The media played a major role in bringing the condition of the migrant workers to the knowledge of public. They started by exposing the atrocities faced by the migrants which was mostly due to the inaction of political parties towards the issue. There were media reports that the workers were not being paid adequately and were forced to leave their shelters which left them stranded and searching for means to travel back to their hometowns. However, the Supreme Court was disappointed by the display of poor journalistic principles which intensified the crisis being faced by migrants.

The biggest predicament being faced by people is the uncertainty, as to how long the crisis will last or what other damage would it cause to the economy, livelihood, and healthcare. The large scale spread of the virus, its communicability and the management of migrants poses a logistic challenge on the authorities, from a legal viewpoint. Certain points in issue have been highlighted as follows:

- Whether *Article 19* of the Indian Constitution is applicable to migrants in the COVID-19 lockdown? And if social distancing can be considered as a reasonable restriction to the abovementioned right?
- Whether the lockdown is *similar to Emergency declared by the President*? If yes, what shall be the status of Fundamental Rights at this time (can they be taken away or not)?

- Can the Directive Principles of State Policy (Part IV) be regarded as *principles that guide India towards the upliftment* of vulnerable classes?
- What *reliefs can the migrants seek* through the various labour welfare legislations in place? How time-saving or effective are they?
- Whether the Apex Court is drawing up a plan to resolve this crisis by providing *systematic and detailed directives*?

RECOURSE AVAILABLE WITHIN THE AMBIT OF THE INDIAN CONSTITUTION

Definition of “Migrant” in the Constitutional Context:

Usage of the term “*migrant worker*” has been trending in the global arena ever since the *International Convention on the Protection of Rights of all Migrant Workers and Members of their Families* took place in the year 1990. The Convention accurately makes a distinction between the ‘*origin state*’ and the ‘*employment state*’ in the political sphere; it depends on factors like migration laws in different countries, nature of work and the generation of employment for workers. The instrument goes on to define “*migrant workers*” as “*individuals who are to be engaged, are already engaged or have been engaged in any remunerated activity, in a State of which they are not nationals*”^{xi}. It is imperative to underscore the fact that this Convention guarantees ‘*Equality of Treatment*’ to migrants, in their places of employment; sadly, this right is continually denied to India labourers.

The Union List (Schedule 7), when read with Article 217, states that the *Central Government alone is empowered to deal with Item 81* in general, which makes provisions for inter-state migrant workers to be protected. The list of States’ powers and responsibilities do not expressly mention inter-state migrants, but that does not excuse them from total responsibility, as labour and exporters fall within their scope of law making.

Battling the concerns of migrants has raised questions regarding their legal and constitutional rights. Safeguarding the rights of workmen is the duty of the state and a subject of legislation. Legal rights relate to fairness of treatment in times of crisis, like the outbreak of corona virus and the resultant lockdown. The Indian Government enacted the *Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act* in 1979. The statute is aimed at

prohibiting the exploitation of inter-state migrants by ensuring fair and decent conditions of employment. Informal labourers are an asset from political, social as well as economic perspectives.

Fundamental Rights and Duties:

The Fundamental Rights and Duties are enshrined in Part III and Part IV of the Constitution of India, respectively. The State as well as the judiciary is bound by the duty to protect the rights offered to citizens by the grundnorm. It encompasses within its fold the issue of human rights. This means that the workers must be ensured not only a dignified life by making provision for basic amenities of life but also a fair treatment that every human deserves. Certain rights under Part III have been stated as follows:

- Right to Freedom of Movement- ***Article 19(1)(d)^{xii}***
- Right to Freedom of Residence- ***Article 19(1)(e)^{xiii}***
- Right to Freedom of Profession / Occupation- ***Article 19(1)(g)^{xiv}***
- Right to Life and Personal Liberty- ***Article 21^{xv}***
- Fundamental Duty to Promote the Spirit of Brotherhood- ***Article 51A(e)^{xvi}***

