



RAVENOUSNESS OF MIGRANTS : THREE LABOUR CODES

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Abstract:

We have witnessed how COVID-19 pandemic has affected and hindered the economy as a whole worldwide. This is one of the most challenging situations the world has ever witnessed. But migrant workers had witnessed the worst hit. It can also be said that a country's capability can be determined by how well it tackles migrant issues.

As Churchill said, "Never let a good crisis go to waste." This quote is highly relevant at this point. And we need to look after every possible way to find a solution.

This research paper contains the way the Indian government or policymakers have taken up schemes to resolve migrant issues. Everything is analysed from the root cause. The questions that arose and the answers that were given. What are the major policy bottlenecks which lead to distress? Will the migrants ever go back to urban areas to work after they have been ill-treated in these struggling times? How is the post-COVID time in the context of "migrant workers" going to be? So what should be done? This paper solely focuses on tackling the circumstantial crisis by bringing new policies to the field.

Introduction

The year 2020 has got its cities to bear the brunt of the disease. This pandemic induced distress on a national scale and got down the lane to spread the entire part of the city which

made it hard for a middle man to find his bread and butter.

The condition in the nation pulled down the doors for all the scales of employment especially to the small scale and migrant workers. The hardships of migrant workers have pushed the pandemic dilemma in the background. Many migrant labourers stuck in different places in the lockdown have tried various methods to reach their hometown through different methods and have died. Many pictures of migrant labourers walking barefoot along with little kids and even carrying infants were being circulated all over the social media. This situation forced us to review the bottlenecks in policies and labour laws. It is similarly found that the issue mainly affects 'unorganised labour' of which the migrant workers are a large part. By the time authorities even paid attention or recognized this as a serious issue which led 200 migrants to death in road accidents and starvation.

Definition: Migrant Workers

The word "Migrants" does not possess a single definition. Different agencies have defined it in different tones among which two major agencies are 'National Sample Survey Office (NSSO)' and the Census. The census defines a migrant as an individual who has changed his place of residence in the past from one village/town to another. It also classifies migrants on the grounds of place of birth. While NSSO relies on migration based on the last usual place of residence, The 'usual place' is where one has stayed for at least 6 months or more. If the last usual place differs from the current place of residence then that individual is considered as 'migrant'.



On the different grounds considered, the population survey done by both the agencies will differ i.e. statistical data. The 2011 Census concluded that by place of the last residence 37.6% of the people were migrants and by place of birth 36.5% of people can be considered as migrants. According to NSSO in 2007-2008 among the 450 million last residence migrants, 11.9% were inter-state migrants and 28% of India's population were considered as migrants. It is difficult to acknowledge the credible and accurate grounds on which the term migration can be based upon. Whether it is the last place of residence, place of birth, destination, origins, particular employment sector, or the standard of living etc.

It is also said that the migrant workers who keep moving to new places were not covered in policy circles. The issues of migrant workers stayed hidden and it took a pandemic to put them in the limelight and realise how important it is to resolve this issue.¹

In a general sense, a 'migrant worker' is a person who migrates from one area to another area within the state or country to get seasonal or interim or part-time work in different sectors. The previous law legislated by both the houses of parliament president of India lent his assent on 11/06/1979 was known as "Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979". As we see there has been a huge hindrance in the labour laws regulations in Covid-19 crisis. The state has been taking control in its own hands but the question arises to what extent does state has

power over wandering workers and the centre's responsibility for this issue. There has been an unarguable infringement of Human rights as well as labour rights.

This paper focuses on the bill that was put forward hearing to the pleas of millions of migrant workers during the time of pandemic which made life harder for survival.

Introduction to Labour Codes

On September 23, 2020, the parliament passed the labour law code bill considering the wages, social security, occupational safety of several migrant workers by combining 44 labour laws into three codes. The idea of the labour law code is not a new sketch it got its idea of amalgamation mooted back in the year 2002 by the National Commission on Labour law under the National Democratic Alliance (NDA) government, but the opposition by the unions gave its way to the year 2020 to frame the labour law bills.

