

AN ANALYSIS OF THE MIGRANT CRISIS IN INDIA IN LIGHT OF THE COVID-19 PANDEMIC

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Abstract

With the enactment of the Inter-State Migrant Workmen Act, 1979 people believed that policy makers were finally considering the struggles faced by migrants but, in light of the recent crisis ensuing in a nationwide lockdown, the provisions of the Act have been rendered inadequate in combating the lack of welfare faced by migrants. Even though the Constitution affords economic and social stability to these vulnerable groups, there has been little effort to improve their plight. This lack of legislation and anticipatory analysis combined with inadequate data on inter-state migration has allowed the condition of migrants to be severely hampered by the lockdown, leaving millions stranded in cities without wages and having lost their livelihood. This paper analyses the issues that migrants face due to the lack of legislation and aims to provide suggestions to combine the implementation of existing schemes with welfare policies to ensure better conditions of migrant laborers.

I. Introduction

II. Constitutional and Legislative Provisions for Migrants

III. An Understanding of Migrant Labor and the Problems they face Amidst this Crisis

IV. Suggestions and Conclusion

I. Introduction

ON MARCH 25th, 2020, Prime Minister of India, Narendra Modi, announced a three-week nationwide lockdown beginning at midnight on that day, thus leaving people with barely four hours of notice before the entire country, barring essential commodities, was shut down.¹ The extreme measure was in furtherance of a battle against the novel coronavirus (COVID-19) which was declared to be a pandemic by the World Health Organization on March 11th. While the lockdown came as an unwelcome shock to all citizens of the country it seemed to be the only effective method to limit the spread of the disease before the number of cases began to rise but, it was the urban poor and the inter-state migrants who were most affected by the complete shutdown of air, rail and road transport, leaving them stranded in cities away from

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¹ Shahid Vaziralli, "The Impact of COVID-19 on Informal and Migrant Workers in India", *International Growth Centre*, May 13, 2020, available at: <https://www.theigc.org/event/the-impact-of-covid-19-on-informal-and-migrant-workers-in-india/> (last visited on May 13, 2020).

their families and without any flow of income.² Experts state that the containment measures, although necessary to slow the spread of the virus, were vicious in implementation and came at an enormous economic and social cost affecting the most vulnerable groups in society – interstate migrants who work for daily wages.³ Many of them were left helpless when rations began thinning out and the only solution seemed to be a mass exodus of migrants with over thousands of people fleeing the cities on foot, numerous even dying along the way.⁴ The 2011 Census⁵ and data collected from the National Sample Survey Office⁶ (NSSO) assert that there are over 65 million inter-state migrants, a third of whom depend on daily wages or are employed in the unorganized sector but even with this huge a number, their welfare and safety in society seem to be unimportant, for it is only in this time of crisis that their hardships are beginning to be noticed.⁷

The Indian government had time to learn from the measures taken by other countries and it rightfully responded with a lockdown but unlike its international counterparts, the terms of containment were considered to be the most stringent so far and they weren't accompanied by economic incentives and measures to ensure food security and this lack of anticipatory analysis on the part of the government not only left migrants stranded and vulnerable⁸ but the complete stalling of economic productivity and the confinement of the most deprived sections of society in terrible conditions has created a large scale humanitarian crisis leaving people to choose between starvation and risking their health in search of food and money.⁹ Inter-state migration first began as a reaction to the agrarian crisis that was marked by an increase in farmer suicides,

² Melissa Autumn White, *Viral/Species/Crossing: Border Panics and Zoonotic Vulnerabilities*, 40 *Women's Studies Quarterly* 117 (2012).

³ Food and Agriculture Organization, *Migrant Workers and the COVID-19 Pandemic*, FAO, available at: <http://www.fao.org/3/ca8559en/CA8559EN.pdf> (last visited on Apr. 7, 2020).

⁴ Tanushree Venkatraman, "In a long walk back home, migrants battle hunger, scourge of COVID-19", *Hindustan Times*, May 16, 2020, available at: <https://www.hindustantimes.com/india-news/in-long-walk-back-home-migrants-battle-hunger-scourge-of-disease/story-TizRfUz69osJQ0Uqmm6jZN.html> (last visited on May 16, 2020).

⁵ Ministry of Home Affairs, *Data on Migration*, Census 2011, available at: <https://censusindia.gov.in/2011census/migration.html> (last visited on May 16, 2020).