A special significance has been placed on the definition of ‘migrant’ in exercise of Right to Freedom. A combined reading of the provisions stated under clauses (d), (e) and (g) of Article 19(1) besides affirming the Charter of Liberties, also acted as a catalyst in construction of a nation ideally promoting unity amongst the citizens. Reasonable restrictions to the exercise of certain Rights to Freedom are mentioned in *Article 19(5) and 19(6)*; herein the decision to leave the migrated state is not voluntarily taken by the citizens. Right to Life stated in Article 21 provides for a decent and respectful standard of living to all people residing within the territory of India. Article 51A (e) highlights the fundamental duty of every citizen to promote common brotherhood, irrespective of any religious, sectional or regional divide that may be prevalent. The Fundamental Rights including Right to Constitutional Remedies have been highlighted with respect to this on-going issue.

Directive Principles of State Policy:

The Directive Principles of State Policy were incorporated in Part IV of the Constitution with the intention of creating a nation which is socially and economically democratic and works towards the welfare of individuals. Certain provisions in Part IV are pointed towards improving the condition of labourers across the country; it does not indicate entitlement based upon the profession/field chosen by the worker. The undermentioned Articles play an instrumental role in shaping a society which is friendly towards the needs of workers. They are:

- **Article 38(2)** - The State shall strive to reduce inequality in income, facilities and opportunities to people residing in different areas or engaged in different occupations^{xvii}.
- **Article 39(e)** - Binds the State authorities to carry out policies which help the workers in maintaining their health and strength, regardless of gender^{xviii}. In addition, it ensures the wellbeing of children by preventing them from entering hazardous avenues on account of economic disabilities.
- **Article 41-** It empowers the State to secure ‘right to work’ and to ‘public assistance in case of unemployment’^{xix}. The object of this provision is to extend the right of social security to the exploited and underprivileged class, with the commitment to attain socio-economic democracy.
- **Article 43-** Empowers the state to assure living wages, humane work conditions and a decent standard of living to all industrial and agricultural workers through legislative action^{xx}.
- **Article 43A-** Added in 1976, it suggests securing the participation of workers in management of industry along with guaranteeing equal treatment to migrant workers in all states^{xxi}.

In the case of *Chandra Bhavan vs. State of Mysore*^{xxii}, the Indian Supreme Court observed that the government can fix different ‘minimum wage’ conditional on the financial status, nature and category of employment etc. It was additionally stated that the Minimum Wages Act, 1958 neither violated Articles 14 or 19(1)(g) of the Constitution, nor the ‘living wage’ provision included in Part IV. The limitations on the Right to Carry on Trade under Article 19(1)(g) was also justified.

The recent reverse migration of labourers has exposed the apathy of employers as well as the State. It became clear that the employers used the manpower of these workers without making arrangements for their future security. The government impliedly did not interfere regarding the security of workers. Moreover, the 'hire and fire' policy adopted by the private employers has added fuel to the fire. All the existing issues of migrants must be addressed in consonance with the tenets of the Constitution.

LABOUR LAWS & THE PLIGHT OF MIGRANT WORKERS

The Centre and State governments have changed various labour laws to facilitate "ease of doing business". Before the onset of COVID-19 pandemic, the Union Labour Minister, Santosh Kumar Gangwar had presented a bill in the Lok Sabha, titled "**The Occupational Safety, Health and Working Conditions Code, 2019**" which was passed by the Parliament on September 23, 2020 and received the Presidential assent on September 28, 2020. It is a key piece of legislation which was under consideration before the Standing Committee of Indian Parliament. This Act repeals 13 out of 44 laws related to safety, health, and work conditions of labourers. The provisions of numerous labour welfare statutes, such as: the Payment of Wages Act, 1936, the Minimum Wages Act, 1948, Payment of Bonus Act, 1965, Equal Remuneration Act, 1976, Interstate Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 etc. have been incorporated in the abovementioned statute.

