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Avinash Kumar



learning.

Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and

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ISSUES AND CHALLENGES OF MIGRANT WORKERS IN COVID ERA: EMPIRICAL STUDY

AUTHORED BY - RICHA SRIVASTAVA¹

Abstract

A migrant worker is one who moves from one place to another in search of employment. The migration may be temporary, seasonal or permanent. The right to livelihood is contained in Right to life under Article 21 of the Indian Constitution. In search of livelihood, the workers travel from one state to another or even one country to another. The study in the present paper is limiting the study of migrant workers within the country. In the process of migration, many issues come into the picture, like safety and security of workers, difficulty in adjusting to different cultural diversity, linguistic issues, exclusion from social entitlement, social and political exclusion, housing facility and exploitation, etc. These migrant workers come under the unorganised sector. There are various social security schemes that Central and State Government have launched for workers, but there is a lack of implementation in different establishments due to different reasons. The primary problem migrant workers face is not getting benefit of certain social security schemes due to not registering when they migrate to other states for employment. The main issue behind the same is the lack of literacy. As the country is facing the corona crisis, therefore the conditions of migrant workers have more deteriorated. They are one of the most affected communities. Though the government, social workers, and NGO's are trying to help them out but still the problem is ongoing. In this study, an attempt has been made to highlight the issues and challenges of migrant workers in the covid era with measures like employing in their state, setting up various establishments in their home state etc, to overcome the same.

Keywords: Migrant workers, livelihood, unorganised sector, social security schemes, social and political exclusion, linguistic.

¹ Research Scholar at Maharashtra National Law University Nagpur and Assistant Professor at Vivekananda Institute of Professional Studies-Technical Campus, Delhi reached @ richasrivastava.du@gmail.com

Introduction

The migrant workers are the major challenge before India, more so in the present time of covid-19 pandemic where the emphasis is on social distancing and least amount of travelling. The workers migrate from one place to another in search of livelihood, which has been an ongoing activity. Migration has its own push and pull factors. One of the main reasons for this migration is the lack of employment opportunities in their home state. Therefore, this migration is not a voluntary movement, but workers are compelled to move to places with different social and cultural values and diverse linguistic preferences. Different linguistic and cultural choices also add to the workers' problems to manage livelihood in another customary place. The migrant workers feel dejected and uncomfortable by not being able to follow their traditional way of life. Migration is the primary concern of developing nations like India, which increased further after globalisation. Indian workforce has 92 per cent of workers in the unorganised sector². A large proportion of the population in the unorganised sector makes the situation even more grave and dangerous as more unorganised sectors push more workers towards migration to seek better livelihood opportunities. The problems and hardship faced by the migrant workers became manifold during the challenging time of Covid pandemic and lockdown associated with it. This study discusses the legal and historical perspective with respect to migrant workers, present status, issues faced during covid lockdown and possible remedies.

Right of migrant workers with a focus on covid pandemic:

A legal perspective

The right to freedom provided in the constitution under Article 19(1) (d)³ (e)⁴ and (g)⁵ are the source leading to a nation which does not discriminate citizens based on their place of birth and living and also allows the citizenry to choose locations which offer better opportunities and living condition to settle. Thereby these are instrumental in maintaining undivided citizenry throughout the country by ensuring socio-cultural and economic integration of the country. The socio-cultural integration happens as with the movement of citizens in search of employment and better livelihood opportunities they also inherently disburse their cultural and traditional practices. The economic integration has also resulted with such movement by contributing towards free

² <https://www.ilo.org/legacy/english/protection/travail/pdf/rdwpaper22a.pdf> (last accessed on 20th March 2023)

³ "To move freely throughout the territory of India"

⁴ "Every citizen of India has the right "to reside and settle in any part of the territory of India."

⁵ "To practise any profession, or to carry on any occupation, trade or business."

movement of goods and services as well as labour thereby ultimately reaching to the idea of the single market. The socio-cultural and economic integration has formulated the modern idea of India.

The constitution in spirit has provided for the socio-cultural and economic integration of the country through Articles 19(1)(d)⁶(e)⁷ and (g)⁸ with reasonable restrictions provided in clauses (5)⁹ and (6)¹⁰ of Article 19. However, practically the movement of laborer is not so uniform, simple, and fluid. This could very well be seen in the social and economic conditions of migrant laborers. Moreover, the distinction between laborer as local and migrant itself creates the dichotomy. The prefix 'migrant' to worker devoid workers from many basic facilities and hinders the enjoyment of rights provided under Article 19(1)(d),(e) and (g) thereby creating an artificial ground of restriction outside constitution. This creates an atmosphere where the rights provided under constitution are not guaranteed and are conditionally available to the workers. To better understand its context and evolution, it would be necessary to dig in past and see how these rights and restrictions have evolved in history in political and judicial arenas.

During pre-independence, a large population was residing in the princely states. These princely states were sovereign machineries which survived under the overall guidance and limitations of the paramount power. These states worked in the interest of themselves, their people and the regions under their control. To maintain their profitable position and supremacy, these states most often than always imposed restrictions on the movement of goods, services and laborer's thereby raising trade barriers. This is idea of trade barriers and restrictions was rejected in independent India. In this regards, Dr. Ambedkar¹¹ observed that,

“The reason for bringing out a separate fundamental right to freedom of trade was to establish the free flow of trade to everyone within the State as well as across the States. But in view of the number of considerations, including the need to regulate trade and commerce.”

⁶ Supra note 4

⁷ Supra note 5

⁸ Supra note 6

⁹ *“Nothing in sub clauses (d) and (e) of the said clause shall affect the operation of any existing law in so far as it imposes or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.”*

¹⁰ *“Nothing in sub clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub clause.”*

¹¹ <https://www.sconline.com/blog/post/2020/05/28/does-the-constitution-approve-the-labeling-of-migrant-workers/> (last accessed on 20th February 2023,3pm)

This led to the formulation of Article 19 (1)(g) in the constitution of India.