⁶ National Sample Survey Office, *Migration in India*, Ministry of Statistics & Programme Implementation, available at: http://mospi.nic.in/sites/default/files/publication_reports/533_final.pdf (last visited on May 18 2020).

⁷ Anil Dharker, "COVID-19 has made Migrant Workers' Plight, State Apathy Visible" *Indian Express*, May 25, 2020, available at: <https://indianexpress.com/article/opinion/columns/invisible-india-migrant-exodus-coronavirus-6425627/> (last visited on May 25, 2020).

⁸ Lawrence O. Gostin & Benjamin E. Berkman, "Pandemic Influenza: Ethics, Law and the Public's Health", 59 *Admin. L. Rev.* 121 (2007).

⁹ Ranjini Basu, "Migrant Agricultural workers in India and the COVID-19 Lockdown", *Focus Web*, May 07, 2020, available at: <https://focusweb.org/migrant-agricultural-workers-in-india-and-the-covid-19-lockdown/> (last visited on May 7, 2020).

unpaid debts, recalling of loans and a severe fall in income and to escape these conditions workers began moving toward cities in search of job opportunities but the current scenario has forced them back to the same circumstances that they were running away from.¹⁰ Thus, the movement of laborers from urban cities back to rural areas poses not just a threat to their health and safety but more challenges like the lack of social security, the consistently low demand for agricultural produce and labor, the poor hygiene practices and standards, and the absence of adequate infrastructure to ensure a decent livelihood¹¹. However, the government has failed to consider any of these factors and the States continue to dilute labor legislations to protect the economy and business owners, overlooking the fact that there can be no business without labor.¹² Right from the start, the measures taken to battle the virus failed to anticipate the most vulnerable groups¹³ in society and in doing so the government has been futile in its attempt to ensure that its citizens are safe for over 20 million Indians are left unequipped, unsafe, unaware,¹⁴ and unconsidered in policymaking and disaster management mechanisms.¹⁵

Area/State	Persons	Males	Females
India	45,57,87,621	14,61,45,967	30,96,41,654
Jammu & Kashmir	28,09,629	8,32,333	19,77,296
Himachal Pradesh	26,47,067	6,67,133	19,79,934
Punjab	1,37,35,616	50,80,819	86,54,797
Chandigarh	6,78,188	3,62,318	3,15,870
Uttarakhand	43,17,454	14,81,307	28,36,147
Haryana	1,05,85,460	31,95,530	73,89,930
Delhi	72,24,514	37,51,348	34,73,166
Rajasthan	2,20,71,482	46,02,922	1,74,68,560
Uttar Pradesh	5,64,52,083	1,11,91,861	4,52,60,222
Bihar	2,72,44,869	38,37,402	2,34,07,467

¹⁰ Nilanjana Bhowmick, "They Treat us like Stray Dogs: Migrant Workers Flee India's Cities", *National Geographic*, May 27, 2020, available at: <https://www.nationalgeographic.com/history/2020/05/they-treat-us-like-stray-dogs-migrant-workers-flee-india-cities/> (last visited on May 27, 2020).

¹¹ Wah Yun Low, Wen Ting Tong & Colin Binns, "Migrant Workers in Asia Pacific and Their Rights to Health" 27 *Asia Pacific Journal of Public Health* 584 (2015).

¹² Amy Lieberman, "From Disease to Pandemic" 30 *World Policy Journal* 78 (2013).

¹³ *Supra* note 2.

¹⁴ Jennifer S. Hainsfurther, "A Rights-Based Approach: Using CEDAW to Protect the Human Rights of Migrant Workers" 24 *Am. U. Int'l L. Rev.* 843(2009).

¹⁵ Editor, "Labour and Migration in India" *Aajeevika Bureau*, available at: <http://www.aajeevika.org/labour-and-migration.php> (last visited on May 31, 2020).