The Code is believed to grant to factory owners, at least three benefits. They are:

- The employers do not need to register their firms separately under the above laws;
- The employers do not need to file the tax returns separately;
- Finally, the employers, as per their own comfort, would be able to structure their relations with the employees / workers.

Around 45 Central and 200 State laws were in force to deal with such relations; unexpectedly, they contributed to straining the relationship of employers and employees even more. A few Indian states were forced to alter their labour law provisions owing to the COVID-19 crisis. They ended up giving additional power to the employers, which include- the right to "hire and fire", utilise the skills of workers for more than 12 hours a day, provide on-the-spot healthcare

facilities as per their convenience etc. The NGOs along with Labour Unions believe that the amendments place a dangerous instrument in the hands of employers, using which they can abuse the helpless workers. Gujarat and Punjab amended the Factories Act to up the weekly working hours to 72. Uttar Pradesh has exempted all establishments from almost all laws, related to safety, health and work conditions, for the next 3 years.

The Labour Code of 2019 proposes to minimise the burden on employer, as regards the healthcare of workers. These concessions could be availed by people who employ 10 or more workers. Besides that, the government would be armed with the power of determining 'floor wage rate' for the labourers. All these measures would reduce the bargaining power enjoyed by the workers until now; as a consequence of which, several worker organisations, including *Bharatiya Majdur Sangh*, have threatened to stage nationwide protests. Against this backdrop, it may be inferred that no matter how desperate the government is to revive the distressed economy, it has *failed miserably in taking into account the broader interest of workers* which needs to be addressed.

The International Labour Organization (ILO) has made it clear that while managing migrant labourers:

- All countries have the sovereign right to develop their own policies; and
- Opportunities and risks may differ from nation-to-nation and across migration borders, thus it is essential to develop tailored and effective policy responses^{xxiii}.

India has applied these international guidelines to its domestic territory. Certain statutes which have necessary implications on the conditions of migrant workers have been briefly discussed as follows:

i. The Contract Labour (Regulation and Abolition) Act, 1970

Contract labourers are employees (indirect) that are deemed to be contractual workers when (i) hired through a contractor, or (ii) to perform certain duties in an establishment. The objective of this Act is two-fold:

- To prevent the exploitation of contract labour; and
- To introduce better conditions of work.

The violation of any provision mentioned under the Act shall attract either 3 months imprisonment or a fine of Rs.1000, or both. The Act was created after workers began migrating, in large numbers, from less developed states like UP, Bihar and Jharkhand to industrial states like Gujarat, West Bengal, and Orissa. The statute, however, could not be instrumental in preventing widespread malpractices. This labour welfare provision too has been absorbed in the freshly passed Labour Code.

ii. *The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979*

According to the Chief Information Commissioner (CIC), the Act seeks to monitor the *employment of inter-state migrants and their conditions of service*. The inter-state migrants are included within the definition “workmen”, as against the common misconception that suggests otherwise^{xxiv}.

This Act is the first layer of formalising the utilisation of labour of migrants. It is applicable to every establishment or contractor that hires 5 or more migrant workers from any other State (or on any day in the past 12 months) after collecting relevant information from all of them. According to this law, the terms and conditions of recruitment should be provided by the contractors deploying such workers, which contain information related to the remuneration payable, working hours, determination/calculation of wages and other essential amenities. Certain conditions of recruitment of migrants, like: wage rate, number of holidays, working hours etc., must be the same as extended to other local workmen engaged in similar work. The wages paid to the workers must be equal to or higher than that enumerated in the Minimum Wages Act. If all the States had implemented the ISMW Act 1979 sincerely, arguably a “dead letter” nowadays, they would have gathered full data particulars of immigrant workers by now. The legislation has been subsumed into the Occupational Safety, Health and Working Act, which secured the Presidential assent on September 28, 2020.

iii. *The Unorganised Workers’ Social Security Act, 2008*

This statute was enacted on December 31, 2008 with the aim of ensuring the well-being of unorganised workers by socially securing them and also, to implement the National Social Security Scheme. *Section 3* of the Act mandates the Central Government to formulate schemes for the informal labourers on matters relating to old age pension, maternity benefits, healthcare,

life insurance, disability cover and any other benefit as may be fixed by the government. The Act makes it mandatory, for the unorganised workers to be registered, in order to avail the ts of the schemes. The District Administration shall assign a Unique Identification Number (UIN) to each worker after they submit the application.^{xxv} This enactment stands repealed and consolidated in the Code on Social Security, 2020.

