

COVID-19 ROPED WITH A HANDCUFFED UNORGANISED SECTOR HOG-TYING THE MIGRANT WORKERS

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I. INTRODUCTION

When a sudden outbreak of COVID-19 took a toll over China in the month of December 2019, it slowly started clenching the entire world in its fists. In India, when its effects were realised following the lockdown starting from March 25, 2020 many people were hit hard, as the virus unveiled the inherent economic divide in the country. The gavel of a pandemic thrashed the Indian economy when it was in its most sluggish phase. With the entire country coming down to a halt, the worst hit are the migrant workers in the unorganised sector who occupy the lowest rungs of the society. With no savings and a complete dependency on daily wages, they have become the most vulnerable. With the International Labour Organisation calling it the worst global crisis since the Second World War, the economy of developing India is dwindling and the contribution by migrant workforce, which forms a major chunk of the GDP, is shackled.

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The unincorporated sector has a considerably large share in the informal economy of India. This is ascertained by government sources like the Economic Survey² and NITI Aayog's Strategy for New India³ which peg the employment rate of the unorganised sector at 93% and 85% of the total workforce, with the exact size still a mystery.⁴ The annual inter-state migration flow is 9 million since 2011,⁵ with the total number of internal migrants in the country being around 139 million.⁶ The nature of work carried out by the migrant workers has encapsulated them in a grey area that is deprived of any effective government intervention with lousy economic policies. With the incoming of a global crisis, their precarious condition has once again garnered the spotlight, acting as a reminder to take immediate action.

The impact has gathered responses from both the administrative and the judicial ends, however, the material question is whether these reforms should only focus on keeping the migrants afloat amidst the lockdown or secure them in an economy which might slowly slip into a pool of economic recession.

² Ministry of Finance, Govt. of India, Economic Survey 2019-20, Vol. 2, at https://www.indiabudget.gov.in/economicsurvey/doc/echapter_vol2.pdf (Jan., 2020).

³ *Strategy for New India @ 75*, NITI AAYOG, https://niti.gov.in/writereaddata/files/Strategy_for_New_India.pdf (Nov., 2018).

⁴ Prasanna Mohanty, *Labour reforms: No one knows the size of India's informal workforce, not even the govt.*, BUSINESS TODAY (Apr. 26, 2020), <https://www.businesstoday.in/sectors/jobs/labour-law-reforms-no-one-knows-actual-size-india-informal-workforce-not-even-govt/story/364361.html>.

⁵ Ministry of Finance, Govt. of India, *India on the Move and Churning: New Evidence*, Economic Survey 2017-18, at <https://www.indiabudget.gov.in/budget2017-2018/es2016-17/echap12.pdf> (Jan., 2018).

⁶ Ministry of Finance, Govt. of India, Economic Survey 2017-18, at <https://www.indiabudget.gov.in/economicsurvey/> (Jan., 2018).

II. IMPACT OF THE PANDEMIC LOCKDOWN ON THE MIGRANT WORKERS

The right approach to find the answers to such recurring questions involves a fundamental step of analysing the impact. As per the recent ILO Report, more than 400 million people in India are at a risk of falling into the poverty trap.⁷ The current lockdown measures in the country, being one of the highest in the Government Response Stringency Index⁸, have a great impact on the migrant workforce. With the announcement of lockdown, India saw a partition-like mass movement of migrant workers back to their villages.⁹ This unplanned decision has left the lives of the migrants in a complete disarray.

In the present situation, where they have absolutely no food security, health safety or livelihood certainty, they are trapped in the debt cycle, with no income but certain unavoidable expenditures looming over their heads. Adding to the misery is the inevitable rise in food prices. The abandoned migrants, shorn of funds are not in a position to follow the social distancing norms in the absence of social security.¹⁰ With masses of these workers forced to sleep under flyovers and on footpaths, their health security has become a major concern. The plight of these workers, which

⁷ ILO Monitor: COVID-19 and the world of work. Second edition Updated estimates and analysis, INT'L LABOUR ORG. https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/briefingnote/wcms_740877.pdf (last visited Apr. 7, 2020).

⁸ Thomas Hale et al., *Variation in Government Responses to COVID-19*, UNIV. OF OXFORD, https://www.bsg.ox.ac.uk/sites/default/files/2020-05/BSG-WP-2020-032-v5.0_0.pdf (last visited Apr. 29, 2020).

⁹ Anirban Nag, *Why fixing unorganised sector can be Modi's biggest Covid-19 economic challenge*, THE PRINT, <https://theprint.in/economy/why-fixing-unorganised-sector-can-be-modis-biggest-covid-19-economic-challenge/396754/> (last visited Apr. 27, 2020).