Sikkim	2,47,049	1,09,073	1,37,976
Arunachal Pradesh	6,30,831	3,00,829	3,30,002
Nagaland	5,49,618	2,81,119	2,68,499
Manipur	6,86,935	2,41,237	4,45,698
Mizoram	3,87,370	1,93,388	1,93,982
Tripura	12,99,623	4,84,406	8,15,217
Meghalaya	7,59,554	4,05,387	3,54,167
Assam	1,06,44,234	36,72,018	69,72,216
West Bengal	3,34,48,472	1,02,40,751	2,32,07,721
Jharkhand	96,59,702	20,00,459	76,59,243
Odisha	1,54,21,793	42,26,426	1,11,95,367
Chhattisgarh	88,88,075	23,17,498	65,70,577
Madhya Pradesh	2,47,35,119	64,13,774	1,83,21,345
Gujarat	2,68,98,286	99,94,352	1,69,03,934
Daman & Diu	1,48,592	98,535	50,057
Dadra & Nagar Haveli	1,88,057	1,03,241	84,816
Maharashtra	5,73,76,776	2,41,85,603	3,31,91,173
Andhra Pradesh	3,83,60,644	1,45,94,644	2,37,66,000
Karnataka	2,64,63,170	1,02,04,423	1,62,58,747
Goa	11,40,690	5,37,256	6,03,434
Lakshadweep	20,401	11,897	8,504
Kerala	1,78,63,419	73,12,435	1,05,50,984
Tamil Nadu	3,12,74,107	1,27,84,326	1,84,89,781
Puducherry	7,12,401	3,19,663	3,92,738
Andaman & Nicobar Islands	2,16,341	1,10,254	1,06,087

Table 1: State-wise distribution of Migrant Labor¹⁶

Area/State	Literate			Illiterate		
	Persons	Males	Females	Persons	Males	Females
India	27,95,04,062	11,22,07,343	16,72,96,719	17,62,83,559	3,39,38,624	14,23,44,935

¹⁶ *Supra* note 5.

Jammu & Kashmir	14,66,835	5,77,332	8,89,503	13,42,794	2,55,001	10,87,793
Himachal Pradesh	18,75,555	5,37,952	13,37,603	7,71,512	1,29,181	6,42,331
Punjab	90,49,242	37,60,321	52,88,921	46,86,374	13,20,498	33,65,876
Chandigarh	5,34,991	3,03,113	2,31,878	1,43,197	59,205	83,992
Uttarakhand	28,68,910	11,94,550	16,74,360	14,48,544	2,86,757	11,61,787
Haryana	64,37,005	24,25,815	40,11,190	41,48,455	7,69,715	33,78,740
Delhi	55,53,987	31,61,448	23,92,539	16,70,527	5,89,900	10,80,627
Rajasthan	96,23,216	33,46,874	62,76,342	1,24,48,266	12,56,048	1,11,92,218
Uttar Pradesh	2,63,42,910	81,22,175	1,82,20,735	3,01,09,173	30,69,686	2,70,39,487
Bihar	1,11,54,196	25,20,404	86,33,792	1,60,90,673	13,16,998	1,47,73,675
Sikkim	1,79,664	87,261	92,403	67,385	21,812	45,573
Arunachal Pradesh	3,72,907	2,02,811	1,70,096	2,57,924	98,018	1,59,906
Nagaland	4,29,243	2,28,026	2,01,217	1,20,375	53,093	67,282
Manipur	4,78,393	1,83,148	2,95,245	2,08,542	58,089	1,50,453
Mizoram	3,32,113	1,69,108	1,63,005	55,257	24,280	30,977
Tripura	10,40,753	4,01,588	6,39,165	2,58,870	82,818	1,76,052
Meghalaya	4,95,796	2,74,202	2,21,594	2,63,758	1,31,185	1,32,573
Assam	66,45,283	25,56,406	40,88,877	39,98,951	11,15,612	28,83,339
West Bengal	2,23,52,253	77,57,205	1,45,95,048	1,10,96,219	24,83,546	86,12,673
Jharkhand	46,82,459	15,64,904	31,17,555	49,77,243	4,35,555	45,41,688
Odisha	93,88,468	31,59,284	62,29,184	60,33,325	10,67,142	49,66,183
Chhattisgarh	49,25,152	17,70,379	31,54,773	39,62,923	5,47,119	34,15,804
Madhya Pradesh	1,28,06,306	46,40,682	81,65,624	1,19,28,813	17,73,092	1,01,55,721