Rashtriya Swasthya Bima Yojana is a welfare scheme that plans to provide appropriate *health insurance coverage* to workers. To people living below the poverty line, the scheme extends a cashless insurance via a smart card, which entitles them to get admitted in private as well as public hospitals.

iv. Limited Legislations

The *Industrial Disputes Act, 1947* is a blanket legislation that gives an exhaustive definition of the word ‘industry’ and facilitates the settlements of disputes arising during employment. The scope of the act is limited to the following two aspects:

- It is only applicable to the organised sector; and
- It restricts the interpretation of term “industry”^{xxvi}

The Supreme Court has attempted to expand the scope of the Act, in order to give relief to a larger section of people employed in the industry. However, the position remains unchanged. The Court has been conflicted on Section 21 of the IDA which states that “*an inter-state migrant workman is said to be employed when he has actually worked with the establishment or the establishment in connection with the work of which he is employed on and from the date of his recruitment*”. The Act has been absorbed into the Industrial Relations Code of 2020.

The provisions of the *Employees’ State Insurance Act, 1948* too, may grant relief to migrant workers in trouble. In *Calcutta Electric Supply Corporation Ltd. v. Subhash Chandra Bose*^{xxvii}, SC left the ambit of term “employee” ambiguous as against contract labour. The Act incorporates a specific set of conditions viz. contribution from the end of employee, monthly wage cap and so forth. An employee earning more than Rs.3000 shall not be covered under the Act or even the Employees’ Provident Funds Act, 1952. The statute has been included in the Code on Social Security, 2020.

v. ***The Occupational Safety, Health and Working Conditions Code, 2020***

Passed by the Indian Parliament in 2020, this Code is aimed at *dissolving 13 labour laws* in force, so as to strengthen protection for labourers. The provisions of several labour welfare statutes, such as: the *Payment of Wages Act, 1936*, the *Minimum Wages Act, 1948*, *Equal Remuneration Act, 1976*, *Interstate Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979* etc. have been included in the Code. It lays special emphasis on the significance of **Displacement Allowance**, to assist in any emergency that may arise, and is equal to 50% of the wage. In February 2020 the Bill was subject to review by a Standing Committee, where it was unanimously agreed that the provisions therein would be implemented on the condition that *a Chapter shall be provided solely for the protection of migrant labourers*. It received the assent of President on September 28, 2020 and is set to be implemented by the year end.

OBSERVATIONS OF INDIAN COURTS

Over the past six months, as many as 12 High Courts in India took cognizance of the humanitarian crises caused by the reverse migration of the workers. Some of them like the Madras, Andhra Pradesh and Delhi High Court have issued directions to the Central and State government asking them to take up measures for alleviating the miseries suffered by the migrant workers.

High Courts:

➤ ***Madras High Court***

In the month of May, Madras High Court made scathing remarks against the authorities responsible for migrant labourers' crisis during the nationwide lockdown. The Court held that the situation indeed was tragic, but one should not remain a mute spectator to the pathetic condition of these workers, as could be seen through media reports. Holding the authorities responsible, it directed the Central government and the Tamil Nadu government to submit before it, an *Action Taken Report*. The data shall include (i) details of the stranded migrant workers, (ii) the assistance given to them, (iii) the data of hapless migrant

workers who died on their way back, (iv) compensation given to their families, and (v) assistance provided to the returned workers.^{xxviii}

➤ *Delhi High Court*

The Court ordered the Delhi Government to set up a hassle-free helpline number, using which the migrant workers may contact their families. The government was asked to make provisions whereby the family members of these workers could connect with them, without unnecessary hassle.^{xxix}

➤ *Gujarat High Court*

The HC took *suo motu* cognizance of the crisis and instructed the State government to introduce concrete plans to address the hardships being suffered by the migrants. The government must adopt a humane approach while doing so.^{xxx}

➤ *Kerala High Court*

The Court itself stepped in to monitor the steps taken by the State government regarding the provision of food and shelter.