The apprehension regarding the enforcement of freedom of trade didn't die down even after the inclusion of Article 19 in the constitution of India. Several noted politicians and statesmen viewed their concern regarding the effective enforcement of these rights in practical terms. Noted politician, freedom fighter, and the then chief minister of the State of Karnataka raised concerns regarding the right to settle, acquire property and carry on trade. He was of the opinion that this provision may act in a partisan manner to serve the interest and rights of people within their respective areas. These apprehensions were nullified and addressed with the details on the reasonable restrictions against the enjoyment of these rights in the constituent assembly¹². T.T. Krishnamachari, noted politician and Union Finance Minister in Independent India while articulating on the scope of the liberty guaranteed under Article 13 of the Draft Constitution (now Article 19), said that *'It is only dependent upon the leaders we elect to abridge rights which are provided here to become a dead letter, and that is in the lap of the gods. For the time being, we have done the very best possible, which human ingenuity can devise.'*¹³

The various discussions in the constituent assembly paved the way for the different labour legislations in India. They provided the spirit on which independent India's labour laws are to be built. The labour law deals with the workers of the unorganized sector. The significant workforces are in the informal sector. Therefore, Labour Law plays a vital role in the life of workers. Still a lot many years of struggle gave the way to various legislations for the benefit of workers. Migrant Labourers are covered by laws and policies, but some preclude the temporary migrants and unorganised sector. The following section discusses the legal provisions with respect to migrant workers, Covid-19 pandemic and lockdown associated with it.

One of the most important acts in this regard is, "Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 (ISMWA)". The ISMWA act provides for the displacement allowance for the workers. It include the provisions for the journey allowance and timely and regular payment of minimum wages. The conducive working environment along with protective gears and clothes on the one hand and hygienic accommodation with cost free medical

¹² [https://main.sci.gov.in/pdf/AnnualReports/The%20Constitution%20at%2067.pdf\(last](https://main.sci.gov.in/pdf/AnnualReports/The%20Constitution%20at%2067.pdf(last) accessed on 15th January 2023, 4 pm)

¹³ Constituent Assembly debates Volume 7, 2nd Dec 194

facilities are some of the important provisions of ISMWA act¹⁴.

This act also ensures the timely payment of wages in case the employment is terminated due to the closure of the establishment. This act provides that the wages earned by workers shall be paid to the worker before the expiry of the second day if the services of workers are terminated due to the closure of the workplace due to any reason other than weekly or other designated holiday. Practically, however, this important provision is seen to have not been implemented. Many labor right organizations have also indicated that the migrants are financially vulnerable and prone to bonded labor due to the absence of proper social security support mechanism accessibility to them in both the rural and urban areas.¹⁵.

There are similarly large number of labour welfare acts enacted by different state governments. This makes the number of labour laws quite unmanageable, with lots of overlap in the jurisdiction and ambiguity in their enactment and implementation when combined with central legislation. There are too many laws that made it very difficult for ordinary men to understand and even more difficult for migrant workers. However, the main issue of the effectiveness of the implementation is still not fixed, and even after so many acts, the laborer in general and migrant laborer, in particular, are forced to live a life of despair¹⁶.

To push economic activities and generate more employment opportunities, various states have passed ordinances to dilute labor laws and relax labor norms. The idea propagated by states is that if the labor laws are eased then there will be more finances flowing into the state in form of investment. These investments which will be channeled in form of the different industrial establishments will generate employment and livelihood opportunities for the resident of that state. The reverse migration during covid-19 lockdown saw workers returning to their home states in large numbers and the requirement for jobs increased to very high levels. This increase in the number of unemployed was particularly more in the states which act as a source of migration during normal times. Therefore, the states like Uttar Pradesh, Madhya Pradesh, etc. were reeling under pressure from this increased unemployed worker situation forcing the government to take these desperate steps of diluting the about laws and thereby increasing employment opportunities

¹⁴ <https://clc.gov.in/clc/acts-rules/inter-state-migrant-workmen> (last accessed on 20th January 2023, 9:00pm)

¹⁵ https://www.ilo.org/global/topics/forced-labour/news/WCMS_097002/lang--en/index.htm (last accessed on 20th January 2023, 10:00 pm)

¹⁶ <https://labour.gov.in/labour-welfare/> (last accessed on 21st January 2023,9:00 am)

for the workers. Covid-19 lockdown forced the shutting down of many industrial units and this caused losses for the employers and owners. Therefore, it was also considered by the states to support the revenue growth of these industries, and the relaxing of labor laws was opted as one of the most convenient and effective mechanisms for this. But it came with a parcel of issues related to the social security deficit due to relaxation of labour laws and would also slow down the process of formalization of work force. The ordinance related to relaxation of labor laws has opened new avenues for the exploitation of workers with risk of an inhuman work environment, unsustainable wage rates, and no grievance redressal mechanisms. It would become practically effortless for the employer to fire his employees without any accountability.

To overcome the drawbacks of many acts in the realm of labour laws, the Parliament has come up with 4 Labour Codes after merging the few Acts in one code to have uniformity without diluting the essence and aims of the legislation. These codes have been notified but are still not in force. These codes are as follows:

- The Code on Wages, 2019.
- The Occupational Safety, Health and Working Conditions Code
- The Code on Social Security
- The Industrial Relations Code.