¹⁰ Neeta Lal, *COVID-19 and India's Nowhere People*, THE DIPLOMAT, <https://thediplomat.com/2020/04/covid-19-and-indias-nowhere-people/> (last visited May 1, 2020).

involves meagre reliance on unfulfilling government supplements has gained the attention of the entire country, as it realises the lack of government planning for this neglected section, leading them to a long-lasting economic agony.

III. RESPONSE OF THE GOVERNMENT

Within the unorganised sector, MSMEs (Micro, Small and Medium Enterprises), employing the largest share of migrant workers, are the worst hit, as they majorly rely upon the cash economy. Currently, they are also facing difficulties in procuring raw materials, engaging workers and reviving a disrupted transport infrastructure due to a halt in the economy. The MSME sector contributes 30% to India's GDP,¹¹ and therefore would seriously hamper the economy if it's left to struggle with the economic slowdown.

Government's response to tackle the current situation on the business front is in terms of slashing interest rates and increasing limits on NPAs (Non-performing assets). This is to prevent businesses from going down the insolvency drain. The government has further offered to make payments from the government's employee provident fund to avoid layoffs. The banks have also come up with special purpose loans with reduced interest rates up to 10-20 %.

While such policy decisions are from a welfare perspective for all the MSMEs in general, which employ a large number of migrant workers, in reality, they cater only to the problems of the large and the organised

¹¹ Ritaram Chaurey et al., *The MSME sector is critical in times of COVID-19*, THE HINDUSTAN TIMES, <https://www.hindustantimes.com/analysis/msmes-is-critical-in-times-of-covid-19/story-6Juiu9zs4jKUdkHLobT6WJ.html> (last visited Apr. 28, 2020).

businesses. Such policy decisions seriously fall short in addressing the concerns of small and unorganised firms. As approximately 55 million firms in India employ less than 5 workers and about 94% of these firms are not registered with the government, it is highly unlikely that such businesses would contribute to the EPF and in turn could avail the contribution that government is making to the EPFO.¹²

The government has attempted to address the concern relating to wages through an order, released by the Ministry of Home Affairs¹³ prohibiting the employers to cut wages of their employees. However, such limitations on the employers would only help migrant workers if they were working under an organised firm registered with the government in the first place. Further, the government even went ahead with transferring Rs. 500 in *Jan Dhan* accounts registered with women,¹⁴ coupled with increasing MNREGA wages for all the workers from Rs.182 to Rs. 202 a day, even though such help won't make a world of difference when jobs are practically extinct amidst the *Janata* curfew.

Another response to this crisis by the government involved a decision to operate trains called "*Shramik Special*" to ferry the migrant workers back to their hometown who had been stranded across multiple states due to the lockdown. However, such measures are myopic considering the gravity of the situation, as even after reaching home they would still be devoid of a source of income to support their family or to

¹² *Id.*

¹³ Ministry of Home Affairs, Govt. of India, Order No. 40-3/2020-DM-I(A) (Mar. 29, 2020), at https://www.mha.gov.in/sites/default/files/MHAOrder_21042020.pdf.

¹⁴ Christophe Jaffewlot et al., *Keeping poor safe in lockdown is a state responsibility, not an act of charity*, THE INDIAN EXPRESS, <https://indianexpress.com/article/opinion/columns/coronavirus-india-lockdown-migrant-workers-labourers-exodus-m> (last visited Apr. 30, 2020).

procure the essential items. A survey conducted by Stranded Workers Action Network (SWAN)¹⁵ that covered 11,159 migrant workers revealed that between the stretch from April 8 to April 13, almost 90% of these workers did not receive any ration from the government and further around 90% of the people surveyed were not paid by their employers. Additionally, almost 70% of the workers that were interviewed claimed that they only had less than Rs.200 left with them during the time period from March 27 to April 13. These figures unveil the harsh reality of the circumstances these helpless workers are stuck in.

IV. RESPONSE OF THE JUDICIARY

The judicial spectrum, acknowledging the situation of the migrant workers in this lockdown, entertained a number of petitions. A Public Interest Litigation, filed in the Supreme Court by activists Anjali Bharadwaj and Harsh Mander, sought a direction to the government for the payment of wages to the migrant workforce. This was eventually rejected by the apex court in order to maintain the separation of powers, by refraining itself from intervention in the governmental budgetary allocations, which is the domain of the legislature.¹⁶ The court took note of the present situation and demanded a close attention of the government in this matter, however the government has maintained its silence on the same. A further petition challenging the MHA order was brought before the Supreme Court which urged a subsidization of 70% of the wages by the government through funds like ESIC (Employees' State Insurance

¹⁵ *Lockdown Displaces Lakhs of Migrants*, THE HINDU, <https://www.thehindu.com/data/data-96-migrant-workers-did-not-get-rations-from-the-government-90-did-not-receive-wages-during-lockdown-survey/article31384413.ece> (last visited Apr. 26, 2020).