➤ *Uttarakhand High Court*

The Uttarakhand HC directed the state government to address the plight of 40,000 migrant workers, and to properly implement the National Food Security Act, 2013.^{xxxi}

➤ Apart from these, *the High Courts of Andhra Pradesh, Himachal Pradesh, Bombay, Telangana and Orissa* expressed their anguish over the pain suffered by these workers and rightly directed the respective State governments, to make arrangements for food, drinking water, glucose packets, temporary toilet facilities etc., for the labourers walking back to their native places.

The Supreme Court of India:

The Apex Court ordered the Union Government to file a *Status Report* on the migrant worker crisis. In that report, the government was asked to mention the following:

- details of migrant workers moving towards their homes
- challenges being faced by them
- welfare measures undertaken by the government.

The Court took the stated position of not interfering in governments' policy matters. In May, however, the Supreme Court expressed its dismay over the state of inadequacy in matters of remedial measures for the migrant workers. It went on to direct the Union and State governments to *address the concerns without further delay* and also, *provide free food, shelter and transportation facilities* to the stranded workers. The Court observed that circulation of fake news caused panic among the migrants and that overlooking the peril caused by it would not be prudent. The Central Government requested the Court to act upon the inaccurate reporting by certain media houses through directives to "*prevent fake and inaccurate reporting whether intended or not*".^{xxxii}

Soon after that, a three-judge bench led by Justice Ashok Bhushan, while hearing the case registered *suo motu*, highlighted that the government has been insensitive towards the plight of these workers.^{xxxiii} The Court asked the Central and State Governments to comply with the directions as follows:

- Both levels of government must coordinate to *assist the stranded workers reach their native places*, within 15 days, either by bus or train
- The government to make provision for the *ration, food, and employment* of workers, as per the requirement
- The Railway Ministry to provide *Shramik* special trains to ferry the labourers. Such trains to be in addition to 171 *Shramik* trains that have already been pressed into service on the request of States
- The government was asked to *perform skill mapping* so that the unemployed may be provided with fitting jobs
- The SC ordered to *drop all criminal charges* against the stranded workers who violated lockdown regulations on their way back

- The States and Union Territories to *prepare a complete list of the migrant workers*, especially those who have already reached their homes and regained employment
- The *nature of work performed* by these labourers, prior to lockdown, should also be mentioned by the concerned State government
- The government was directed to specify the *employment schemes* introduced for the welfare of these workers.^{xxxiv}

Hence, the Top Court has made visible attempts to protect the Fundamental Rights of these workers as enshrined under Article 21 in order to directly intervene in the matters that the state has been negligent of.

REMEDIAL MEASURES UNDERTAKEN BY THE GOVERNMENT

In March 2020, the Union Home Ministry directed the States to utilise the *National Disaster Response Fund (NDRF)* for providing *food, shelter etc. to the migrant workers*. Further, in the last week of March 2020, the Central and State Government asked the landlords not to press the tenants for rent, until the period of lockdown is over. The State governments were directed to set up relief camps for these workers on their transit route. The government additionally announced the setting up of *National Migrant Information System* to enable the National Disaster Management authority to create a database containing the contact details, movement and arrival of these workers, which shall be used by various state governments during welfare planning^{xxxv}. It also intended to enable the Central government to run *Shramik Special trains* to carry these workers to their destinations.

i. Relief Camps

After the Union government's instruction to set up relief camps which cater to the basic needs of migrant workers, the State government and NGOs set up such camps across the country for helping these workers get rid of their problems, especially of hunger and starvation.

ii. Mode of Conveyance

In the last week of May, almost 40 lakh migrants reached their homes by buses and nearly 91 lakh reached their destination owing to the *Shramik* special trains. In addition to the above, various *states' registration portals* were being operated to share information of these workers, their lodging and places where they were stranded. In a way, it facilitated the workers to find out their exact location.