Judicial Precedents with respect to migrant workers in association with covid pandemic

IN MISERIES RE: PROBLEMS AND OF MIGRANT LABOURERS¹⁷

In view of the overwhelming difficulties faced by the labourers the bench of Justice Ashok Bhushan and Justice MR Shah, JJ directed to create common National Database for all the organised workers present in the different states throughout the country. This database could be utilised for extending various schemes of state and union governments for the welfare of labourers and will ensure that the organised workers can enjoy the benefits of government schemes.

“...for accessing of any benefit percolating from any scheme framed by the Centre or the States for the benefit of unorganised workers or migrant workers, registration of workers is essential,

¹⁷ IN RE: PROBLEMS AND MISERIES OF MIGRANT LABOURERS [2021 SCC Online SC 398](#)

*which registration shall facilitate the unorganised workers to assess the scheme and reap the benefit.*¹⁸

As of present day, there is no uniform process of registration across the country, The different acts envisage different process and classes of registration of workers. For instance, the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act 1996 allows for the registration of construction workers. The status of registration under Unorganised Social Security Act 2008 is not yet confirmed by the states and none of the states have informed about the completion of this registration process. All the states have framed the rules under this state but the situation of registration is still unsatisfactory and at different levels across different states of the country¹⁹. To overcome this difficulty of non-uniformity, the Union government has come up with the Code of Social Security Act, 2020 (Act No.36 of 2020 published in the Gazette of India on 29.09.2020). By virtue of Section 164 of this act, the Unorganised Social Security Act 2008 and the building and other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996 stands repealed. The Section 112 of this Code of Social Security Act 2020, also provides for the registration of unorganised workers, gig workers and platform workers. To expedite this registration process, the court has also taken this matter into its cognizance and has asked for the regular status updates with the steps taken by the government machinery to complete the registration process at the earliest²⁰.

The court has also instructed the Central and State Governments to complete the registration process at the earliest to enable the unorganised workers to reap the benefits of different social security schemes. This registration is very important as without the systematic identification of the unorganised workers, it is very inefficient to deliver the benefits to them. After proper identification of the unorganised workers, the next important aspect is to ensure that the benefits reach the desired beneficiary²¹. For this purpose, it is essential to have an efficient monitoring mechanism to supervise the delivery of social security and welfare scheme benefits to unorganised workers who are recognised and identified.

¹⁸ <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1776993> (last accessed on 25th March 2023, 9.30pm)

¹⁹ <https://www.ilo.org/dyn/travail/docs/686/UnorganisedWorkersSocialSecurityAct2008.pdf> (last accessed on 25th March 2023, 9.50pm)

²⁰ https://labour.gov.in/sites/default/files/SS_Code_Gazette.pdf (last accessed on 28th March 2023, 9.55pm)

²¹ <https://www.livelaw.in/top-stories/supreme-court-registration-unorganized-workers-early-174628> (last accessed on 28th March 2023, 10.55pm)

The recent pandemic of COVID-19 created many more hardship for the migrant workers. They got stranded outside their natural place of living and were without any support and livelihood opportunities. In this regard, the court took proactive stand by asking the states to inform the courts through affidavits regarding the measures to ensure the delivery of ration to migrant workers without ration cards. Court also directed the state to ensure the delivery of dry ration to the migrant workers throughout the country by utilising any scheme including Atma Nirbhar Bharat under their disposal.

“Whether the Atma Nirbhar Bharat Scheme of the Union of India, which was implemented for giving dry rations to migrant workers in May and June, 2020 is to be utilised or some other scheme has to be utilised is a matter for States to take a decision but the dry ration has to be distributed to the migrant workers throughout the country by the States.”²²

Court also fixed the responsibility on States to provide community kitchen to the stranded labourers. Court was of the view that the workers have lost their employment but they need two meals a day to sustain. Therefore, government shall provide community kitchen to the stranded workers throughout the country and inform the people so that they can benefit from these welfare measures.

“There shall be awareness and publicity with respect to the various schemes notified by Government including the places of community kitchens so that such needy persons may, in fact, take benefits.”

However, with respect to the direct cash benefit transfers to unorganised workers, courts did not issue any directions and stated that it is the policy matter/scheme of states and needs to be formulated by respective governments²³.

“... cash transfer is a matter of policy and schemes drafted by each State and Union Territory and direction for cash transfer can't be issued by this Court to any category of persons unless they are covered by any scheme declared by the State and Union Territory.”²⁴

²² <https://www.aninews.in/news/national/general-news/sc-passes-slew-of-directions-on-plights-of-migrant-labourers-amid-covid-1920210524231356/> (last accessed on 30th March 2023, 10.55am)

²³ Supra note 17

²⁴ https://main.sci.gov.in/supremecourt/2020/11706/11706_2020_36_1501_28166_Judgement_29-Jun-2021.pdf (last accessed on 30th March 2023, 10.55am)

The constitution of India through the Directive Principles of State Policy (DPSP) also persuades states to work for the betterment and progress of workers of our country without any qualification such as local or migrant workers. The main aim of DPSP is to guide state to provide good life to the citizens by creating conducive social and economic conditions. In this regard, states legislature and executive are expected to work towards creating environment of socio-economic democracy in the country. In this spirit, Supreme court validated the law on minimum wages by stating that sec 3(3)(a) of Minimum Wages Act which provides for location and area based different minimum wages is not violative of Article 14. The Supreme Court stated that the constitution provides for reasonable restrictions on minimum wages by referring to the provision on 'living wage' under the DPSP and it also justified the limitations on the right to carry on trade under Article 19(1)(g). The Minimum Wages Act is a step towards the realization of a living wage which is aspired through DPSP²⁵.