Several central trade unions and other trade committees openly criticised this bill while the industries welcomed it with open arms as it believed that it would make India an investment destination and also expand employment opportunities gender unbiased. The code bill gave a system of hiring and firing flexibility for employment and retrenchment of the employees. The labour code bill holds three codes namely,

1. Industrial Relations Code, 2020
2. The Code on Social Security, 2020
3. The Occupational Safety, Health and Working Conditions Code, 2020

¹ Sunil Sinha, 'Understanding the migrants' Business Standard (23 May 2020)



Industrial Relations Code, 2020

The industrial relation code adopts the northern American system of hiring and firing model, it brings the rules for hiring and firing labours in mid-sized and large industries making retrenchment easier where this was one of the drawbacks for the central and other trade committees to oppose this as that had flexibility in retrenchment and it concentrates on a larger firm and is inadequate to the smaller firms. It borders the framework of rights of workers from union and settlement of industrial disputes. This code is an amendment to trade unions. This code defines from that of a strike to mass casual leave.

The code on social security, 2020

This new code focuses on the maximum benefits under minimum governance and reflects uniformity in approach across the new labour codes. It focuses on the unorganised sectors and fixed employment. It gives ease for settlement of unorganised workers. This code provides for the registration through Aadhar card for all the unorganised workers and a gig worker through a portal to avail the security policies.

The Occupational Safety, Health and Working Conditions Code, 2020

Keeping in mind one's safety in the workplace the new code was proposed in order to protect the workers in his workplace. The code majorly focuses on the safety precautions in factories and industries. Its main concern is in the field of mine works, factories and industries and it also lays down the provisions for medical allowances to the workers. It is a code of concern for individual workers working in the factories and industries.

Moreover, with time, labour laws need an overhaul to ensure simplification and updation, along with provisions which can apprehend the necessities of developing forms of labour (e.g., gig work). This research paper discusses these challenges and the directions taken by the three Codes.

It is also said that the new labour reforms are meant to help the migrant workers who kept moving to new places and were not covered in previous policies. The issues of migrant workers stayed hidden and it took a pandemic to put them in the limelight and realise how important it is to resolve this issue.

Administrative flaws that led to Agricultural distress vis-a-vis migrant crisis and its redressal in new labour codes

Even after when India opted for liberal economics during 1993 internal migration was not made a policy priority in India. The estimates of its scale vary from 100 million to somewhere between 150 million, which itself shows a lack of data and transparency. Some migrants move for work permanently usually, from educated and more privileged groups and then there are those on the peripheries. The latter migrate temporarily, usually forced to do so by agrarian distress because of financial instability in rural areas. Labour migration corridors from rural areas to centres like Mumbai and Bengaluru which will represent adjustment strategies for the rural poor.

Agricultural GDP growth rate(3.1) is less than the average GDP growth rate(6.7) and the only sector which is increasing drastically is livestock. The reasons for such decrease is because of low irrigation and degradation of soil fertility because of the excessive use of



fertilizers. Nearly 30% of India's land has been degraded due to deforestation, intensive farming, soil erosion and groundwater depletion, resulting in desertification. According to the Ministry of Statistics, only 39.79% of agricultural land is irrigated in India. This type of lack of water management is another reason for the slowdown.²

Thirdly, Complexities in the agriculture supply chain affects the demand-supply curve during crisis time. Due to this, economic institutions and their intermediaries will be closed and people lose their jobs.

According to the 2011 census, 3.5 million migrants who moved to other cities to earn daily bread gave financial reasons for their migration. Among them, 25% to 50% of wages are sent back to their families. Like in Bihar, this remittance covers 36% of the gross domestic product of the state. How will these states cope up with this? This indeed is related to the fall of agricultural activity in the last 2 decades. Because of this reason, there is a sudden rise in migration from 1991 to 2011. According to the 1991 census, 1.4 million migration took place and in 2001 it increased by 2.2% and gradually in 2011 it increased to more than 3.5 % respectively.

This agrarian distress indeed creates negative externalities in rural areas which increases internal migration. Indian agriculture contributes 16% for the total GDP which employs 40% of the Indian population. This over employment in the agrarian sector shows administrative incapability and policy

mismanagement to provide systematic incentives for the farmer to gain efficiency by decreasing the cost of production. Migration problem is just a symptom of this disease-- Agriculture distress. Looking at these statistics it is clear that because of the slowdown in the agricultural economy resulted in excessive migration.³

The new social security code and occupational safety code have proposed certain changes for expanding social security and inclusion of inter-state migrant workers in the definition of workers. This will assure livelihood safety for migrated workers to a certain extent. Also, the significant point to note is for the first time, provisions of social security will also be extended to agricultural workers also. The Social Security Code proposes a National Social Security Board which shall recommend to the central government for formulating suitable schemes for varied sections of unorganised workers, gig workers and platform workers. Also, aggregators employing gig workers will have to contribute 1-2 percent of their annual turnover for social security, with the total contribution not exceeding 5 percent of the amount payable by the aggregator to gig and platform workers.

