

Problems of Migrant Workers in India: A Post Pandemic Scenario

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Abstract

Migrant workers are seen to be the most vulnerable members of the communities in which they live and work. They leave one place for another in search of employment, better wages, a decent living, or to be close to family or friends. Many suffer severe violations of their human rights, including ill-treatment by law enforcement authorities, abusive or exploitative working conditions, low wages, lack of fundamental workplace rights and protections, limited access to social security, systemic discrimination and wide-spread xenophobia and prejudice. During the post pandemic lockdown, they confronted with most severe sufferings of their life and history. The present paper is to discuss and analyse the problems of inter-state & intra-state migrant workers' in India post declaration of nationwide lockdown by the Central Government due to the Covid-19 pandemic. This paper concludes that the existing laws to protect the migrant workers have become lifeless. In the last 40 years, neither has it been effectively enforced nor any steps have been taken for its revival. Proactive measures are required to pour life into it. These laws may be made effective by requiring the establishment to submit all the details of migrant workers to the appropriate authority. The Government should ensure safe and healthy living, good working conditions along with just and fair wages to migrant workers.

Key Words: Rights of Migrant Workers, Post Pandemic Impact on Migrants Rights, Problems of Migrant Workers in India.

I. Introduction

Since ancient times, migration is one of the preferable natural human responses to hunger, deprivation, persecution, or natural disaster. Migrants leave one place for another in search of employment, better wages, a decent living, or to be close to family or friends. Many suffer severe violations of their human rights, including ill-treatment by law enforcement authorities, abusive or exploitative working conditions, low wages, lack of fundamental workplace rights and

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protections, limited access to social security, systemic discrimination and widespread xenophobia and prejudice. Migrant workers are the most vulnerable members of the communities in which they live and work. The post-Covid 19 scenario is the evidence of their vulnerability, sufferings, agony and miserable life. The present paper discusses and analyses inter-state & intra-state migrant workers' problems in India post declaration of nationwide lockdown by the Central Government due to the Covid-19 pandemic.

II. Who are Migrant Workers?

There are several definitions of “migrant worker” given in the international instruments. According to the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families 1990, the term “migrant worker” refers to “a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national”.² UNESCO Glossary defines a migrant as “any person who lives temporarily or permanently in a country where he or she was not born and has acquired some significant social ties to this country”.³ According to the International Organization for Migration, a migrant is a person who moves away from his or her place of usual residence, whether within a country or across an international border, temporarily or permanently, and for a variety of reasons. In short, a migrant is any person who lives temporarily or permanently in a country where he or she was not born.⁴

The above definitions indicate that the term ‘migrants’ does not include refugees, displaced persons or other persons forced to leave their permanent homes. Migrants are those people who voluntarily decide or choose to leave one place and settle at the other place, maybe for employment & subsistence, although sometimes the choices may be extremely constrained. Migration may

²https://treaties.un.org/doc/Treaties/1990/12/19901218%2008-12%20AM/Ch_IV_13p.pdf

³<https://wayback.archive-it.org/10611/20171126022441/http://www.unesco.org/new/en/social-and-human-sciences/themes/international-migration/glossary/migrant/>

⁴<https://www.iom.int/who-is-a-migrant>

also occur due to marriage, transfer, environmental issues, etc. In this chapter, we are concerned mainly with the migration for work, employment, or other means of subsistence.

We are concerned more with inter-state and Intra-state workers within India and not foreign migrants. Hence, a reference to National instruments becomes essential. According to the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, “inter-State migrant workman” means any person who is recruited by or through a contractor in one State under an agreement or other arrangement for employment in an establishment in another State, whether with or without the knowledge of the principal employer of such establishment.⁵ This definition does not include workers who are not appointed by contractors, daily wagers and workers engaged in the un-organised or informal sector such as small traders, street vendors, hawkers, vendors at railway stations and bus stops, etc. who are equally vulnerable.

III. Demographics of Migrant Workers

Let us take a quick review of demographics migrant workers based on the Census of India 2001. India’s total population in 2001 was 1.03 billion, out of which about 30% (307 million) were reported as migrants from the place of birth. It is pertinent to note that, Maharashtra state received the highest number of migrants (7.9 million) from other states and other countries, followed by Delhi (5.6 million) and West Bengal (5.5 million). The number of migrants in India rose by 32.9% in the decade 1991-2001 compared to the previous decade. The data from the Census of 2011 shows that the total number of internal migrants in India was 45.36 crore which is 37% of the country’s total population.⁶

In the absence of official data regarding the number of migrant workers in the year 2020, we may consider Professor Amitabh Kundu’s estimation. He states that there are a total 65 million inter-state migrants in India, of which 33% are

⁵ See Section 2(1) (e) of the Act.