It is also worth mentioning here that the provisions with respect to the enjoyment of fundamental rights do not condition them on the domicile. Similarly, the three provisions/directive related to the workers under DPSP also is devoid of any restriction on the domicile/migrant nature of the workers. These DPSP under Article 39(e), Article 43 and Article 43-A of the constitution are as follows: -

1. It provides for healthy work environment with respect to gender, age along with coercion free working conditions²⁶.
2. It provides for living wages, decent environment to work and decent standard of living.²⁷
3. It provides for participation of workers in the management of the industries²⁸.

These directives have no indication with respect to the migrant status of the worker and neither they suggest any discrimination between the local and migrant workers. Therefore, these cannot be utilized to implement conditional schemes based on domicile or regional affiliations of the workers. These directives accompanied by right to social security as provided in Article 41 of the constitution opens up a new ray of hope for the underprivileged citizenry to get economic democracy in addition to social-cultural democracy. Therefore, in a nutshell the schemes of Part

²⁵ Chandra Bhavan Boarding and Lodging, Bangalore v. State of Mysore 1969 (3) SCC 84

²⁶ Constitution of India Article 39 (e)

²⁷ Constitution of India Article 43

²⁸ Constitution of India Article 43-A

IV don't provide for any entitlement based upon the place of domicile of workers neither it gives weightage to the regional affiliations.

The government to further streamline the management of interstate migration of workers implemented The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979. This act defined the interstate migrant workman as below:-

“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. This act was well-intentioned and implemented to provide much-needed help and support to migrant workers by making registration of organisations dealing with migrant workers necessary for effective monitoring of the implementation of labour and social security laws²⁹”.

This act was enacted to protect the rights of the workers whose services were used outside their native state in India. However, this worked only for the interstate registered migration of workers and did not cover the entire spectrum of migrant workers.

Role of executive & its policies in context of migrant workers

During various times and over the years, the government has launched various social security schemes to support migrant workers. A few of them are mentioned below³⁰: -

- Pradhan Mantri Jan Dhan Yojana (PMJDY)
- Pradhan Mantri Jeevan Jyoti Bima Yojana (PMJJBY)
- Pradhan Mantri Suraksha Bima Yojana (PMSBY)
- Atal Pension Yojana (APY)
- Sukanya Samridhi Yojana
- National Pension Scheme

There are several legislations in labour law related to social security schemes and various welfare schemes. The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979 is a landmark act to support and facilitate migrant workers. This act was

²⁹ <https://clc.gov.in/clc/acts-rules/inter-state-migrant-workmen> (last accessed on 30th Sep 2023, 10.55am)

³⁰ <https://labour.gov.in/sites/default/files/PIB1797243.pdf> (last accessed on 31th March 2023, 11.55am)

enacted to regulate the employment of inter-State migrant workers and provide for their conditions of service and matters connected.

The Code on Social Security, 2019, was introduced in Lok Sabha by the Minister of State for Labour and Employment, Mr Santosh Kumar Gangwar, on December 11, 2019. It aims to replace nine social security laws, including the Employees' Provident Fund Act, 1952, the Maternity Benefit Act, 1961, and the Unorganised Workers' Social Security Act, 2008. Social security refers to measures to ensure access to health care and income security to workers. Under this proposed code, the central government may notify various social security schemes to benefit workers³¹. These include an Employees' Provident Fund (EPF) Scheme, an Employees' Pension Scheme (EPS), and an Employees' Deposit Linked Insurance (EDLI) Scheme. These may provide for a provident fund, a pension fund, and an insurance scheme, respectively. The government may also notify: (i) an Employees' State Insurance (ESI) Scheme to provide sickness, maternity, and other benefits, (ii) gratuity to workers on completing five years of employment (or lesser than five years in certain cases such as death), (iii) maternity benefits to women employees, (iv) cess for the welfare of building and construction workers, and (v) compensation to employees and their dependents in the case of occupational injury or disease³².

Apart from the above mentioned historical policies, to counter the covid pandemic hardship the central Government passed on the benefits to the workers through Direct benefit transfers under Atmanirbhar Bharat Rozgar Yojana (ABRY), Pradhan Mantri Garib Kalyan Yojana (PMGKY), Pradhan Mantri Garib Kalyan Rojgar Abhiyan (PMGKRA), working capital loan to street vendors under PMSVA Nidhi Scheme and special training programme under Pradhan Mantri Kaushal Vikas Yojana in the selected districts having high concentration of returnee migrant workers.

The challenges faced by the migrant workers have been multi-dimensional. The code on Social Security 2019 hasn't come into effect till now, and in this scenario, the Covid-19 pandemic has thrown the economic situation into haywire. Notably, for the migrant workers, the situation has become more complicated and pathetic. Covid-19 is also the major reason for delayed progress in enacting the labour code. On analyzing the issues and challenges of the migrant worker, it is

³¹ <https://prsindia.org/billtrack/the-code-on-social-security-2019> (last accessed on 20th March 2023, 9 am)

³² https://www.prsindia.org/sites/default/files/bill_files/Code%20on%20Social%20Security%2C%202019.pdf (last accessed on 20th March 2023,10.30am)

seen that there is a plethora of legislation to support migrant workers. Still, there are severe lacunae in its implementation. Therefore, despite the noble aims, the implementation has been lagging, causing most of the hardship for the migrant workers³³.

Other than the national level legislation for workers, there have been significant efforts from international organisations to improve the situation of workers. In this field, the most important role has been played by International Organization which has been at the forefront to recommend and implement international standards across the countries.