Implications: Extending social security for agricultural workers will reduce reverse migration and also provide limited remittance to migrant supplying states during national crises. Also, this will ensure financial security for unorganised workers and agricultural labourers. Which will in turn help the reduction of rural-urban parity in the long run.

² Ministry of Statistics-GOI (Agriculture survey, 2018)

³ Office of the Registrar General; Census Commissioner, Ministry of Home Affairs, Government of India (Census: 1991, 2001, 2011)



In the eyes of the judiciary and legal battle

Looking at the labours condition in the current pandemic situation the idea of new labour codes were passed by the parliament, this was accepted by industries with open arms but not from the workers, the new codes that modified several parts in the statute have hindered certain rights of the workers, such rights include with the system of hire and fire model, change in the definition clause, limitation etc.

No protection against hire and fire regime

This hire and fire policy has rendered workers virtually defenceless against the arbitrary retrenchment and layoffs. The new code requires a closer analysis of industrial relations as it changes the equation of workers as well as their establishments where they work for. The industrial relation code holds a condition in it where the workers lose the scope of protection against arbitrary retrenchment, closure and layoff. The earlier law which had a provision for a limited number of workers to be employed but now the new code comes up with a condition where an employer has to seek government permission only when employing 300 workers where the previous law limited for 100 workers this is defenceless on the part of the workers.

The workers lose their right in the model of hire and fire model to justify the same taking in the picture Sec 254 of Industrial Dispute Act which laid down that when a worker is retrenched from work at the time of re-appointment for the post the employer had to give first preference and priority to the retrenched employer but the new code changes this provision to where the employer

can appoint a new worker for the post of a retrenched worker, here the worker who was removed by retrenchment lose his right over reappointment for the post.

The definitions as modified by the new codes for the industry look into the activities and undertakings by that category of industries only where this acts defenceless for workers which do not fall under industry. Similarly, change in the definition of employee, employer and worker seek to legalise the definition of all kinds of contacts as the new labour codes concern is on fixed contracts. The consequence of such changes in the definition itself self-contradictory.

Dilute workers rights in collective bargaining

Concept of unequal bargaining was observed unlike other private contractual relations, the parties cannot be left to their own devices. A contract of employment therefore stands on an entirely different footing from other contracts.⁴ The contract of employment stands entirely different from other contracts.

Limitations

In 1977, Maharashtra implemented changes requiring all workers with 240 days of continuous service to be made permanent, but the new code has a fixed retrenchment that has statutory recognition. The change in definition of settlement under the new code includes individual settlements which goes against the very concept of collective bargaining.

Coming to the limitation put forth by the new code where it has made limitation of 2 years to raise a dispute for conciliation, this has raised a concern where 50% of the workers

⁴ Central inland water transport corp. Vs Brojo nath



being illiterate and such limitation to go before conciliation infringes their right.

As time goes several reforms take place to keep the situational consistency, also updation can sometimes lie under the fallacy of policymakers. The increase in the threshold for standing orders in these new labour codes will water down the labour rights for workers in small establishments having less than 300 workers. This can also lead to the destruction of employment security.

The Industrial Relations Code also inducts new conditions for carrying out a legal strike. The period for arbitration proceedings has been incorporated in the conditions for workers before going on a legal strike as against only the time for conciliation at present. Also, no person should go for a legal strike without prior notice before 60 days. This elongation in the procedure will make it hard to initiate legal strike which will once again suppress the rights of labourers.

The overview of such changes clearly has to look into the provision laid down under the constitution of India where every person has the right to perform his choice of trade and occupation and at the same time hold rights to strike. The new codes in the hidden space infringe such rights of workers and hence the workers did not welcome this idea of new labour codes at such a time of the pandemic. This holds major drawbacks of new labour codes as they don't hold high the rights of workers and only concentrate on fixed contracts which don't do more good to workers at this time of the pandemic.

Conclusion: It is a crucial point of time for Indian policymakers and jurists to take into

consideration the collective interest of migrants and to reorganise the bottlenecks in order to avoid negative externalities in future on the livelihood of migrants. India must do better, commencing with inclusive urbanism and policy reforms premised on an ethic of labour care. The present code which has both pros and cons in its entirety will serve good for the migrants and with respect to social security and hits the fundamental rights of unorganized workers.