Gujarat	1,82,49,550	80,87,479	1,01,62,071	86,48,736	19,06,873	67,41,863
Daman & Diu	1,18,055	83,216	34,839	30,537	15,319	15,218
Dadra & Nagar Haveli	1,35,798	86,775	49,023	52,259	16,466	35,793
Maharashtra	4,19,51,760	1,94,21,565	2,25,30,195	1,54,25,016	47,64,038	1,06,60,978
Andhra Pradesh	2,27,98,596	1,04,81,403	1,23,17,193	1,55,62,048	41,13,241	1,14,48,807
Karnataka	1,76,65,505	79,01,810	97,63,695	87,97,665	23,02,613	64,95,052
Goa	9,06,355	4,42,869	4,63,486	2,34,335	94,387	1,39,948
Lakshadweep	17,612	10,515	7,097	2,789	1,382	1,407
Kerala	1,50,90,088	60,95,898	89,94,190	27,73,331	12,16,537	15,56,794
Tamil Nadu	2,28,16,040	1,02,98,351	1,25,17,689	84,58,067	24,85,975	59,72,092
Puducherry	5,51,341	2,62,535	2,88,806	1,61,060	57,128	1,03,932
Andaman & Nicobar Islands	1,67,725	89,939	77,786	48,616	20,315	28,301

Table 2: State-wise distribution of literate and illiterate migrant labor¹⁷

II. Constitutional and legislative provisions for migrants

Evolution of labor legislations in India and its neglect of migrants

The beginning of the Industrial Revolution in Britain in the 17th Century and the United States in the 18th Century introduced the world to a new realm of technology and production where labor was merely another source of production rather than an indispensable asset to the revolutionization of invention and manufacture of commodities.¹⁸ This period of transformation, while initially welcomed by the people and boosted by the influx of labor from small towns and villages to urbanized cities,¹⁹ was tainted by the evils of exploitation and arbitrary exercise of power by factory owners and employers who took advantage of the

¹⁷ *Ibid.*

¹⁸ W.N Salve, *Labour Rights and Labour Standards for Migrant Labour in India*, International Labour Organization, available at: <http://www.ilo.org/legacy/english/protection/travail/pdf/rdwpaper22a.pdf> (last visited on May 31, 2020).

¹⁹ Richard Mitchell, Petra Mahy and Peter Gahan, "The Evolution of Labour Law in India: An Overview and Commentary on Regulatory Objectives and Development" 1 *Asian JLS* 413 (2014).

laissez-faire attitude of the government to form arbitrary terms in work contracts, ensure that they could hire and fire at will, and to overwork and overburden employees who had no avenue to raise their voices.²⁰ Soon, however, the Government of India began to realize that its non-interference would lead to a decline in economic growth triggered by a lack of productivity caused by unsatisfied workers whose lives were put at risk every day due to the nonexistence of adequate labor standards.²¹ This realization coupled with the establishment of the International Labor Organization (ILO), in 1919,²² led to the advent of labor legislations and judicial pronouncements that aimed at ensuring essential safeguards to workers especially in matters regarding working hours, minimum wages, leisure time, compensation, redressal mechanisms in case of disputes, safety measures in the workplace, and overall assurance of labor standards by International Treaties and Conventions ratified by India.²³ The Workmen's Compensation Act, 1923²⁴ was first in the long line of labor legislations that was enacted in India and following its lead were legislations like the Trade Unions Act, 1926,²⁵ the Industrial Disputes Act, 1947,²⁶ the Minimum Wages Act, 1948,²⁷ and the Equal Remuneration Act, 1976²⁸ just to name a few. Though these Acts came at a crucial moment in the industrial era and saw to the much-needed welfare of the working class, it failed to consider that over 90% of the country's workforce is employed in the informal or unorganized sector,²⁹ engaged in setting up shop on sidewalks or pulling rickshaws, with no welfare measures, minimum wages or any kind of social and economic security.³⁰ A lot of these informal workers are inter-state migrants – permanent or seasonal, who flock to urban cities, from their homes in rural villages or small towns, in search of better job opportunities and a more steady and stable flow of income³¹ but are instead left unregulated and deprived of any benefits expected to be provided

²⁰ Irfan Ahmed Sofi, Mohd Imran Khan, Mohd Hussain Kunroo and Abdul Qayoom Khachoo, "Labour Market Regulations and In-formalisation of Migrant Worker: Evidence from Indian Manufacturing Sector" 7 *Asian J.L & Econ* 169 (2016).

