

Impact of COVID- 19 on Migrant Workers in India

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Abstract

The impact of Covid 19 on the migrant workers was disproportionately severe. They lost their means of livelihood and mass decided it would be better to return home, to their State of origin. They claimed ‘it was better to die at home of the virus, rather than on the road of starvation.’ The exodus¹ was of a magnitude perhaps only matched by that at partition.² No transport, no means of sustenance, initial apathy by the government and Courts led to loss of health and subsequent death. Much focus has been on the right to livelihood and the right to movement, but it is to be noted that the most important fundamental right is the right to life. Life does not mean a mere animal existence but an enjoyment of all the faculties that life has to offer. A healthy mind and body is one of the most important prerequisites to fullest enjoyment of life. The fundamental rights and directive principles enshrined in the Constitution lay emphasis on the right to health of the worker. The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 states the responsibilities of the Contractor, Employer and Government, it lays down the requirement of special allowances for the migrant worker. The honorable Supreme Court has given detailed directions while interpreting the right to health under Art 21 of the Constitution. While there is a robust legal frame work in place, still the various reports show that health is one of the most undervalued rights, specially, when it comes to the migrant worker, it is often abused due to poverty and ignorance. The article focuses on the fundamental right to health of the migrant worker. It traces the constitutional and legislative framework, analyses the precedents and makes suggestions.

Key words: Covid 19- Migrant worker- Fundamental rights – Right to life - Right to health

Introduction

The Covid 19 pandemic is wreaking havoc in the whole world. The virulent nature of the virus and the extreme exponential spread of the contagion led to large scale lockdown not only in India but in the whole world.³ The lockdown caused a lot of hardships to individuals especially and disproportionately to the most vulnerable. However the full impact of the tragedy that it unwittingly caused was felt in some measure with its relaxation.⁴ ‘India lost its soul and moral compass during this Corona crisis.’⁵ The stress and uncertainty is definitely felt more by daily wage earners, specially when they have migrated away from their hometowns⁶. After the relaxation of this lockdown, the entire population of

¹ Upendra Baxi ‘Exodus Constitutionalism Mass Migration in Covid Lockdown Times’ available at <<https://www.theindiaforum.in/article/exodus-constitutionalism>> last visited on 14 July 2020

² Nishitha Mandava ‘One was religious the other was economic: Migrations during partition and lockdown’ Spilling the Chai, 28 May 2020 available at < <https://www.spillingthechai.org/post/one-was-religious-the-other-was-economic-migrations-during-partition-and-lockdown> > last visited on 29 June 2020

³ Van de Pas, R. (2020). Globalization Paradox and the Coronavirus pandemic (pp. 4-5, Rep.). Clingendael Institute. doi:10.2307/resrep24671.5

⁴ Javed, S., Kishwar, S., & Imran, W. (2020). (Rep.). Sustainable Development Policy Institute. doi:10.2307/resrep24354

⁵ Sujata Anandan India’s migrant workers will neither forget nor forgive the hunger and humiliation National Herald available at <https://www.nationalheraldindia.com/india/indias-migrant-workers-will-neither-forget-nor-forgive-the-hunger-and-humiliation> accessed on 22 June 2020

⁶ Raksha Ramaswamy COVID-19 exposing urban-rural healthcare disparities in India Thread available at <https://www.thehindu.com/thread/reflections/covid-19-exposing-urban-rural-healthcare-disparities-in-india/article31511629.ece> accessed on 22 June 2020

migrant workers decided to leave the State of work and return to the State of origin. This journey with no money, no food and mostly on foot led to unprecedented humanitarian crisis. Initially this was largely ignored by all except a few community conscious individuals, who tried to move the honorable Supreme Court by public interest litigations.⁷

The Honourable Supreme Court gave a variety of decisions vis a vis the migrant workers during the trying times. Ranging from “How Can We Stop Them From Walking?”⁸ to taking suo moto writ petitions⁹ and giving directions that the migrants not be prosecuted for violating lockdown rules,¹⁰ to giving detailed instructions for mitigating their hardships, including directing the States to make arrangements for their return home.¹¹ The honourable Prime Minister also launched employment schemes to avert this crisis, including, Garib Kalyan Rojgar Abhiyan offering employment to the workers who had returned home.¹² All this is ‘too little, too late.’

This paper details how the fundamental right to health has been negated due to non-implementation of the existing legal framework.

