

Impact of COVID-19 on Migrant Workers: Issues and Challenges

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ABSTRACT

A democratic society is marked by constitutionalism, human rights and social justice. One of the key features of a democratic community is that it should be free from inequity, injustice and unfairness in treatment. However, a country like India is still struggling to avoid these unacceptable occurrences. Recently, we saw a great human tragedy during the lockdown period when the migrant workers were forced to abandon their places of work due to the loss of jobs and decided to walk out on foot under severe conditions. Previously, the abject poverty forced them to migrate to cities in search of green pasture but unfortunately, they could not find it. Moreover, whatever meager jobs they got, they lost that also during the period due to this ongoing adverse condition. The painful story that we heard from the media, NGOs and other activists was very sad and it moved all the sensible persons who believe in democracy and social justice so much so that they could not stop expressing regrets for the society we live in.

Key words: Constitutionalism, Human rights, Lockdown, Migrant workers, Government

INTRODUCTION

The government oblivious of the hardships they suffered, announced the lockdown which brought on them untold miseries, so that they were forced to leave for their homes by whatever means of transportation they got. They were tired and ran out of their food stock as also out of their pockets so that they marched barefooted to their homes. The government must be more sensitive and compassionate towards their plight and must have made appropriate arrangements to ensure that they

did not suffer from the miseries of life. However, this did not happen and general peoples, media, courts and even the governments remained mute spectators to their plight.

It prompted the Supreme Court to take suo motu cognizance of the plight of migrant workers. The Court accordingly directed the Central and State Governments to adopt welfare measures for the betterment of these workers. Further, the Delhi High Court has directed the Centre and the State Government of Delhi to take appropriate measures to alleviate the pain suffered by the workers. Similar directions have been issued by Madras High Court to the State of Tamil Nadu. The painful plight suffered by these workers underscores the most important but cruel truth that despite seventy-four years of independence, India is still struggling to provide a dignified life to the poor people. In so far as the human rights of these workers are concerned, such have been openly flouted not only by the State but also by the immediate employers. It is learned that 13.9 crore migrant workers^[1] from the states of U.P., Bihar, Orissa, Jharkhand, Chhattisgarh etc. are working in different parts of the country. However, they are still not in a position to manage their bare living. It is estimated that these workers also face health and shelter issues in the states where they work. Dharavi is one such example where within a radius of two kilometers live there around 8 lakhs. This plight is further accentuated when we find that almost a dozen people forced to live in small room with no access to basic amenities of life. Moreover, poor facilities

in various relief camps opened for these migrant workers by the home states have further added to their woes and have served to highlight the flagrant violations of their human rights. The States must adopt a humanitarian approach to address their issues and to design the socio-economic structure in a way that these workers find a dignified working condition. Further, the Supreme Court should keep a vigil on the State's welfare measures and direct them to set up a worker's welfare board or a commission to look into their problems and address them on a priority basis. Hence, these issues call for in depth analysis of the situation in a way that these issues are not only brought to the fore but also the challenges that lie therein are also highlighted.

Issues emerging during migrant workers movements in India during COVID-19 lockdown

Migrant workers during the COVID-19 lockdown have suffered many hardships. With economic activities being virtually out of gear due to the lockdown announced by the Prime Minister on 24th March, 2020, almost 4 crores of workers went jobless. [2] They also had to face the problems of shortages of food. It was at this time that they started remembering their near and dear and suffered from a sense of isolation at their places of residence. Hence, they thought to return their homes by whatever transportation means they had. Some of them caught unsafe transportation means such as trucks and lorries and thus met with a series of accident on their way to homes.