Role of International Labour Organization

The International Labour Organization (ILO) had consistently played a significant role in promoting International Labour Standards. The ILO has formulated international labour standards at various conferences. ILO has promoted several labour standards such as fair labour standards, minimum labour standards, basic or core labour standards, etc. have been encouraged by ILO. There are several factors which have been attributed to non-observance of labour standards such as unfair trade and labour practice, state of under-development; absence of work place co-operation³⁴ etc. With a view to improve labour conditions through the forum of tripartite committees, the international labour organization passed the convention in June 1976. Since its inception, the international labour organization has adopted 181 legally binding conventions and 188 recommendations to improve labour standards across the globe. There are eight core labour standards across four categories from ILO, which are as follows:-

- i) Right to freedom of association and collective bargaining.
- ii) Elimination of forced labour.
- iii) Elimination of child labour.
- iv) Elimination of discrimination in the matter of occupation and wages.

Seven crucial conventions are conventions No's 29, 87, 98, 100, 105, 111, and 138³⁵. These Conventions are also known as social clause, labour clause, social concerns etc. These are the

³³ https://www.ilo.org/global/topics/labour-migration/publications/WCMS_826684/lang--en/index.htm(last accessed on 20th March 2023,11.30am)

³⁴ Mishra Lakshmidhar (2001), Can Globalization and Labour Rights co-exist? The Indian Journal of Labour Economics , Vol.44 No.1 January -March.

³⁵ Mitra Partha Pratim and Kauslal Agrim (1998), International Labour Standards in India some key issues. The Indian Journal of Labour Economics , Vol.41 No.4, 1998.

instruments in the hands of ILO to improve the living and working conditions of the working class in the third world³⁶.

The ILO provides tripartite arrangements between employers, workers, and the state to legislate and execute the international labour standards in member countries. The international labour standards protect workers in various sectors. They include freedom of association, equal pay for equal work, safe working conditions, abolition of forced labour and sex-based discrimination, employment protection, provision of social security, protection of migrant workers, elimination of sexual harassment of women workers and others.

With respect to covid pandemic, ILO has been issuing the update on world of work which gives the overall scenario of work hours and covid pandemic impact on it. As per the "ILO Monitor: COVID-19 and the world of work -Seventh edition" report, south Asia mainly driven by India witnessed a loss of 34.5 per cent in the work hours of second quarter, and of 9.9 per cent in the in the work hours of third quarter of 2020. This gets correlated with the lack of job opportunities particularly for the unorganized sector and migrant workers and provides a overview of the situation which is marred by lack of job opportunities. India being a signatory to ILO, is committed towards the objective of ILO and, in consonance with the same various labour legislation has been framed. ILO has been providing the frequent updates on the labour situation across the globe and India for effective policy interventions to reduce the hardship faced by the laborer.

The situation of Migrant workers with special reference to Covid-19 pandemic era

The sorry figure of migrant workers has not abated even after multiple interventions by different national and international organisations. They are facing a multitude of problems ranging from social, cultural, livelihood as well as exploitation. The distressful figure of migrant workers who are working hard for nation-building is totally unjustifiable. Even worse, the migrant workers are not even treated with dignity in their own country. They are treated like second-grade citizens in their own country and are made fun of due to their poor economic and social status. Migration is one of the leading causes of increasing nuclear families where children grow up without a wider

³⁶ Nath, G.B. (1998), Linking International Labour Standards with trade implications for India, The Indian Journal of Labour Economics, Vol. 41, No.4. •

family circle.

The destination environment is very new to the migrant workers and they are largely less familiar with it. This new environment is a temporary place for them to accommodate which invites different forms of emotional, social, psychological, and physiological challenges for them. On one hand, they face trauma and negligence from the local community of the temporary place of work and on the other hand, they are constantly worried about the safety and well-being of their family members and kin in their native place. They are under constant pressure to timely send money back home to their native places as their family largely are dependent entirely or partially on this financial support. All these create a number of psychological as well as physiological disorders in migrant workers.

The migrant labourers working in unorganised sectors and living in unhygienic and polluted environments are vulnerable to health problems and sickness. Migrant Labourers employed in construction sites, metro projects, quarries, mines and highway projects live in a hazardous environment. They are vulnerable to air and water pollution leading to kidney and lung disorders. Most live-in open spaces or makeshift shelters despite the Contract Labour Act which stipulates that the contractor or employer should provide suitable accommodation³⁷.

The migrant workers, on the one hand, go away from their homes, and above that, poverty makes them unable to live a normal and healthy life. Children growing up in poverty have no access to proper nutrition, education or health. Migration increased the slum areas in cities, increasing many problems such as unhygienic conditions, crime, pollution, etc. With factories and workplaces shut down due to the lockdown imposed in the country, millions of migrant workers had to deal with the loss of income, food shortages and uncertainty about their future.

The covid-19 outbreak saw the infections rising at a very fast pace and to cope with this situation, the government imposed a number of restrictions on different activities and the most widely used was the social distancing norms. This was very much required to stop the spread of infectious diseases. But these restrictions created new problems and challenges for the migrant workers. There was a drought of work opportunities for which the workers migrated and this forced the

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[https://www.worldwidejournals.com/indian-journal-of-applied-research-\(IJAR\)/special_issues_pdf/April_2016_1461059249_24.pdf](https://www.worldwidejournals.com/indian-journal-of-applied-research-(IJAR)/special_issues_pdf/April_2016_1461059249_24.pdf) (last accessed on 15th Sep 2023, 9 am)

reverse migration to their native places. Due to social distancing norms, much of the public transport facility was operated in a restricted fashion and this led to very limited ways for the migrant workers to reach their native places. This forced workers to return to their native places walking and taking all possible mediums of transport. Their problems got further amplified due to the sealing of state and district borders and they found themselves stuck at the borders. These are the most marginalized sections of society who are dependent on daily wages for their living. Many of the laborers got stuck at the shelter homes and quarantine centres far away from their natural habitat, causing psychological distress and hardships. As they are mostly the daily wage earners, they didn't have enough financial resources to sustain themselves and whatever little money they had all got spent while going back home. They also face adverse reactions from the local communities and need support and strong social protection³⁸.

