



THE MIGRANT LABOUR CRISIS DURING THE PANDEMIC: A LEGAL PERSPECTIVE

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ABSTRACT:

The pandemic has impacted every individual's lifestyle in the society. The pandemic has caused chaos all over the world since it erupted and situation is getting worse day by day. We should habituate ourselves to the "new normal", but what about the people who do not have any signs of this so called new normal. The very first and worst affected sects of the society were the proletariat or to be more precise the migrant labourers. They do not see a normal after the present crisis, life is extreme for them after the pandemic. Their basic fundamental and human rights had been snatched away from them and none of the institutions came to their rescue. Especially the government, which has far more important works like banning Chinese goods and toppling with the state governments. The worst part being the government being the cause of this crisis, the present situation arose after the sudden announcement of lock-down in March to prevent the spreading of COVID-19. From then on lakhs of migrant workers walked back to their homes, they were not provided with basic necessities throughout their days or even months of journey. The judiciary also turned a blind eye and did not come to their rescue even after many of their fundamental rights being infringed, some of them were even arrested for breaking the lockdown measures. The Supreme Court took suo motu cognizance of the situation and gave some 'directions' to the states and union territories.

This article will be talking about the many number of rights infringed and what legal recourse do they have and also tries to analyse the situation and find out what is the way forward.

INTRODUCTION:

Migration and India go way back. India has seen one of the worst migrations during independence and next to that stands the reverse migration of the migrant workers during this pandemic. Migration of workers has been prevalent in India since the ancient times, and it continues, as the country is still developing and it will go on to be the same. Indians have been migrating out of the country and within the country as well, this leads to many imbalances, brain drain, urbanization and many other consequences. India has a huge population and it is hard to achieve allocative and distributive goals with such population, which makes migration inevitable. The main problem is with inter-state migration during the pandemic, people from other countries were easily transported to their homes, but the migrant workers within the country had to face a lot of difficulties to reach their homelands.

Recent times have seen humongous amount of inter-state migration within the country. People from various states leave their farms and other simple work in rural India to join the millions of domestic workers in metros and urban areas. Due to this increased number of migrations, the casualisation of workers is growing and they have to fight for their rights and social security. The migrant workers have been the unsettled settlers who



helped in the development of the country.¹ Employers and workers have been the pillars of the economy, and the tripartite relation between the employers, labour and the government is of utmost importance in these situations. Since independence the country has introduced many labour laws to maintain the same and even the advent of Liberalisation, Privatization and Globalization(LPG) policies have paved path for restructuring these relations. The only issue here is with the implementation part of all these laws and policies for the welfare of labour. It ultimately proves to be disappointment, because of the present crisis. If the said laws have been implemented to the letter, this crisis would have been foreseen and steps would have been taken to prevent the same.

The story so far:

- Since the lockdown has been announced the migrant workers don't have any work and as a result do not have money to pay the rents. The pandemic has rendered lakhs of workers hapless and stranded on roads. Not to mention the number of images we have seen on the media of thousands of migrant workers walking to their homes, crossing state borders and many of them dying in the process. As word spread that all the "factories" were pulling down shutters, they realised that they had lost their informal jobs. Pauperisation loomed, especially in metros and cities like Delhi, Mumbai, Ahmedabad, Surat, Hyderabad, Chennai, Bhatinda. Overnight, lakhs of these dispossessed workers started their 1,200-km

journeys home, on foot, cycle-carts, jugaad scooties, cement mixers scenes which have been imprinted indelibly on the country's consciousness. At each district or state border, they were met with police lathis and bureaucratic obstinacy because the prime minister had announced the world's strictest lockdown at four hours' notice, which the police interpreted as licence to dominate the streets.² At this point the risk of being prone to the disease was very less and yet due to these circumstances many labourers were left behind as they had children and pregnant women with them, or even didn't have that extra hundred for the journey. Soon they ran out of their savings and basic necessities and they were pushed out by the landlords, as the landlords did not pay heed to the advice of waiving off rent. The next two weeks the covid-19 has excavated in the cities especially and the workers who were huddled in unhealthy clusters were prone to the infection. After that, almost 10 states which include Uttar Pradesh, Madhya Pradesh and Gujarat, in the month of May passed ordinances relaxing certain aspects of the labour laws. These three states have the maximum number of migrant labourers going from other states. We don't know how to interpret this move, some say it's a breather for states after the pandemic, and some say the moves are anti-labour and unconstitutional. Only time can tell us how this particular move affected the employers and worker and the society at large.

• CONSTITUTIONAL PROVISIONS REGARDING THE ISSUE:

¹ Sangeeta Mandal, Emerging Trends of Inter-State Migrant Workers in India: A Study of Legal Framework, 7 Indian J.L. & Just. 106 (2016).

² Nalini Singh, Chronicle of a havoc foretold: Why weren't migrants assisted to go home earlier? The

Indian Express (June 17, 2020, 9:13 AM), <https://indianexpress.com/article/opinion/columns/migrant-labour-crisis-india-coronavirus-lockdown-reverse-exodus-6462286/>.