According to the international organizations like International Labour Organization and World Economic Forum, an estimated 40 crore migrant workers [3] live in different parts of the country. Majority of them hail from the Uttar Pradesh, Bihar, Madhya Pradesh, Rajasthan, Chhattisgarh, Jharkhand and Orissa. These labourers had to face challenges related to conveyance, food, shelter and social stigma. Some of the data issued by the state

governments are serious. For example, the state of Bihar issued a data in the mid of May, 2020 that out of 11 thousand migrant workers that reached Bihar, 560 of them were found COVID+. [4]

Maharashtra accounts for almost 52% of the total migrant workers of India followed by Gujarat, Delhi and the Punjab [5] in that order. The State of Maharashtra, as we know, is the worst affected state by the COVID-19 outbreak and it should take timely actions to address their problems. According to the above data, majority of these migrant workers consist of the youth drawn from the poor families of the backward classes. It shows that despite long spell of rules by OBC leaders in these states, their problems have not been addressed.

Most of the migrant workers are daily wage earners engage broadly in MSME sectors and construction activities. In both these sectors they are not given appropriate health care and other facilities such as proper fooding and lodging with the result that some of them fail to bear the brunt of these activities and also fail to reap the reach dividends of their life. Majority of these workers eke out their livings and hence have no savings to bank upon in future. All these things happen despite the legal cover provide to them under the Inter-State Migrant Workmen Act, 1979.

Labour laws and the plight of migrant workers

Recently, the Centre and various State Government have changed various labour laws to facilitate "ease of doing business". For example, the Central Government had already attempted to change in September 2019 labour code which includes The Payment of Wages Act, 1936, the Minimum Wages Act, 1948, the Payment of Bonus Act 1965, and Equal Remuneration Act, 1976, [6] the above bill is now under consideration before the Standing Committee of Parliament. It is believed that it would give factories owners at least three benefits: Firstly, they did not need register their firms separately under the above laws; Secondly, they did not need file

return separately and thirdly, they would be able to structure their relations with their employees and workers according to their ease. In fact, there were 45 Central laws and almost 200 State laws to deal with such relations with the result that such relations got strained. [7]

A few Indian States like the Punjab, Uttar Pradesh, Madhya Pradesh, Gujarat, and Rajasthan have very recently during COVID-19 lockdown and migrant worker crisis have changed labour laws giving more powers to the employers such as the powers of “hire and fire”, taking work from the workers for twelve hours [8] and provide healthcare facilities to the workers on the spot as per their convenience. The NGOS working for the welfare of these workers and employees unions believe that it would give an instrument of exploitation to the employers to exploit the helpless workers.

Before the onset of COVID-19 the Union Labour Minister, Santosh Kumar Gangwar had presented a bill in the Lok Sabha titled “occupational safety”, “health and working conditions code 2019” which proposes to minimise the burden on the employers with respect to the provision of healthcare to the workers. Moreover, such concessions will be available to the employers employing 10 or more workers. [9] Besides, the government will be armed with the power of determining the floor wage rate for these workers. All these measures would minimise the bargaining power of the workers enjoyed by them until now. That’s why several workers organisations including Bhartiya Mazdoor Sangh, An Arm of the RSS, have threatened to stage nationwide strike. Against this backdrop one can say that the government which wants to put back on the track the distressed economic activities has failed to take into account the broader interest of workers. It needs to be seriously addressed.

Legal and constitutional issues

Battling migrant labourers have raised concerns regarding their legal and constitutional rights. Protecting the rights of migrant workers is the duty of the state and

the state must legislate upon providing legal rights to compensation from the employers and in case of unemployment from itself. The legal rights also relate to fairness of treatment in times of crisis such as the one that is happening now (outbreak of COVID-19 and resultant lockdown).

In so far as the constitutional rights of these workers are concerned it is the bounden duty of the state and courts to give full respect to Article 21 which provides for a decent living for all individuals residing within the territory of India. It also encompasses within its fold the issue of human rights. It simply means that these workers must be ensured not only a respectful life by making the provision for the basic amenities of life but also a fair treatment that a human being deserves.

The recent mass reverse migration of workers has exposed the apathy of the employers besides exposing the apathy of the state as well. Now it has become clear that the employers used these workers to get their work done without making any provision for the future security of these workers. The State on the other hand has colluded with these employers in not bothering about the security of them. Further the “hire and fire” policy [10] adopted by the private employers supported by the legislation cited above has further rubbed salt on the wounds of these workers. The recent crisis that they find themselves in is the outcome of all the above factors which must immediately be addressed.