Literature review

The humanitarian crisis was worsened as the migrants were not in a position to take any health precautions including the much recommended one of social distancing.¹³

No government help, loss of employment and large scale panic due to the sudden onslaught of virus and consequent lockdown, left no choice of means except the long, long, walk home with no food, no masks, no water, absolutely nothing, which took a toll on the already weakened migrant worker.¹⁴ Many of the migrants fell ill and lost their lives during the exodus.¹⁵

The existing literature evidences the fact that during the pandemic the health of the migrant worker was affected and many times lives were also lost due to the same. This paper will correlate how the non observance of various legislations and precedents led to loss of health and subsequently life of the migrant workers.

The World Health Organization defines health as ‘a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity’¹⁶.

‘Migrant population, being a non-native population, is vulnerable and is exposed to many health problems. Poor working condition, poor living condition, lack of job security, meager salary, inability

⁷ Chander Uday Singh The Supreme Court Is in the Thrall of the Government available at <https://thewire.in/law/supreme-court-public-institution> accessed on 13 July 2020

⁸Radhika Roy How Can We Stop Them From Walking? : SC Refuses To Entertain Plea For Migrants On Road Live Law Available at <https://www.livelaw.in/top-stories/sc-refuses-to-entertain-plea-for-migrants-on-road-156803> accessed on 23 June 2020

⁹ In Re : Problems And Miseries Of Migrant Labourers Suo Motu Writ Petition (Civil) No(s). 6/2020

¹⁰ Krishnadas Rajagopal Coronavirus lockdown | Migrant workers should not be prosecuted, says Supreme Court The Hindu New Delhi, June 09, 2020 available at <https://www.thehindu.com/news/national/coronavirus-lockdown-migrant-workers-should-not-be-prosecuted-says-supreme-court/article31784841.ece> accessed on 18 June 2020

¹¹ Abraham Thomas Migrant workers must be sent home in 15 days, says Supreme Court Hindustan Times, New Delhi Jun 10, 2020 available at <https://www.hindustantimes.com/india-news/migrant-workers-must-be-sent-home-in-15-days-says-supreme-court/story-YQsRZroVlJFzUdw2GaTgCL.html> accessed on 18 June 2020

¹² Coronavirus lockdown | Centre lays out 50,000 crore public work scheme for migrant workers The Hindu available at <https://www.thehindu.com/news/national/centre-lays-out-50000-crore-public-work-scheme-for-migrant-workers/article31863944.ece> accessed on 22 June 2020

¹³ The Elusive Home Editorials Economic & Political Weekly Vol. 55, Issue No. 22, 30 May, 2020

¹⁴ Survival and Mobility in the Midst of a Pandemic Editorials Economic & Political Weekly Vol. 55, Issue No. 14, 04 Apr, 2020

¹⁵ Milind Ghatwai Migrant worker’s health deteriorates on way home, his friend sticks with him till end The Indian Express available at <https://indianexpress.com/article/india/migrant-workers-health-deteriorates-on-way-to-up-his-friend-sticks-with-him-till-end-6414289/> accessed on 22 June 2020

¹⁶ Preamble to the Constitution of WHO as adopted by the International Health Conference, New York, 19 June - 22 July 1946; signed on 22 July 1946 by the representatives of 61 States (Official Records of WHO, no. 2, p. 100) and entered into force on 7 April 1948.

to fulfill their own needs, exploitation by contractors are the other factors which also contribute to stress,¹⁷ which in turn leads to loss of immunity and health.

‘Poverty is a universal determinant of health among most migrant workers, strongly influencing their health status. It is associated with malnutrition, a poor overall health status, poor access to preventive and curative health services, and higher mortality and morbidity rates’¹⁸

The effects of the pandemic was first faced in the urban areas, where it rapidly spread, due to overcrowding and cramped living conditions, which made social distancing impossible, however, when the migrant workers returned home without any health checks in place the virus began its insidious spread to the rural areas too.¹⁹ For example in Uttar Pradesh many migrant workers are Covid positive, and are being tracked, checked for symptoms and treated.²⁰

Many migrant labourers also need psychological counseling after the traumatic events of the past few weeks, which is not being done.²¹ The children, one of the most vulnerable of the population and the future of the Country, are being largely ignored.²² While there is a focus on online education, their physical and mental wellbeing has not been taken into account. We must remember that they are cooped indoors, deprived of playing outdoors with their friends and relatives. It is often observed that children’s anxiety levels often mirror those of their parents. Malnutrition which was always a problem, is now compounded with the absence of work and wages, leading to stunted growth, loss of physical and mental health, and an early death.