The extent of hardship faced by the labourers can be understood by the fact that as per census 2011 there were 450 million internal migrants in India which was more than 30% of the total population of the country. Census 2011 data show that, in India, a large proportion of migration of the workers is within the district and to the other districts within the state. Following the census trends, few studies have estimated more than approx. 600 million internal migrants in 2020. Out of these 600 million, approximately one third migration happen to be inter-state and inter-district i.e., approximately 200 million is estimated migrant people in the country in 2020 outside their natural place of living. It is also estimated that out of these 200 million roughly around two-thirds of them are migrant workers, which constitute 140 million people. As per census 2011, highest out migration is reported from states like Uttar Pradesh (23.0%), Bihar (14.1%), Rajasthan (7.0%), Madhya Pradesh (5.4%), Maharashtra (5.3%), Karnataka (4.7%). Approximately one-fourth of the total migration is to the other state. The migration of workers is more in urban areas due to the availability of educational and employment opportunities. This made the situation more difficult as the urban areas mostly went into strict lockdown forcing lot of migrant workers to return to their residences. There problem gets amplified due to the fact that a significant number of migrant workers are temporary/seasonal workers employed in informal sector and belongs to lowest income quintile groups far away from any kind of social security net. Also, it is important to remember that as per Census 2011 women outnumber the men migrants mostly attributed to marriage. However, this largely mis-represent the women's employment status post marriage.

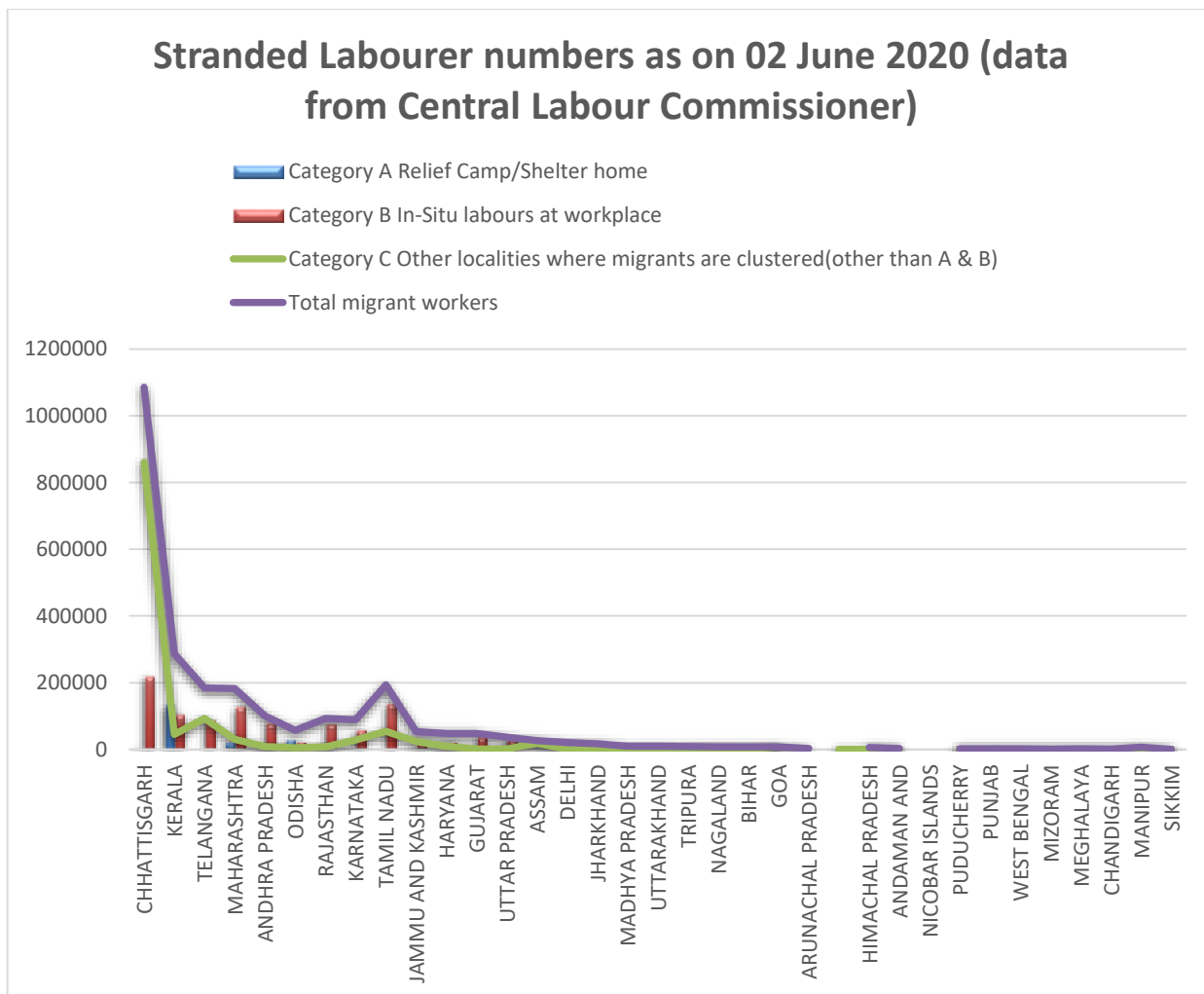
³⁸https://www.researchgate.net/publication/344535802_ECONOMIC_IMPACT_OF_NOVEL_CORONA_VIRUS_DISEASE_COVID-19_ON_MIGRANT_WORKERS_RURAL (last accessed on 15th Sep 2023, 9 am)

The situation of women was also very distressful in covid pandemic era.