• Constitution of the country is the fundamental and supreme law of the land. Every legislation derives power from the Constitution. The purpose of having a constitution is to have a framework of the government which is likely to endure through the changes the nation. The Constitution of India has affirmed social and economic justice to all its citizens. The fundamental rights and the directive principles of state policy enshrined in our Constitution need a special mention in view of their supreme importance in influencing labour legislations of the country. These provisions ensure guarantee against any exploitation. Various DPSPs mentioned in Article 39, 42 provide for the basic human rights for workers and employees. Labour falls under the [Concurrent List](#) of the Constitution. Therefore, both Parliament and State Legislatures can make laws regulating labour. Currently, there are over [100 state laws and 40 central laws](#) regulating various aspects of labour such as resolution of industrial disputes, working conditions, social security, and wages. To improve ease of compliance and ensure uniformity in central level labour laws, the central government is in the process of codifying various labour laws under four Codes on (i) industrial relations, (ii) occupational safety, health and working conditions, (iii) wages, and (iv) social security.³

• The inhumane conditions the migrant workers faced during this lockdown is an example of constitution not being followed and infringement of many fundamental rights and the provisions and relaxation of labour

³ Anya Bharat Ram, [Relaxation of labour laws across states](https://www.prsindia.org/theprsblog/relaxation-labour-laws-across-states), PRS Legislative research (May 12, 2020), <https://www.prsindia.org/theprsblog/relaxation-labour-laws-across-states>.

laws were against many international standards. India is a founder member of the ILO. India has ratified 37 of the 181 conventions. The constitution of India upholds all the fundamental principles envisaged in the seven core international labour standards. Article 22 of the Universal Declaration of Human Rights, every member of society has a right to social security. The ILO declaration on fundamental principles and rights at work is a major step in this direction. Development must bring about an improvement in the living conditions of people. It should, therefore, ensure the provision of basic human needs at all times. The international covenant on economic social and cultural Rights of the United Nations is another international instrument bestowing workers with economic social and cultural rights. The ILO provides for a tripartite arrangement between employers, workers and state to legislate and execute the international labour standards in the member countries. The main fundamental right which was infringed during these testing times was right to life which includes a bundle of rights. Through judicial activism Article 21 has an extended view which include right to health for labour⁴ and right to shelter⁵ and many other basic fundamental rights which facilitate right to life and live with dignity.

LABOUR LAWS:

Democratic ideas have also been grown simultaneously with the growth of industrialization in our country which have pleaded for and also helped in mass awakening and consciousness for greater

⁴ CERC v. UOI, AIR 1995 SC 922.

⁵ *Shantistar Builders v. Narayan Khimalal Totame*, AIR 1990 SC 630.



power amongst the working class, which paved way for a number of labour laws. Labour legislations and industrial jurisprudence are based on certain fundamental principles, like Social Justice, Social Equity, International Uniformity and National Economy. The interest of an employee is now of utmost importance. In India, a number of social security legislations have been enacted from time to time to promote the condition of the labour keeping in view the development of industry and national economy.

Until very recently, most Indians were unaware of a statute titled the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979.⁶ The purpose of this act is not to encourage interstate migration of workers against the interests of local workers as the principal employers would have to incur more cost in deploying interstate workers. The aim of the Act is to regulate the employment of inter-State migrant workmen and to provide for their conditions of service and for matters connected therewith. The Act defines "inter-State migrant workman",⁷ as 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 in relation to such establishment. Employment of inter-State migrant workmen

in any establishment is prohibited unless it is duly registered under this Act.⁸

The law requires all establishments hiring inter-state migrants to be registered, and contractors who recruit such workmen be licensed. Contractors are obligated to provide details of all workmen to the relevant authority. Migrant workmen are entitled to wages similar to other workmen, displacement allowance, journey allowance, and payment of wages during the period of journey. Contractors are also required to ensure regular payment, non-discrimination, provisioning of suitable accommodation, free medical facilities and protective clothing for the workmen. If the law is there why wasn't it implemented. If the governments followed this legislation to the letter they would have never faced such a crisis. States would consequently have been better prepared to take steps to protect such workmen during this lockdown. However, almost no state seems to have implemented this law in letter and spirit.⁹ This is because it would mean more compliance and cost of access to labour which the states and the employers are not ready to spend.

CONCLUSION:

The experts have many contrasting opinions on this ongoing crisis but one of the common opinions is that there is a lot of beating which is yet to come for the economy and the government organs in the near future due to

⁶ Satvik Varma, Why India's Legal and Labour system needs to be reconfigured to really help the migrant workers, The Wire, <https://thewire.in/labour/india-labour-legal-system-migrant-workers>.

⁷ Section 2(e) of the Inter-state Migrant Workmen Act, 1979.

⁸ Section 6 of the Inter-state Migrant Workmen Act, 1979.

⁹ KP Krishnan , Anirudh Burman , Suyash Rai, Migrant Workmen Act, 1979, must be rationalised to remove requirements that disincentivise formalization, The Indian Express (May 9, 2020, 7:46 AM), <https://indianexpress.com/article/opinion/columns/india-lockdown-inter-state-migrant-workmen-act-6400710>.



the present decisions. The workers are not willing to return to the cities and to their work any time soon, the factories although opened after lockdown are sitting idle without any skilled workers to operate. The workers have realized that there is no protection for them from any government body even the judiciary, which is prodding, pushing, embarrassing and asking probing questions. They are not disposing of the matters but demanding answers, which is not sufficient in these suffering times. The economy is said to grow at its lowest pace as the migrant workers are considered the invisible workers. The relaxation of labour laws is another level of exploitation where the working hours have been increased. The lockdown fell like a guillotine on the migrant workers but the country will be paying the price in the long run. The vicious cycle of unemployment and relaxation on social security measures will continue until the legislations are rationalized to meet the requirements.