Legal Framework: The Constitution of India

Constitutional provisions with regard to labour laws include fundamental rights such as right to life²³, prohibition of discrimination in employment,²⁴ freedom of speech, movement and residence through

¹⁷ Nitika, Lohiya, A., Nongkynrih, B., & Gupta, S. K. (2014). Migrants to urban India: need for public health action. *Indian journal of community medicine : official publication of Indian Association of Preventive & Social Medicine*, 39(2), 73–75. <https://doi.org/10.4103/0970-0218.132718>

¹⁸ Akinola AB, Krishna AK, Chetlapalli SK. Health equity for internal migrant labourers in India: an ethical perspective. *Indian J Med Ethics*. 2014;11(4):232-237. doi:10.20529/IJME.2014.058

¹⁹ Prashasti Singh New Covid-19 hotspots are emerging in rural villages across India *Hindustan Times* available at <https://www.hindustantimes.com/world-news/new-covid-19-hotspots-are-emerging-in-rural-villages-across-india/story-j1IbU0uaZeGvnF7rxj4X8M.html> accessed on 22 June 2020

²⁰ Sparshita Saxena ‘Over 11 lakh migrant workers tracked for Covid-19 in Uttar Pradesh; 1,027 found symptomatic’: Top health official *Hindustan Times* available at <https://www.hindustantimes.com/india-news/over-11-lakh-migrant-workers-tracked-for-covid-19-in-uttar-pradesh-1-027-found-symptomatic-top-health-official/story-JZnZFutMyJ2KVpAxe2CqGO.html> accessed on 22 June 2020

²¹ Gerard de Souza HT Salutes: Goa-based volunteer calls for need to check mental health issues in migrant labourers *Hindustan Times* available at <https://www.hindustantimes.com/india-news/ht-salutes-go-based-volunteer-calls-for-need-to-check-mental-health-issues-in-migrant-labourers/story-PIMakuE4LuFbPdb4hDYyHP.html> accessed on 22 June 2020

²² Divya Ravindranath and Umi Daniel Understanding the Implications of the COVID-19 Lockdown on Migrant Workers’ Children *The Wire* available at <https://thewire.in/rights/covid-19-lockdown-migrant-workers-children-implications> accessed on 22 June 2020

²³ Art 21. Protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law

²⁴ Art. 16. Equality of opportunity in matters of public employment

(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect or, any employment or office under the State

out India, association and assembly and of profession,²⁵ prohibition of forced labour²⁶ and prohibition of child labour²⁷.

The Directive Principles call upon the State to provide for adequate means of livelihood and ensure the health of the worker.²⁸,public assistance in times of unemployment and sickness²⁹,just and humane conditions of work and maternity relief³⁰,living wage³¹,participatory management,³²

The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979

²⁵ Art 19. Protection of certain rights regarding freedom of speech etc

(1) All citizens shall have the right

(a) to freedom of speech and expression;

(b) to assemble peaceably and without arms;

(c) to form associations or unions;

(d) to move freely throughout the territory of India;

(e) to reside and settle in any part of the territory of India; and

(f) omitted

(g) to practise any profession, or to carry on any occupation, trade or business

²⁶ Art 23. Prohibition of traffic in human beings and forced labour

(1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law

(2) Nothing in this article shall prevent the State from imposing compulsory service for public purpose, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them

²⁷ Art 24. Prohibition of employment of children in factories, etc No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment

²⁸ Art 39. Certain principles of policy to be followed by the State: The State shall, in particular, direct its policy towards securing

(a) that the citizens, men and women equally, have the right to an adequate means to livelihood;

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

(d) that there is equal pay for equal work for both men and women;

(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment

²⁹ Art 41. Right to work, to education and to public assistance in certain cases The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want

³⁰ Art 42. Provision for just and humane conditions of work and maternity relief The State shall make provision for securing just and humane conditions of work and for maternity relief

³¹ Art 43. Living wage, etc, for workers The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co operative basis in rural areas

³² Art 43A. Participation of workers in management of industries

The State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry

The Act defines migrant worker³³ provides for displacement³⁴ and journey³⁵ allowance which were not given during the pandemic. The Act creates system of accountability and acts as first layer of formalizing the utilization of their labour.³⁶

Judicial Review

In a plethora of decisions the honourable Courts have held that the right to health be read in Art 21 and laid down detailed guidelines for its effective implementation.

*State of Punjab v. M.S. Chawla*³⁷ held, 'It is now settled law that right to health is an integral to right to life. Government has constitutional obligation to provide the health facilities.'

*Vincent Panikurlangara v. Union of India*³⁸ held, 'A healthy body is the very foundation for all human activities. In a welfare State, therefore, it is the obligation of the State to ensure the creation and the sustaining of conditions congenial to good health.'