⁶ https://censusindia.gov.in/Data_Products/Data_Highlights/Data_Highlights_link/data_highlights_D1D2D3.pdf See also https://censusindia.gov.in/Census_And_You/migrations.aspx

workers, 30% are casual workers and another 30% work on the regular basis in the informal sector. If street vendors (which are not covered by the workers' data) are added to this, 12 to 18 million people are residing outside the states of their origin and are at risk of losing their source of income due to lockdown. According to him, out of the total inter-state migrants, 25% belong to Uttar Pradesh alone, 14% belong to Bihar, 6% Rajasthan & 5% belong to Madhya Pradesh.⁷

A study conducted jointly by the Centre for the Study of Developing Societies (CSDS) and Azim Premji University in the year 2019 shows that almost 29% of the total population of mega cities in India is of daily wage earners, and this is the actual figure of migrants willing to travel back to their native states.⁸

It means that around 4-6 million people would have wanted to return to Uttar Pradesh, and 1.8-2.8 million to Bihar, 700,000 to 1 million to Rajasthan and 600,000-900,000 to Madhya Pradesh. This data should have been used and considered by the Central Government while deciding the Nationwide lockdown to foresee the issues relating to livelihood, transport, loss of employment, etc. However, the Government completely ignored it and took a hasty & impulsive decision that impacted millions' lives.

A. A Migrant Worker's Monthly Household Income

A Survey conducted by the CSDS from 2017-19 published in Indian Express e-paper dated 27 May 2020, found that, of the total migrant workers, 22% earn Rs. 2,000; 32% earn between Rs. 2,000 and 5,000; 25% earn between Rs. 5,000 and 10,000; 13% earn between Rs. 10,000 and 20,000 and only 8% earn more than Rs.20,000 per month.⁹ It shows their poor economic condition and unsustainability, particularly during the lockdown.

⁷<https://www.livemint.com/opinion/online-views/opinion-the-lockdown-and-our-crisis-of-interstate-migrants-11585560071429.html>

⁸<https://www.thequint.com/voices/opinion/salman-khurshid-congress-leadership-migrant-labourers-economic-crisis-covid-modi-govt-inequality>

⁹ Politics and Society Between Elections Survey' conducted by the CSDS published in Indian Express e paper dt. 27 May 2020), available at <https://indianexpress.com/article/explained/coronavirus-india-lockdown-migrant-workers-mass-exodus-6348834/>

B. The Inter-State Migrant Workmen Act, 1979

Before the Act of 1979, the employment system in India was mostly exploitative for inter-state migrant labourers. In Orissa, the contractors or agents used to send the workers to other states in large construction projects, but the employers never honoured their promise about the wages and timely payment. Wages given were much less than those promised, and there was a delay in settling the payments also. The abuse began with unlimited working hours, compelling them to work without weekly holiday and in worst working conditions.¹⁰ That led to the adoption of abusive practices by employers and contractors. To overcome this, the Parliament of India enacted Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 (hereinafter referred as the Act of 1979) to regulate employment inter-State migrant workers and to provide for their conditions of service. This Act applies to all the establishments who employ five or more workers from other states and applicable to all contractors who engage five or more inter-State workers. The Act of 1979 provides for registration of establishments who employ migrant workers and requires the contractors to get the licences from the State from where they are willing to employ the workers.¹¹ Each contractor is required to maintain complete details of all the migrant workers and submit it to the registering authority within 15 days of hire. It is also mandatory for the contractors to maintain a register of all the migrant workers and issue them a passbook containing their employment details.¹² The inter-state migrant workers are entitled to get from the establishments the displacement allowance, journey allowance, accommodation, health and other facilities. Migrant workers are also entitled to regular payment of wages, equal pay for equal work, suitable work conditions, residential accommodation, free medical facilities, protective clothing, etc. When any fatal accident or serious bodily injury caused to any such workman, the establishments are required to report it to the specified authorities of both the States and the next of kin of the workman¹³

¹⁰ https://en.wikipedia.org/wiki/Inter-State_Migrant_Workmen_Act,_1979

¹¹ See Sections 3-6.

¹² See Sections 7-11.

¹³ See sections 13-19.