One of the biggest challenges during Covid-19 was the return migration due to lack of livelihood opportunities in the host states/districts forced as a result of lockdown. Media coverage showed large number of men and women walking for hundreds of kilometers to their homes due to harsh effects of lockdown due to COVID-19 pandemic. News agencies reported death of some women on the way and also some instances of women giving birth on road and continuing their journey with new born. There was lot of hardship faced by them. The situation was so grave that lead to the incident like train running and killing 16 migrant laborer's sleeping on the railway track after getting too tired of walking. This migration also brought great losses for children whereby they lost their educational opportunities and this also made them more prone to be thrown into child labour.

During covid-19 lockdown, migrant workers ran out of money for sustenance. They started moving back to their permanent hometowns and got stranded due to strict lockdown. They were out of water, food and basic hygiene facilities and faced lot of existential problems. The exact number of migrants who have got stranded during the pandemic is not known but based on an initial data released by the central chief labour commissioner on June 02, 2020 about 26 lakh migrant workers were stranded across the country. Out of which only 10% were in the relief camps/shelter homes, 43% were in situ workplaces and 46% in another cluster. The details about them are presented in Figure 1. This shows that the laborer in the relief camps/shelter homes were very less and which could be non-accessibility of these facilities to the returning migrant laborer³⁹.

³⁹ <https://www.businesstoday.in/latest/economy-politics/story/23-percent-migrant-workers-returned-home-walking-during-coronavirus-lockdown-269815-2020-08-> (last accessed on 18th March 2023,10 am)



In a reply to Lok Sabha question (**Lok Sabha Unstarred Question No. 1056 for 08th February 2021**) the Ministry of labour informed that 1.23 crore migrant workers returned to their home during the Covid-19 lockdown (Figure 2 & Table 1). The magnitude of the problem can be known from the fact that the number of return migrants during June 2020 to February 2021 increased from approx. 26 Lakh to 1.23 crores. Though no actual data is present for the total number of stranded migrant laborer the inference from June 2020 and February 2021 presents a gruesome picture of the hardship faced by the laborers. Out of these around 50 per cent were from three States — Uttar Pradesh, Bihar and West Bengal⁴⁰. These states are among the states from where the maximum out-migration takes place. If Rajasthan and Odisha are added then these 5 states recorded around 67 percent of migrant workers returning home. Interestingly Gujarat is the only State which has not reported return of any migrant worker. The situation was more worrisome

⁴⁰<https://loksabha.nic.in/Questions/QResult15.aspx?qref=48709&lsno=17> last accessed on 18th March 2023,10:30am)

for the reason that some of these states diluted their labour laws through ordinances, which made these returning migrant laborer's more vulnerable and devoid of any social protection.