²¹ *Ibid.*

²² Nisha Varia, *Sweeping Changes – A Review of Recent Reforms on Protections for Migrant Workers in Asia and the Middle East*, 23 *Can. J. Women & L.* 265 (2011).

²³ Editor, *Labour Legislation in India*, Shodhganga, available at: https://shodhganga.inflibnet.ac.in/bitstream/10603/81209/11/11_chapter%203.pdf (last visited on June 1, 2020)

²⁴ The Workmen's Compensation Act, 1923 (Act 8 of 1923).

²⁵ The Trade Unions Act, 1926 (Act 16 of 1926).

²⁶ The Industrial Disputes Act, 1947 (Act 14 of 1947).

²⁷ The Minimum Wages Act, 1948 (Act 11 of 1948).

²⁸ The Equal Remuneration Act, 1976 (Act 25 of 1976).

²⁹ *Supra* note 19.

³⁰ Yogima Seth Sharma, "National Database of Workers in the Informal Sector in the Works", *Economic Times*, Jan. 19, 2020, available at: <https://economictimes.indiatimes.com/news/economy/indicators/national-database-of-workers-in-informal-sector-in-the-works/articleshow/73394732.cms> (last visited on July 29, 2020).

³¹ *Supra* note 20.

by an ordinary welfare state,³² a concept familiar to Indian legislators as it is enshrined in the Preamble to the Constitution of India.

Constitutional provision of a ‘welfare state’ and its application to migrant workers

The term “Socialist³³” was added to the Preamble through the 42nd Constitutional Amendment³⁴ in 1976 to categorize India as a welfare state where the government protects and promotes the economic and social well-being of its citizens and this concept is reflected in the Directive Principles of State Policy which act as guidelines to the state in policy making.³⁵ In furtherance of being a welfare state, a concept rooted in principles of equality of opportunity and equitable distribution of wealth, the Constitution of India provides for the recognition and welfare of all workers, employed in both the organized and unorganized sectors, by enforcing a duty on the state to ensure a just social order,³⁶ equality in income,³⁷ a right to employment,³⁸ humane working conditions,³⁹ the participation of workers in the management of industries,⁴⁰ and a secure living wage.⁴¹ To ensure that these rights are provided, the Constitution has made the Central Government responsible for inter-state migration⁴² while both the Centre and States are tasked with the welfare of labor, employment, social security, industrial disputes and workmen’s compensation.⁴³ However, these responsibilities have evolved into legislations that benefit only the organized sector while largely self-employed migrants or those who are part of the unorganized sector, have been left behind in economic and social welfare policies.

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

³² Noah Novogrodsky, *Duty of Treatment Human Rights and the HIV/AIDS Pandemic*, 12 *Yale Hum. Rts. & Dev. L.J.* 1, 20 (2009).

³³ The Constitution of India, 1950.

³⁴ The Constitution (Forty Second Amendment) Act, 1976, s. 2(a).

³⁵ Shraddha Ojha, *Administrative Law: The Concept of Welfare State and its Relevance in Indian Scenario*, Legal Services India, available at: <http://www.legalservicesindia.com/article/507/Concept-of-Welfare-State-and-Its-Relevance-in-Indian-Scenario.html> (last visited on May 2, 2020).

³⁶ The Constitution of India, art. 38.

³⁷ The Constitution of India, art. 38.

³⁸ The Constitution of India, art. 41.

³⁹ The Constitution of India, art. 42.

⁴⁰ The Constitution of India, art. 43A.

⁴¹ The Constitution of India, art. 43.

⁴² The Constitution of India, Schedule VII, list 1, item 81.

⁴³ The Constitution of India, Schedule VII, list 3, items 22-24.

In 1977, the Government of India constituted a committee to discuss the need for labor reforms in the country especially about migrant workmen. The committee felt that the Contract Labor (Regulation and Abolition) Act, 1970 existent at that time was insufficient to deal with the plethora of problems faced by migrant workers and so, they recommended the enactment of a new consolidated and concrete law.⁴⁴ However, before any steps could be taken toward formulating a system of safeguards, a state of emergency was announced in the country. In 1979, as soon as the emergency was lifted, the Inter-state Workmen (Regulation of Employment and Conditions of Service) Bill was introduced in Parliament by the Janata Party but looking at the need for migrant labor to revitalize the economy the Bill was tabled for further discussion and approval. It, however, came into force as a full-fledged Act on June 11, 1979 to regulate the employment of inter-state migrant workmen and to provide for adequate and approved conditions of service.⁴⁵