However, the journey by special trains and buses were not without hiccups. The migrant workers were allegedly charged fares by their State governments, whereas it was decided the Centre and States would bear 85% and 15% of the cost of fares respectively. Later, the Supreme Court asked the Centre to bear total fares and ensure that these workers get all the humanitarian aid on their way back.

iii. Other Relief Measures

The Central government announced a *relief package* worth ₹1.7 lakh crores to help the deprived section of society. It consisted of *cash transfers, free cylinders, and free arrangements of food grains* from the PD system for three months starting April 2020^{xxxvi}. In order to absorb the incoming migrant workers in employable works in rural areas, the Centre decided to spend ₹40,000 crores additionally under MGNREGA. Various State governments also took measures to provide employment to these migrant workers in their places of origin. The governments of U.P., M.P., Gujarat, Punjab etc. accordingly relaxed certain labour laws for the purpose of boosting industry as well as investments.

The above relief measures were further strengthened by the “*Atmanirbhar Bharat Scheme*” announced by the Prime Minister. This ₹ 20.5 lakh crore package includes almost ₹3 lakh crores worth of collateral free loans to MSME sectors, which employ nearly 35 lakh (mostly) migrants from Uttar Pradesh, Bihar, Madhya Pradesh, Chhattisgarh, Jharkhand, Orissa and West Bengal.

RECENT DEVELOPMENTS

The 2020 Monsoon Session of Indian Parliament witnessed vigorous debating on the migrant workers crisis in the face of a pandemic. The NDA led government argued that the countrywide lockdown was inevitable as it facilitated the reinforcement of country's health infrastructure. The Indian Labour Ministry clarified their stance by *admitting to not having data on the death of migrants*. For the same reason, the question of economic assistance or compensation to families of migrants, who died during the lockdown, does not arise. Government made attempts to peddle the story that the spread of 'fake news' regarding duration of the lockdown triggered the rushed movement of migrants. The Minister informed the Lok Sabha that the Central Government was conscious of the plight of migrant workmen and took necessary measures to cater to their basic amenities.

Railway Minister of India, Piyush Goyal, stated in the Lok Sabha *that ninety-seven migrants were reported dead while onboard the Shramik Special trains* which were started by the government to ferry the stranded workers to their native places. He added that the train fare was borne by the Governments at both levels, and that no workers were charged money for their travels.

After much hue and cry, the *Occupational Safety, Health, Working Conditions and Social Security was passed by the Lower as well as Upper House of Parliament on September 23, 2020*. It received the assent of the Hon'ble President on September 28, 2020. The Union Labour Minister, Shri Santosh Gangwar, hailed this as a welcome move which would further the welfare of labourers in all facets. Twenty-nine out of the forty labour welfare statutes were successfully subsumed into the four Labour Codes. This is expected to play a vital role in providing a transparent system which suits the changing work environment. It is all set to be implemented from December of 2020.

CONCLUSION

The report published by National Crime Records Bureau (NCRB) suggests that suicides among daily wagers have doubled in the last six years and are up to 23.4% now. The widespread unfair

trade practises prevalent in the industry have triggered the vulnerable classes and played a role in pushing them to the brink.

The COVID-19 lockdown has put spotlight on the precarious working conditions of migrant workers in India. Arundhati Roy, an eminent author, aptly sums up the migrant labourers crisis as follows: “*Erasure of the poor from imagination.*” The loosening of labour laws in Gujarat and U.P. dangerously undermines the minimal protection which is in place for such workers. Unlike rural labourers, who benefit from MGNREGA and farmers who benefit from several schemes- migrants fail to receive formal governmental support.