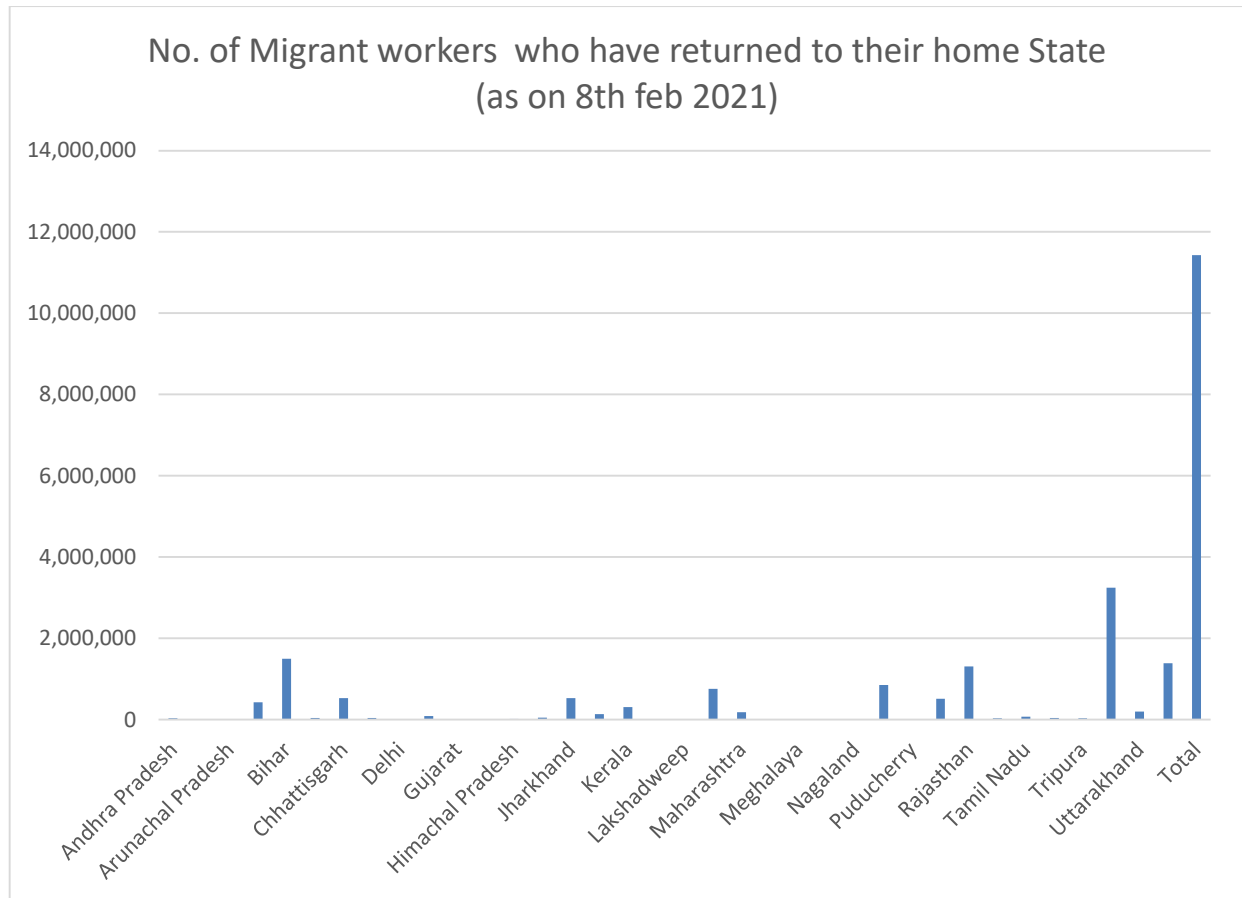


Table 1: Lok Sabha Unstarred Question No. 1056 for 08.02.2021 regarding Migrant Workers⁴¹

SL No	Name of the State	No. of Migrant workers belonging to this State who have returned to their home State
1	Andhra Pradesh	32,571
2	Andaman and Nicobar	4,960
3	Arunachal Pradesh	2,871
4	Assam	4,26,441
5	Bihar	15,00,612
6	Chandigarh	39230

⁴¹ <https://pqars.nic.in/annex/256/AU1056.pdf> (last accessed on 20th Sep 2023, 11 am)

7	Chhattisgarh	526900
8	Dadra & Nagar Haveli and Daman & Diu	43,747
9	Delhi	2,047
10	Goa	85620
11	Gujarat	0
12	Haryana	1,289
13	Himachal Pradesh	18,652
14	Jammu & Kashmir	48,780
15	Jharkhand	5,30,047
16	Karnataka	1,34,438
17	Kerala	3,11,124
18	Ladakh	50
19	Lakshadweep	456
20	Madhya Pradesh	7,53,581
21	Maharashtra	1,82,990
22	Manipur	12,338
23	Meghalaya	4,266
24	Mizoram	8446
25	Nagaland	11,750
26	Odisha	853,777
27	Puducherry	1,694
28	Punjab	5,15,642
29	Rajasthan	13,08,130
30	Sikkim	33,015
31	Tamil Nadu	72,145
32	Telangana	37,050
33	Tripura	34,247
34	Uttar Pradesh	32,49,638
35	Uttarakhand	1,97,128
36	West Bengal	13,84,693
	Total	1,14,30,968

It can be inferred by the above data that the situation of migrant workers has deteriorated further due to covid. The new challenges now are with respect to providing the adequate employment opportunities to the workers along with some kind of social security. It is also pertinent to mention that the workers have been going through a lot of mental harassment in all this process so it is also required to provide the adequate psychological and mental illness preventive care for their betterment along with the nutritional and sustenance support.

Conclusion and Suggestions:

The crisis of migrant workers is not new, but the pandemic has aggravated their difficulties. They are the most affected community in the covid era. There has been a relaxation of labour laws in a few states, which will again be a rider to exploit the laborer. The covid crisis has brought the state into an emergency like situation because of which it has become difficult for a state to continue with the strict labour laws. But we need to take a balanced view so that the migrant workers do not bear the brunt of a pandemic from all corners. The migrant workers who have put in a lot of effort in nation-building have never been rewarded. They are affected very badly in the corona crisis that now they fear returning to their workplace. It is the state's responsibility to help them in this need of the hour⁴².

As an immediate response to the covid pandemic, measures to be taken should include ensuring community shelters and community kitchens, making other relief material available, emphasizing the need for social distancing and safe hygiene practices, identification of suspected cases of infection and adherence to protocols for management of such cases, putting up mechanisms to enable them to reach to the family members through telephone, video calls etc. and ensuring their physical safety.

Apart from these following suggestions are proposed with respect to labor welfare: -

- 1) The most important lacunae faced by the government machinery, NGOs & stake holders along with the research community was the lack of availability of data to estimate the real extent of the problems at different levels. The aim should be to have the availability of some kind of mechanism to have the data of migrants workers on regular and real time basis to devise and target the government schemes and plans appropriately. The All-India

⁴² <https://thewire.in/economy/covid-19-pandemic-indian-labour> (last accessed on 25th March 2023, 11.20 am)

Survey on Migrant Workers which has already overrun its timeline is long due from Ministry of Labour and Employment. Similarly, the e-shram registration of unorganized workers⁴³ (under Ministry of labour and Employment) is also required to be completed on priority to help the policy planners and executers to fine tune and target their interventions for widespread benefit of migrant workers.

- 2) The state should come forward and provide employment in the home state. There must be the establishment of various industries and factories in each state so that the migrant workers can get job opportunities in their own states. The over-concentration of mega cities as a source of employment needs to be diversified by establishing and promoting industries in the satellite towns by providing adequate infrastructure.
- 3) The migrant workers should be treated with dignity as provided in our constitution and recognize specific and varied needs for each person/family. There is no generalization. The taboo of migrants should be removed. The NGO's, social sector organizations and all stake holders should be brought together for the support of laborer. laborers should be made aware of their rights and various government scheme including skill development, which would help them to secure jobs and live a life of dignity. The workers should be assured that local administration, government bodies, charitable institutions and people at large are there and willing to extend them a helping hand when required. The workers need a sense of security and respect, their importance in nation building needs to be highlighted and any support from the government shouldn't have a reflection of mercy but should be in the spirit of winning over the situation together⁴⁴.

⁴³ <https://register.eshram.gov.in/#/user/self> (last accessed on 25th Sep 2023, 11.30 am)

⁴⁴ <https://www.ilo.org/global/topics/labour-migration/policy-areas/social-protection/lang--en/index.htm> (last accessed on 27th Sep 2023, 12.30 pm)