The employer is also liable for the payment of wages and other responsibilities. Establishments are prevented from employing any migrant workers without the registration. State governments are empowered to appoint inspectors to ensure the implementation of this Act. Inspector may conduct inspections and record testimonies of migrant workers. Any obstruction to their work is punishable with imprisonment for a term which may extend to 2 years or fine up to Rs 2000 or both.

If implemented, these provisions would have also helped the administration determine the numbers and keep track of the total migrant workers and their essential needs during lockdown and transport facility required for their comfortable journey to their home towns.

Although there is a considerable increase in migrant workers after 1990, the implementation of the law has been completely ignored, and it became deadwood. It came into the discussion only when the present Central Government proposed to repeal the above Act and enact Occupational Safety Health & Working Conditions Code (OSHWC) 2019, which incorporates into it only a few provisions from the Act of 1979.¹⁴ This move of Central Government has been severely criticised by many including CITU.¹⁵

IV. Problems of Migrant Workers - Post Covid-19 Lockdown

Millions of migrant workers were working in metro cities like Mumbai, New Delhi, Ahmedabad, Surat and other cities of India. However, in December 2019, Covid-19 virus outbreak occurred in China and reached India at the end of January 2020. Slowly cases of Covid-19 infection started increasing in India, but the Government could not do much towards prevention of Covid-19 until a one fine day ‘Janata Curfew’ was declared on 22 March 2020.¹⁶ After a gap of one day, suddenly on 24 March 2020 evening, a nationwide lockdown was

¹⁴<https://www.hindustantimes.com/india-news/explainer-migrant-workers-to-get-social-security-in-the-new-avatar-of-1979-law-that-was-not-so-effective/story-PNqSZnxtBCGIBQgjsVtpJ.html>

¹⁵<https://economictimes.indiatimes.com/news/economy/policy/citu-appeals-to-pm-to-not-repeal-inter-state-migrant-workers-act/articleshow/75536865.cms>

¹⁶<https://www.thehindu.com/news/national/narendra-modi-speech-live-updates-coronavirus/article31108793.ece>

announced by the Honourable Prime Minister Narendra Modi which was to be implemented from midnight, and he appealed all to stay wherever they were.¹⁷ The movement of people had been banned, all the Industrial enterprises except the essential goods & services were ordered to stop working. Shopping malls, markets, religious places, restaurants were completely shut down.¹⁸

The sudden and uninformed lockdown with the notice of just four hours for preparation, rendered millions of migrant workers, daily wagers and street vendors jobless, and they were got stranded in the cities where they worked. They lost their source of income and became captives in their home. Small and temporary housing made them breathless; restricted movement and the workless-ness coupled with homesickness had a significant physical and psychological impact on their health. Daily earners could not sustain for more time as they could not fulfil their basic needs. Fear of spreading Corona virus in slums, loss of employment and inability to afford the day to day expenditure forced them to leave the place. Support from the Government was very meagre and insufficient for survival. The transport facilities like trains & buses were withdrawn entirely, which compelled them to start a journey towards their native State by whatever means and modes. Many fell ill, the elderly, small children and women were forced to walk or travel by bicycle, cycle-rickshaw, bullock cart etc. A 15-year-old girl Ms Jyoti Kumari cycled 1200 km carrying her ill father, many walked for 1800-2000 km to reach their home,¹⁹ many died on the railway tracks and many on the road, thousands walked without water, food and footwear, many of them died due to dehydration & other health issues.²⁰ Thousands suffered severe injuries on their legs, soles and toes; thousands walked without food since no restaurants were open, they had to beg and eat²¹, compromising their most fundamental right to dignity.²² Women had

¹⁷<https://www.thehindu.com/news/national/pm-announces-21-day-lockdown-as-covid-19-toll-touches-10/article31156691.ece>

¹⁸<https://www.bbc.com/news/world-asia-india-52024239>

¹⁹<https://thewire.in/rights/jyoti-kumari-bihar-gurgaon-cycle-covid-19-lockdown>

²⁰https://en.wikipedia.org/wiki/Indian_migrant_workers_during_the_COVID-19_pandemic

²¹<https://www.ft.com/content/dec12470-894b-11ea-9dcb-fe6871f4145a>

²²<https://www.thehindu.com/news/national/india-coronavirus-lockdown-migrant-workers-and-their-long-march-to-uncertainty/article31251952.ece> ; See also

to walk thousands of kilometres even when they were pregnant²³, carrying luggage and kids.²⁴ The visual of a man pulling a bullock cart alongside a bull became viral with a cause.²⁵ In another heartbreaking story, an 11-year-old boy Mohammad Tabarak took his parents from Varanasi to their village Araria in Bihar in a tricycle, pedalling for almost 600 kilometres.²⁶ Lakhs of migrants reached their home in absolute precarious health or some died even before they reached.²⁷ The Government became silent spectator when this was happening for months together.²⁸