As a means to improve the working conditions and standard of living, there is a desperate need to enforce an extensive national strategy for migrant labour welfare, by implementing it in a way so as to strike the best possible balance between both sides, offering more comfort to the weaker section. Mere formulation of law has no meaning until the implementation is carried out in all honesty. In light of the distressed conditions of migrants during the lockdown, it is vital that the legislators introspect upon the undermentioned aspects with utmost seriousness. They are:

- ✓ The foremost measure that needs to be taken by the Central and State governments is the meticulous collection of information for the ***National Migrant Workers Database*** and ***Unique Identification***. This shall be the first step towards achieving a proper streamlined regulation for migrant workmen.
- ✓ Apart from that, the workers must be ***made aware of their legal and financial rights***, as provided by several Central and State legislations.
- ✓ The States should impart ***training to the migrants*** keeping in view the ever-changing industrial landscape.
- ✓ Upon receiving the Unique Identifications, all workers must be automatically enrolled into government ***healthcare schemes*** like Ayushman Bharat.
- ✓ Finally, the institutionalisation of a ***Provident Fund for migrant workers*** is vital and shall act as a social net for the underprivileged. Contributions to such PF can be made jointly by the Central, destination state and home state governments.

The COVID-19 lockdown has exposed the magnitude of migrant labourers’ plight. Despite their substantial contribution to GDP, they have failed to garner political attention. India’s migrants deserve an enabling work environment that makes their present and future sustainable.

In order to witness the economy green shoot, it is imperative that the industries and businesses revive, that is practically impossible without employing the migrant workers, since they form an integral part of our economy. The government must draw up a massive plan for the reabsorption of these migrant workers with adequate social safety measures some of which have already been announced by the Centre. Availing the opportunity, the government must usher in sweeping structural reforms.

ENDNOTES

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- ^v Chitranjali Negi, "Human Rights Violations of Migrants Workers in India During COVID-19 Pandemic" 3 *SSRN* (2020)
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- ^{ix} The National Food Security Act, 2013 (Act 20 OF 2013)
- ^x Shoumojit Banerjee, "16 migrant workers run over by goods train near Aurangabad in Maharashtra", *The Hindu*, May 8, 2020.
- ^{xi} International Convention on the Protection of Rights of all Migrant Workers and Members of their Families, art. 2(1)
- ^{xii} The Constitution of India, art. 19(1)(d)
- ^{xiii} *Id.*, art. 19(1)(e)
- ^{xiv} *Id.*, art. 19(1)(g)
- ^{xv} *Id.*, art. 21
- ^{xvi} *Id.*, art. 51A(e)
- ^{xvii} *Id.*, art. 38(2)
- ^{xviii} *Id.*, art. 39(e)
- ^{xix} *Id.*, art. 41
- ^{xx} *Id.*, art. 43
- ^{xxi} *Id.*, art. 43A
- ^{xxii} 1970 SCR (2) 600
- ^{xxiii} The International Convention on the Protection of Rights of all Migrant Workers and Members of their Families, 1990
- ^{xxiv} The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, sec. 2(j)
- ^{xxv} The Unorganised Workers' Social Security Act, 2008, sec. 3
- ^{xxvi} The Industrial Disputes Act, 1947, sec. 2(j)
- ^{xxvii} AIR 1974 SC 1952
- ^{xxviii} A.P. Suryaprakasam v. Superintendent of Police, Sangli District, 2020 SCC Online Mad 1004
- ^{xxix} National Campaign Committee for Eradication of Bonded Labour vs. GNCTD, W.P.(C) 2985/2020
- ^{xxx} Ravi v. State of Gujarat, 2020 SCC Online Guj 930
- ^{xxxi} Preetam Singh Panwar v. UOI, 2020 SCC Online Utt 237
- ^{xxxii} Alakh Alok Srivastava vs Union of India,

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^{xxxvi} What India has released from its Rs.17 lakh crore relief package for poor, *available at*:

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