Issues of food security:

a. **Need for Food Security:-** The poor suffer the most despite all the progress made in the field of industry and economy; our reputation being very shoddy in the elimination of hunger and malnutrition until the end of the last century, the government shifted its focus at the beginning of the 21st century from a patronage to a rights based approach. MGNREGA was enacted in 2005 in relation to this. This being strengthened by a few more legislations, thus we have

now legal rights in the field of education, information and employment across the country. Recently, we have successfully got a National Food Security Bill passed (in 2013) conferring upon every Indian the legal right to food.

- b. **Challenges on Food Security:** The new approach attempts to do the following: -
- 1) Sustainable management of natural resources including water bodies.
 - 2) Movement of food grains access market without trade barriers.
 - 3) Adoption of modern technologies and financing facilities for modernising farming practices.
 - 4) Public spending on health, education like social sector to be increased.
 - 5) Improving governance at the grassroot level.

Issue and Concerns

The production of food grains is one of the issues which have become prominent during recent lockdown when it comes to feeding migrant workers and the poor. But India's efforts in this regard have been far from satisfactory. It is one of the reasons why India figures badly on the Food Hunger Index. In 2017, India ranked 100th among 119 countries as hunger in India got worse. It has had a telling effect on the poor and the migrant workers. In order to address this Food Security Act, 2013 has been passed.

Food Security Act, 2013: This act provides for food guarantee to at least 67% of the population in the country which means more than eighty crore people will be covered under the scheme. In this it has been provided that people living below the poverty line will get coarse grains, wheat and rice at ₹ 1, 2 and 3 respectively. But it has not benefitted the poor and the migrant workers anymore due to the poor implementation of the act.

Reverse migration: With no work in sight, and no money left in their pockets, these migrant workers had no choice but to live for their homes however they were forced to

walk on foot or huddle of in goods carriers to anyhow reach their homes. ^[11] But 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 8 May, 2020, after a goods train ran over them while they were waiting for their turn to catch the Shramik train on the tracks where they fell asleep and finally met with their ill fate. ^[12] Moreover, many were manhandled and beaten by the police for violating lockdown regulations. For example, on 31 March, 2020, nearly 120 migrant workers were badly beaten by the Gujarat police. Similarly, they were beaten by Madhya Pradesh and Uttar Pradesh police on the way to their homes. Further, they had to face the wrath of police in Maharashtra and in Bihar as well. ^[13] Many more were arrested for violating the lockdown regulations.

However, in May, 2020, despite the movement of Shramik trains to various destinations and special buses by the government, the plight of workers did not end as they still underwent harrowing condition of their journey.

Issues of Social Security: The issue of social security relates to gender justice, insurance cover for the poor, pension scheme for the poor, credit guarantee, education and health security among others. It leads to social inclusion of the socially disadvantage as the migrant workers are. But even such schemes have not benefitted migrant workers. It has been shown in the studies conducted by various NGOs and the government body itself. It includes PRIYA, NCAER etc. Corruption has eaten into the gains made by various social security schemes such as MNREGS, BETI BACHAO BETI PADHAO, JAN DHAN YOJANA etc.

Healthcare: The healthcare facilities to the migrant workers at their work places have been very poor. The employers have not been taking care of the physical and mental plight of these workers as has been recently

demonstrated during their exodus to their homes.

Court Observation

Over the past two and half months as many as 12 High Courts in India took cognizance of the humanitarian crises caused by the reverse migration of the workers. ^[14] Some of them like the Madras, Andhra Pradesh and Delhi High Court has issued directions to the Central and State government asking them to take up measures for alleviating the pain and miseries suffered by these migrant workers. In the month of May, the Madras High Court ^[15] made scathing remarks against the authorities taking note of migrant labourers who walked back to their native places during the lockdown. The Court said that it was the human tragedy but one should not remain a mute spectator to the pathetic conditions of these workers which could be seen in media. Holding the authorities responsible it directed the Central government and the Tamil Nadu government to submit before it and Action Taken Report related to the welfare of these workers during the lockdown period. The Court also wanted the data of the stranded migrant workers the assistance given to them so far, the data of the hapless migrant workers who died on the way the compensation given to their families and assistance provided to the returned workers.