*Consumer Education and Research Centre v. Union of India*³⁹ laid down :

"Social justice which is a device to ensure life to be meaningful and livable with human dignity requires the State to provide to workmen facilities and opportunities to reach at least minimum standard of health, economic security and civilized living. The health and strength of worker, the court said, was an important facet of right to life. Denial thereof denudes the workmen the finer facets of life violating Art. 21."

*Bandhua Mukti Morcha v. Union of India*⁴⁰, observed:-

"It is the fundamental right of everyone in this country, assured under the interpretation given to Article 21 by this Court in Francis Mullin's case⁴¹---to live with human dignity, free from exploitation. This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of the workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just as humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity, and no State--neither the Central Government---has the right to take any action which will deprive a person of the enjoyment of these basic essentials".

When health is lost the Right to Medical Care is very essential and has been recognized by the Courts. In *Parmananda Katara v. Union of India*⁴²:

"Art. 21 of the Constitution cast the obligation on the State to preserve life. The patient whether he be an innocent person or a criminal liable to punishment under the laws of the society, it is the obligation of those who are in charge of the health of the community to preserve life so that the

³³ S. 2(e) "inter-State migrant workman" means any person who is recruited by or through a contractor in one State under an agreement or other arrangement for employment in an establishment in another State, whether with or without the knowledge of the principal employer in relation to such establishment;

³⁴ S. 14 Displacement allowance.— (1) There shall be paid by the contractor to every inter-State migrant workman at the time of recruitment, a displacement allowance equal to fifty per cent. of the monthly wages payable to him or seventy-five rupees, whichever is higher.

(2) The amount paid to a workman as displacement allowance under sub-section (1) shall not be refundable and shall be in addition to the wages or other amount payable to him.

³⁵ S. 15. Journey allowance etc.—A journey allowance of a sum not less than the fare from the place of residence of the inter-State migrant workman in his State to the place of work in the other State shall be payable by the contractor to the workman both for the outward and return journeys and such workman shall be entitled to payment of wages during the period of such journeys as if he were on duty.

³⁶ S.8(2) - the terms and conditions of the agreement or other arrangement under which the workmen will be recruited, the remuneration on payable, hours of work, fixation of wages and other essential amenities in respect of the inter-State migrant workmen

³⁷ AIR (1997) SC 1225

³⁸ 1987 SCR (2) 468

³⁹ (1995) SCC (3) 42

⁴⁰ [1984] 3 SCC 161

⁴¹ [1981] 1 SCC 608

⁴² (1989) SCR (3) 997

innocent may be protected and the guilty may be punished. Social laws do not contemplate death by negligence to tantamount to legal punishment.... Every doctor whether at a Government hospital or otherwise has the professional obligation to extend his services with due expertise for protecting life.” In *Paschim Banga Khet Mazdoor Samity v. State of West Bengal*⁴³ ‘Since it is the joint obligation of the Centre as well as the States to provide medical services it is expected that the Union of India would render the necessary assistance in the improvement of the medical services in the country on these lines.’

*State of Punjab v. Ram Lubhaya Bagga*⁴⁴ held:

‘Pith and substance of life is the health, which is the nucleus of all activities of life including that of an employee or other viz. the physical, social, spiritual or any conceivable human activities. If this is denied, it is said everything crumbles. Further to secure protection of one's life is one of the foremost obligation of the State, it is not merely a right enshrined under Article 21 but an obligation cast on the State to provide this both under Article 21 and under Article 47 of the Constitution.’

*Confederation of Ex-servicemen Association v. Union of India*⁴⁵ held ‘right to health and medical aid of workers during service and thereafter, is a fundamental right of workers. According to this Court, it can issue directions in an appropriate case to the State or its instrumentalities or even private employers to make the right to life meaningful and to pay compensation to affected workmen’

*In Re : Problems And Miseries Of Migrant Labourers*⁴⁶ does not make a mention of the right to health, we may infer it from, the ruling that ‘The adequate transport arrangement, food and shelters are immediately to be provided by the Centre and State Governments free of costs.’

Suggestions

‘Human right abuses such as grinding poverty force people to migrate.’⁴⁷ Parliament seeking to ‘reform’ labour law has, introduced, The Occupational Safety, Health and Working Conditions Code of 2019. The code seeks to merges thirteen labour laws into a comprehensive Code. The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act of 1979, is one of them. However activists are of the opinion that the safeguards given to the migrant workers in the 1979 Act will be diluted,⁴⁸

‘We all know how poor people have to grease the system even for their legitimate dues.’⁴⁹

Narratives from across India evidence that the State in formulating its schemes should take into account the varied needs of the migrant worker, specially and not limited, to poverty, ill health, and psyche.⁵⁰ Registration of migrant workers should be mandatory.⁵¹ Rations should be provided without much formality.⁵²

A proper implementation of existing Constitutional and legislative provisions is required. They should not remain merely paper provisions.