V. Human Rights Violations of Migrant Workers

Migrant workers are entitled to all the human rights that a normal human being has and the rights conferred by different international instruments and national laws. The most fundamental among these are life, liberty, equality and dignity, and the right to fair working conditions and minimum wages. However, intentionally or unintentionally, their rights have been completely ignored for

https://www.washingtonpost.com/world/asia_pacific/india-coronavirus-lockdown-migrant-workers/2020/03/27/a62df166-6f7d-11ea-a156-0048b62cdb51_story.html

²³<https://www.indiatoday.in/image-of-the-day/video/images-of-the-day-man-pulls-cart-for-650-km-with-pregnant-wife-on-it-mother-and-son-pull-a-bullock-cart-1677740-2020-05-13>

²⁴<https://mumbaimirror.indiatimes.com/coronavirus/news/covid19-latest-live-updates-dharavi-crosses-1000-mark-35000-cases-in-mumbai-by-june-3-thane-mira-bhayander-kalyan-nirmala-sitharaman-tax/migrant-worker-drags-exhausted-child-on-her-luggage-as-they-walk-from-punjab-to-jhansi-in-up/videoshow/75734334.cms>

²⁵<https://timesofindia.indiatimes.com/city/indore/indore-labourer-yokes-himself-to-cart-pulls-family-25km-home/articleshow/75729323.cms>

²⁶<https://thewire.in/rights/lockdown-tricycle-cart-boy-parents-home>

²⁷<https://www.thehindu.com/opinion/op-ed/no-relief-for-the-nowhere-people/article31495460.ece> ; See also <https://timesofindia.indiatimes.com/india/lockdown-deaths-of-those-who-never-reached-home/articleshow/75505407.cms>

²⁸<https://www.thehindu.com/opinion/op-ed/no-relief-for-the-nowhere-people/article31495460.ece>

the last 40 years. They were subjected to arbitrary action, paid much less than the minimum wages and had been given very inhuman treatment.²⁹

During the lockdown, the Government of India managed to bring back around 9 lakh people who were stranded throughout the world (till 24 July 2020)³⁰ by arranging special flights, whereas, millions of migrant workers who were stranded at mega cities like Mumbai, Pune, New Delhi etc, they were asked to stay where they were and prevented from moving back to their homes within India. When trains and buses were withdrawn with immediate effect, there remained no option for their journey. Shortage of food, money and difficulty in residing at very small houses or compartments and fear of spreading corona in slum areas, made them undertake their tedious walk home. Many street dwellers who were prevented from using the public place for sleeping and utility, also joined this route. However, instead of arranging transport facilities for them, the state authorities took punitive action such as lathi charge against them for violating lockdown rules.

On the one hand, aeroplanes were arranged for rich Indians stranded outside India, on the other hand, poor workers were denied basic facilities like food, transport, etc. and were beaten up when they attempted to reach their home town. The whole world has witnessed the sufferings of migrant workers while walking for thousands of kilometres to reach their near & dear ones. Unfortunately, the Central Government and also the state governments remained silent spectators; however, civil society and lakhs of private individuals came forward to help by whatever possible means. The role of civil society during lockdown was commendable.³¹ Most surprisingly, the most active organ of

²⁹<https://www.thehindu.com/news/national/over-878-lakh-indians-have-returned-from-abroad-under-vande-bharat-mission-mea/article32237013.ece>

³⁰<https://www.hindustantimes.com/andhra-pradesh/police-lathi-charge-migrant-workers-in-west-godavari-seeking-to-return-home/story-R93TjQ7udRpFgbKcMyzsqM.html> ; See also <https://www.thehindu.com/news/cities/Vijayawada/covid-19-lockdown-police-beat-up-migrant-workers-send-them-to-shelter-homes-later/article31599485.ece>

³¹<https://www.livelaw.in/top-stories/sc-refuses-to-entertain-plea-for-migrants-on-road-156803>; See also <https://kanooniyat.com/2020/05/supreme-court-refuses-to-entertain-plea-for-migrants-on-road/>

democracy, the honourable Supreme Court of India also turned a blind eye to these sufferings. A bench of Justice L Nageswara Rao, Justices S K Kaul and B R Gavai refused to entertain an application seeking directions to the Centre to ask all district magistrates to identify stranded migrants and provide them food, shelter and free transportation. The Supreme Court found itself helpless in directing the Government to arrange for food, shelter and transport.³² On the contrary, the High Courts were found taking proactive steps in providing relief to poor migrant workers.³³