The Andhra Pradesh High Court also expressed unhappiness and anguish over the pain suffered by these workers and directed the State government to make arrangements such as food drinking water, glucose packets, temporary toilet facilities etc. for the walking labourers until they reached their homes. ^[16]

The Delhi High Court asked the Delhi Government to set up a hassle-free helpline number to help the migrant workers to make contacts their homes and also help the family members of these workers to contact the migrant labourers.

The Gujarat High Court took suo motu cognizance of the crisis and ordered the State government to make concrete

plans to address the difficulties suffered by these migrant workers. It asked for more humane approach to tackle the situations.

The Kerala High Court has itself stepped in monitoring the steps taken by the State government regarding the provision of food and shelter.

The Odisha, Bombay and Himachal Pradesh also asked the respective State Governments for making appropriate arrangements such as food shelter and medical facilities to these workers. The Himachal Pradesh High Court asked the State government to file and Action Taken Report in this regard. ^[17] It is in line with the order of the Jammu and Kashmir High Court which in March itself directed the Union Territories Administration of Jammu and Kashmir and Ladakh to see that free accommodations, healthcare facilities and other needs of the migrant workers are met properly. ^[18]

Similar orders have been passed by the Telangana and Uttarakhand High Court with the former asking the civil supply commissioner to provide free ration and other essentials to even those who do not have ration cards, while the latter asking the Uttarakhand government to address the plight of 40,000 migrant workers, and also to properly implement the National Food Security Act, 2013. ^[19]

The Supreme Court of India agreed to entertain a petition on behalf of the migrant workers in the last week of March, 2020. ^[20] The Court asked the Union Government to file a status report on the issue related to the plight of migrant workers. In its report, the Central Government mentioned that the migrant workers fearing to face survival challenges started moving towards their homes. The government also listed welfare measures undertaken by it which the court seems to have endorsed. The Court also did not entertain a plea regarding the payment of minimum wages as it thought that the government was dishing out enough policy measures to address it.

In the sequence in the third week of May, the Supreme Court rejected a PIL which sought its intervention in directing the District Magistrates to identify and provide relief to these workers free of cost. It happened in the face of almost two dozen workers being run over in Aurangabad in the state of Maharashtra. But the Court took the stated position of not interfering in governments' policy matters.

On 26 May, the Supreme Court expressed unhappiness over the state of inadequacy regarding appropriate provisioning for the migrant workers and accordingly asked the Union and State governments to address their concerns without delay. Accordingly, the Court specified that the Centre and States should provide free food, shelter and transportation facilities to the stranded workers. A short while before this ruling came senior lawyers from Mumbai and Delhi wrote in very strong tones a letter to the court reminding it of its duty to protect the rights of these workers.

The Supreme Court recently took up the issue of migrant workers with all seriousness and directed the government to take strong remedial measures mainly the transportation of stranded workers to their native places. A three-judge bench led by Justice Ashok Bhushan asked the Central, State and Union Governments to send these workers to their respective homes within 15 days either by bus or train. It also directed the above government to provide such workers ration food and even jobs as and when required. It ruled that the railways would provide Shramik trains to ferry these workers. Such trains will be in addition to 171 Shramik trains that have already been pressed into service by the railways on the request of the state.^[21] Moreover, the Court also asked the government to do skill mapping so that these workers are provided fitting jobs. In addition to these directions the Court also asked the governments to drop all criminal cases against these workers for violating lockdown regulations. The above bench directed the States and Union

Territories also to prepare a complete list of these workers specially those who have already reached their homes and got a job. It also specified in its directions that the jobs, these workers are doing prior to lockdown should also be mentioned by concerning states. Besides the Supreme Court also asked the governments also to specify the schemes for employment and details of the welfare schemes that might benefit these workers.^[22]

Hence the top Court attempted to protect the human rights of these workers and also of their fundamental rights enshrined in Article 21 in order to directly intervene in the matters that the state has been negligent of. The three-judge bench in its June, 05 order also regretted that the governments have not been sensitive enough to the plights of these workers. Accordingly, in its preliminary remarks which were later included in its order the bench asked the governments not only to provide adequate transportation arrangement but also food and shelter, and all that free of cost.