Conclusion

The members of the Constituent Assembly debates were much concerned with the philosophy and jurisprudence of labour welfare, in framing the directive principles, concerning alleviation of poverty and amelioration of conditions of labour: they believed that economic and social democracy were the

⁴³ 1996 SCC (4) 37

⁴⁴ (1998) 4 SCC 117

⁴⁵ AIR 2006 SC 2945

⁴⁶ Suo Motu Writ Petition (Civil) No(s). 6/2020

⁴⁷ Nash, K. (2015). *The Political Sociology of Human Rights (Key Topics in Sociology)*. Cambridge: Cambridge University Press. doi:10.1017/CBO9781139031202

⁴⁸ Watch | How can migrant workers be protected? The Hindu available at <https://www.thehindu.com/news/national/migrant-workers-crisis-and-their-protection/article31579408.ece> accessed on 22 June 2020

⁴⁹ Jawhar Sircar A Long Look at Exactly Why and How India Failed Its Migrant Workers The Wire available at <https://thewire.in/labour/lockdown-migrant-workers-policy-analysis> accessed on 22 June 2020

⁵⁰ Manisha Priyam and Mridusmita Bordoloi Documenting the story of India's migrant distress | Analysis Hindustan Times available at <https://www.hindustantimes.com/analysis/documenting-the-story-of-india-s-migrant-distress/story-sVC8sCHFetXYBPKLa1OhZM.html> accessed on 22 June 2020

⁵¹ Shashank S. Mangal v. Government Of Nct Of Delhi W.P.(C) 3324/2020 and CM APPL. 11679/2020

⁵² A.P. Suryaprakasam v. Superintendent of Police, Sangli District, Maharashtra H.C.P.Nos. 738 & 787 of 2020

prerequisites for the success of political democracy. As one member put it 'Political consciousness and patriotism will come only when they are economically contended.'⁵³ This philosophy has even greater need for implementation today.

References

- Akinola AB, Krishna AK, Chetlapalli SK. Health equity for internal migrant labourers in India: an ethical perspective. *Indian J Med Ethics*. 2014;11(4):232-237. doi:10.20529/IJME.2014.058
- Constituent Assembly Debates available at https://www.constitutionofindia.net/constitution_of_india/directive_principles_of_state_policy/articles/Article%2043 accessed on 23 June 2020
- Javed, S., Kishwar, S., & Imran, W. (2020). (Rep.). Sustainable Development Policy Institute. doi:10.2307/resrep24354
- Mahendra Pal Singh, V.N. Shukla's Constitution of India, (Revised) Edition: 13th Edition, 2017 with Supplement 2019
- Nash, K. (2015). *The Political Sociology of Human Rights (Key Topics in Sociology)*. Cambridge: Cambridge University Press. doi:10.1017/CBO9781139031202
- Nishitha Mandava 'One was religious the other was economic: Migrations during partition and lockdown' *Spilling the Chai*, 28 May 2020 available at <<https://www.spillingthechai.org/post/one-was-religious-the-other-was-economic-migrations-during-partition-and-lockdown>> last visited on 29 June 2020
- Nitika, Lohiya, A., Nongkynrih, B., & Gupta, S. K. (2014). Migrants to urban India: need for public health action. *Indian journal of community medicine : official publication of Indian Association of Preventive & Social Medicine*, 39(2), 73–75. <https://doi.org/10.4103/0970-0218.132718>
- Preamble to the Constitution of WHO as adopted by the International Health Conference, New York, 19 June - 22 July 1946; signed on 22 July 1946 by the representatives of 61 States (Official Records of WHO, no. 2, p. 100) and entered into force on 7 April 1948.
- Survival and Mobility in the Midst of a Pandemic Editorials *Economic & Political Weekly* Vol. 55, Issue No. 14, 04 Apr, 2020
- The Elusive Home Editorials *Economic & Political Weekly* Vol. 55, Issue No. 22, 30 May, 2020
- Upendra Baxi 'Exodus Constitutionalism Mass Migration in Covid Lockdown Times' available at <<https://www.theindiaforum.in/article/exodus-constitutionalism>> last visited on 14 July 2020
- Van de Pas, R. (2020). Globalization Paradox and the Coronavirus pandemic (pp. 4-5, Rep.). Clingendael Institute. doi:10.2307/resrep24671.5

⁵³Constituent Assembly Debates available at https://www.constitutionofindia.net/constitution_of_india/directive_principles_of_state_policy/articles/Article%2043 accessed on 23 June 2020