¹⁶ Harsh Mander v. Union of India, Diary No. 10801/2020.

Corporation). Another petition sought the implementation of ONORC (One Nation One Ration Card) Scheme for the availability of the basic needs of migrants the most important being food and shelter.

Pleas seeking the fundamental rights of these migrant workers have seen most of the filings in the apex court in the months of March and April. However, the only substantive Supreme Court directions have come in respect of free testing of persons under the *Ayushman Bharat* Scheme and other sections of EWS as notified by the Government.¹⁷ The large number of cases before the Supreme Court with limitations on the digital front has proved to the detriment of the migrant workers, as no immediate relief can be sought.

These policy responses are not able to suffice in the current state of lockdown when all the economic activities are shut. The world of migrants would further worsen when a meltdown hits the economy post the lockdown.

V. TOWARDS AN ECONOMIC RECESSION?

Amidst the ongoing crisis where these workers are not even able to sustain themselves, they might face another crisis when such a meltdown takes the form of a recession. The period 2008-2010 witnessed a recession across the globe that started from the USA when the unemployment rate increased to 23%.¹⁸ With recent reports declaring that the US economy has

¹⁷ Shashank Sudhi v. Union of India, Diary No. 10816/2020.

¹⁸ M.K Venu, *Covid-19 economic blow will be unprecedented*, THE WIRE <https://thewire.in/economy/covid-19-coronavirus-india-economy> (last visited Apr. 28, 2020).

shrunk by 4.8%,¹⁹ global business leaders fear for a U-shaped recession caused by the Coronavirus pandemic. Experts believe that the havoc created by the pandemic on the world economies might lead to a second depression after the 1930s. Reasons to believe the same are the recent crash of US stocks i.e. 18% within just 18 days that resembles the fall during the Great Depression.²⁰ This is of major concern considering the past patterns wherein the Indian economy suffered a slowdown which originated in the US markets.

Indian economy before the pandemic occurred was already witnessing a manufacturing slump, where negative growth was observed in the last two quarters in core sectors like oil, gas, etc. The timing was further vulnerable as the economy was also facing high unemployment rate, lack of investments and no source of increasing rural wealth and consumption.²¹

India is considered amongst the top 15 countries to bear a serious impact from COVID 19 crisis and UNCTAD has already estimated that the impact can cost India around US\$ 348 million.²² Considering the cost analysis as above, if such a recession comes, in that case, even the officials at higher levels would face layoffs or salary cuts. In such a scenario, the

¹⁹ Patricia Sabga, *Recession sign: US economy shrinks 4.8 percent in first quarter*, AL JAZEERA, <https://www.aljazeera.com/ajimpact/recession-sign-economy-shrinks-48-percent-quarter-200429120958454.html> (last visited Apr. 27, 2020).

²⁰ Dale Smith, *Experts say we're headed for a recession. Here's what that means for you*, CNET, <https://www.cnet.com/personal-finance/experts-say-were-headed-for-a-recession-heres-what-that-means-for-you/> (last visited Apr. 29, 2020).

²¹ *Manufacturing sector: Struggling to take off*, THE HINDU BUSINESS LINE, <https://www.thehindubusinessline.com/opinion/manufacturing-sector-struggling-to-take-off/article28322705.ece#> (last visited Apr. 30, 2020).

²² *Trade Impact for coronavirus estimated at 348 million: UN Report*, THE TIMES OF INDIA, <https://timesofindia.indiatimes.com/business/india-business/trade-impact-of-coronavirus-epidemic-for-india-estimated-at-348-million-un-report/articleshow/74487999.cms> (last visited May 1, 2020).

future of migrants under the unorganised sectors without any clear legal guidelines to cover them, would be abysmal.

Therefore, every policy measure from now on, whether short term or long term should reflect and address the demographic in an all-inclusive manner, while considering the possibility of a recession in the near future.

VI. THE REQUIRED REFORMS

With a slew of domestic labour laws in place, the government seems to have overlooked their implementation. The problems faced by the migrant workers in this pandemic are not ordinary. The government has tried to come up with some short-term reliefs, however, their legal aspects still remain unattended.

Firstly, according to the Disaster Management Act (“**DM Act**”),²³ the Government is obligated to take necessary steps in helping the victims of the disasters and also in formulating a detailed machinery for mitigating the adverse effects. Taking into account all the relevant aspects, the Government should activate National and State Advisory committees in the field of disaster management and public health to manage and formulate a plan instead of passing ad-hoc orders.