Remedial measure undertaken by the Governments

In March 2020, the Union Home Ministry directed the States to make use of National Disaster Response Fund (NDRF) for providing food, shelter etc. to the migrant workers.^[23] Further, in the last week of March 2020, the Central and State Government asked the landlords not to press for rent from the tenants until the period of lockdown is over.^[24] Moreover, the Union Home Ministry directed the State government set up relief camps for these workers on their transit route.

In May 2020, the Central government announced the setting up of National Migrant Information System to enable the National Disaster Management authority to create a data base related to the numbers, movement and arrival of these workers to be shared by various state governments, later in order to make welfare planning.^[25] It also intended to enable the

Central government to plan for Shramik Special trains, to carry these workers to their destinations.

Relief Camps: After the Central government directed the State government to set up relief camp for taking care of the basic needs of migrant workers such as food to be served to them free of cost, the State government and NGOs set up such camps across the country for helping these workers get rid of their problems especially of food enroute to their destination.

Conveyance: In the last week of May, 91 lakhs of migrant workers reached their destination in various states through Shramik special trains and Roadways transport buses.^[26] In addition to the above various states' registration portals were being operated to give information of these workers regarding their lodging and the places where they were stranded.^[27] It helped even the workers to find out the places of their location.

By 23 May, 2020, 40 lakh migrants reached their homes by buses. However, the journey by Shramik special trains and buses were not without hiccups. It was alleged that the migrant workers were charged fares by the state government whereas it was decided the centre would pay 85% and states 15 % of the cost of fares of each worker.^[28] Later the Supreme Court asked the Central government to bear total fares^[29] and ensure that these workers get all the humanitarian aids during the journey thereafter things got settled.

Other Relief Measures: The Central government announced a relief package worth ₹ 1.7 lakhs crores to help the poorer section including migrant workers besides farmers and poor ladies. It consisted of cash transfer as also free arrangements of food grains from the PDs system for the next three months starting April 2020, besides free cylinders and cash transfers.^[30] In order to absorb the incoming migrant workers in the employable works in rural areas, the Union Finance Minister viz. Nirmala Sitaraman announced that the Centre should be spending ₹40,000 crores

additionally under MGNREGA.^[31] Various State governments also took up measures to provide employment to these migrant workers at the place of their homes. The government of Uttar Pradesh,^[32] Madhya Pradesh, Gujarat, The Punjab etc. accordingly relaxed labour laws^[33] in order to encourage investments and industries so that these workers would be given employment.^[34] The above relief measures further get bolstered due to the "ATMANIRBHAR BHARAT SCHEME" announced by the Prime Minister. The ₹ 20.5 lakh crore package includes almost ₹3 lakh crores, collateral free loans to MSME sectors which employ nearly 35 lakh people, majority of which are migrant workers from the States of Uttar Pradesh, Bihar, Madhya Pradesh, Chhattisgarh, Jharkhand, Orissa and West Bengal.

CONCLUSION

All the above measures have been taken with a view to stopping these workers from suffering the pangs of life and get gainful employment at the places of their homes. The State of Uttar Pradesh has announced to set up a commission to look into the welfare of these workers besides conducting skill mapping. It is to be seen as to which extend the plight of these workers is addressed in days to come. Moreover, in order to witness the green shoots in our economy, it is necessary that the industry and business should revive. It is not possible without employing the migrant workers. Hence what is required is to 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. It would be interesting to see as to what extent these migrant workers come back to the places of their work.

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