A. What made Them Travel Back?

In the initial days of the lockdown, migrant workers were expecting that lockdown would be withdrawn after 21 days, but when the lockdown was extended further, they could not continue their stay in the metro cities owing to the loss of employment & income and also because there was no hope for re-employment in the near future. Those in the low-income group, could not sustain for a longer time, daily wage earners did not have stocks of food grains or bank balance; many were undergoing starvation.³⁴ The Poor public distribution system³⁵, increasing threat of coronavirus arising from crowded slums & use of public toilets, suffocation due to small & congested housing or temporary sheds, mental stress, psychological impact, homesickness and the urge to be with the family in difficult times, lack of hopes of support from the Government and intact village-based ethnic ties with the natives could have

³²<https://theleaflet.in/a-proding-judiciary-in-times-of-emergencies/#>

³³<https://www.thehindubusinessline.com/opinion/the-hunger-challenge-of-the-lockdown/article31480844.ece> ; See also <https://thewire.in/labour/covid-19-poverty-migrant-workers>

³⁴<https://www.thehindubusinessline.com/opinion/the-hunger-challenge-of-the-lockdown/article31480844.ece> ; See also <https://thewire.in/labour/covid-19-poverty-migrant-workers>

³⁵<https://thewire.in/rights/one-nation-one-ration-card-migrant-workers> ; See also <https://www.livemint.com/news/india/no-ration-cards-no-food-supplies-hunger-stalks-rural-india-11586197320697.html> See <https://www.downtoearth.org.in/news/governance/old-data-kept-those-in-need-away-from-pds-amid-covid-19-lockdown-report-72024>

forced them to walk thousands of kilometres once their source of livelihood was taken away.

B. Why are Migrants Ignored?

Many families from Uttar Pradesh, Bihar, West Bengal, etc. suffer abject poverty and decide to migrate to industrialised cities of other cities like Mumbai, New Delhi, Ahmadabad, Surat, Hyderabad, etc. Either they migrate with a limited household, or only the working member/members migrate, and the remaining members stay at their native place. Most of them work in the unorganised sector or start their small shop for trading. They are from low-income families, are less educated and unorganised. They are a voiceless community and remain vulnerable to any abuses. They being voiceless, never get the attention of media or politicians as it does not affect party leaders' political career. Apathy towards the poor, inefficient administration, overpopulation, weak opposition, lack of coordination between the governments, conflict of political interests between Centre & State govt, conflict of political interests between Centre & State, a complete failure of state machinery, weak opposition, failure of opposition parties to compel governments to take steps, election manifesto filled with religious commitments rather than justice to the poor, etc. could be the reasons for lack of proactive steps towards implementation and strengthening of this OSHWC Code.

VI. Conclusion

Migrant workers are real wheels of any economy, and they must be the first to be cared for and protected. Almost all the developments and top infrastructures in the world are built by the efforts of workers. They play a crucial role in the development of the nation. However, the unplanned, unthoughtful, arbitrary, impulsive and hasty decision of countrywide lockdown took the lives of hundreds³⁶ and resulted in the loss of livelihood of millions of migrant workers.³⁷ As a guardian of its citizens, the State failed miserably in protecting

³⁶<https://www.thehindu.com/news/national/activists-say-over-300-deaths-related-to-lockdown-troubles/article31491525.ece>

³⁷<https://www.thehindubusinessline.com/opinion/the-hunger-challenge-of-the-lockdown/article31480844.ece> ; See also <https://thewire.in/labour/covid-19-poverty-migrant-workers>

migrant workers' rights, and the top court also missed an opportunity to correct the wrongdoings and restore their rights. The faith and confidence of the migrant workers in the system have been shaken to such an extent that it may take decades to restore it. It is also unclear when these workers will return to work and whether they will return at all? The existing laws to protect the migrant workers have become lifeless. In the last 40 years, neither has it been effectively enforced nor any steps taken for its revival. Proactive measures are required to pour life into it. These laws may be made effective by requiring the establishment to submit all the details of migrant workers to the appropriate authority. The Government should ensure safe and healthy living, good working conditions along with just and fair wages to migrant workers. India's dream of becoming \$3 trillion is useless if our poor migrant workers are sleeping hungry or compelled to walk 2000 kilometres to reach their homes.