Secondly, with respect to powers under DM Act, 2005, S. 46 empowers the State to constitute a National Disaster Response Fund towards meeting emergency expenses. The government should constitute such a fund in order to resolve the problem of wages to be paid to the migrant workers. Further, in exceptional situations like these, asking the employers who

²³ Disaster Management Act, 2005, No. 53, Acts of Parliament, 1992, s. 38.

themselves have no income of their own to pay full wages to their employees is unreasonable.

Thirdly, likewise, models followed in the United Kingdom and Canada can be adopted. In the UK, the government has announced the Coronavirus Job Security Scheme,²⁴ which covers 80% of the monthly wages of the employees. Similarly, Canada has announced Canada Wage Subsidy²⁵ which provides a 75% wage subsidy up to 12 weeks. Following such a scheme is achievable under the present statutes to provide an interim relief to the stranded workers.

Fourthly, further, experts have observed that India needs to revolutionise the social security system for its migrant workers.²⁶ For the short term, the government needs to provide insurance covers to all the workers and also enhance the working credit limits with banks. The Unorganised Workers Social Security Act, 2008 empowers the Government to promulgate schemes in relation to employment injury benefit, housing,²⁷ health and life cover.²⁸

Fifthly, for the people undergoing treatment of COVID-19, the Government should provide them with paid sick leave, as it is done in the

²⁴ Coronavirus Job Retention Scheme (Mar. 26, 2020) at <https://www.gov.uk/guidance/check-if-you-could-be-covered-by-the-coronavirus-job-retention-scheme>.

²⁵ Canada Emergency Wage Subsidy (Mar. 15, 2020), at <https://www.canada.ca/en/revenue-agency/services/subsidy/emergency-wage-subsidy.html>.

²⁶ Yogima Sharma, *Covid has exposed deep flaws in India's social security system: Experts*, THE ECONOMIC TIMES, <https://m.economictimes.com/news/economy/policy/covid-has-exposed-deep-flaws-in-indias-social-security-system-experts/articleshow/75218338.cms> (last visited Apr. 25, 2020).

²⁷ Unorganised Workers' Social Security Act, 2008, No. 33, Acts of Parliament, 2008, s. 3.

²⁸ *Id.*

case of the service sector. Under the Employees State Insurance Act, 1948,²⁹ the Government can utilize funds collected by ESIC to make payments to the migrant workers who are undergoing treatment.

Lastly, there is an immediate need for cohesive policies to protect these most vulnerable groups of people not only during the lockdown, but also in its aftermath. Government can consider taking steps by facilitating the amount of Rs.6000 within the Pradhan Mantri Shram Yogi Mandhan Yojna to the migrant workers, generally given in three instalments, in one go. The Government can also consider relaxing the fiscal deficit target by some percentage to lift off the load upon businesses to pay taxes, allowing them to retain workers. If not through the scheme, the government can adopt a uniform policy of DBT (direct benefit transfer) wherein an approximate amount of Rs. 5000 can be transferred in the bank accounts of people who are over 25 years and an amount of 10,000 for those above 65 years. Likewise, any successful approach taken up by the government at this stage would require an effective amelioration of both legal and economic reforms.

VII. THE WAY FORWARD

Migrant workers, who are very much a part of the economy, are largely invisible from the official government data in the form of national sample surveys and the census. However, they are an integral part of contemporary India. The government has, through its plans and budgetary allocations, provided for schemes for basic conveniences for this faction of the economy. But, has it done enough? The schemes, policies and the plans are just a garb of welfare. The present laws have remained on the

²⁹ Employees' State Insurance Act, 1948, No. 34, Acts of Parliament, 1948, s. 46.

paper, lacking real implementation. For instance, the benefits under Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 requiring registrations, remain unknown and unimplemented. Migrant workers, be it inter-state or inter-district, need to be recognised through proper reforms with their implementation by the Central and the State governments.

The present laws need to account for the current situation and provide for compensation and social security covers to these workers in the event of closure of an establishment or any other work due to natural calamity. Moreover, express provisions for a contingency fund in emergency situations like the present pandemic and a general scheme for transportation, food security and shelter need to be inserted, having the effect of law.

Time and again when a crisis strikes the Indian economy and the problems of these migrant workers surface up to mainstream society, huge uproar about making effective policy reforms that protect such workers are often witnessed, which are eventually submerged under the justification of larger economic interests. What the government has failed to understand is the importance of the migrant workforce as cogs in the economic wheel of our country. The uniqueness of their crisis comes from the abruptness of the public policy and not the nature of this workforce.

With the impact realised, responses analysed and lacunae identified, the real question still remains, is the government keen on giving equal representation to these people and focus on their needs in such exceptional circumstances when even a single wrong step can make or break the economy?