The Act provides for all contractors and businesses that employ five or more inter-state migrants to obtain a license from the state, or states, to which the workmen belong as well as from the state in which they have been employed or are proposed to be employed.⁴⁶ These businesses must also obtain a registration certificate from the state in which business is being carried on after submission of documents comprising details of all the employed migrant workmen. The Act also requires that the license must contain information about the workman's conditions of service such as terms of employment, remuneration working hours, determination of wages, provision of allowances such as journey allowance and displacement allowance, and accessibility to medical services, protective clothing, and residential accommodation.⁴⁷ Furthermore, all of this information must be provided in a passbook to all the migrant workmen employed by the concerned employer or business, as well as to the appropriate registration authority.⁴⁸ Apart from these provisions, the Act also envisages routine inspections of the

⁴⁴ H.S. Pandey, "Contract Labour and Social Security Legislation in India" 36 *Journal of Indian Law Institute* 193 (1994).

⁴⁵ Bhadra Sinha, "This 1979 inter-state workmen law could help avert migrant crisis if enforced strictly", *The Print*, June 08, 2020, available at: <https://theprint.in/judiciary/this-1979-inter-state-workmen-law-could-help-avert-migrant-crisis-if-enforced-strictly/437494/> (last visited on May 13, 2020).

⁴⁶ The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, (Act 30 of 1979).

⁴⁷ *Ibid.*

⁴⁸ Arfa Javaid, "What is the Inter-State Migrant Workmen Act, 1979?", *Jagran Josh*, May 12, 2020, available at: <https://www.jagranjosh.com/general-knowledge/migrant-workers-protection-law-1589300556-1> (last visited on May 12, 2020).

businesses by a public officer to ensure that all requirements are being met and that the conditions of service meet the necessary standards.

However, poor implementation of this Act has led to the piteous condition of migrant workers, not just amidst this pandemic, but as a social class in itself. Though critics do attribute this non-implementation to the fact that migrant workers do not provide a substantial vote-bank, such politicization of welfare legislations has been a recurrent theme in the Indian legal and political system. The government must learn from its mistakes and carry out more effective and deliberate implementation of this Act to avert such a situation in the future and to ensure that a marginalized and permanently displaced community, like migrant workers, have more secure right to life and personal liberty.

III. An understanding of migrant labor and the problems they face amidst this crisis

Who are Migrants?

From mines and brick quarries to salons and high-end hotels, migrant labor contributes to about 10% of India's Gross Domestic Product (GDP) but there is a shocking lack of data⁴⁹ to understand how they are incorporated into India's economic and legislative structure.⁵⁰ As cities in India became increasingly industrial and rural areas suffered under the agrarian crisis, the country saw a migration of workers between districts, cities and states.⁵¹ Migrant labor can be permanent – one-time movement with no plans to return to their original home,⁵² or seasonal – a style of livelihood pursued by many male members of poor families which include constant movement in search of employment.⁵³ This constant movement with no roots makes migrants extremely susceptible to exploitation by employers and the lack of welfare legislations to ensure their protection leaves them defenseless.⁵⁴ Research has shown that many migrants are underpaid, oppressed, overworked, prone to illnesses, and unaware of their rights, and often this condition is worse for migrants employed in the scarcely regulated unorganized sector.⁵⁵

⁴⁹ *Supra* note 19.

⁵⁰ Priya Deshinkar, "Why India's Migrants Deserve a Better Deal" *Livemint*, May 18, 2020, available at: <https://www.livemint.com/news/india/why-india-s-migrants-deserve-a-better-deal-11589818749274.html> (last visited on May 18, 2020).

⁵¹ Sangeetha Mandal, "Emerging Trends of inter-State Migrant Workers in India: A Study of Legal Framework" 7 *Indian J.L. & Just.* 106-(2016).

⁵² *Ibid.*

⁵³ John H. Steel (ed.), *Encyclopaedia of the Social Sciences* (Elsevier Ltd., NL, 2008).

⁵⁴ Narender Nagarwal, "Analysing the Legal Framework of Human Rights of Migrant Workers" 5 *Indian J.L. & Just.* 99 (2014).

⁵⁵ *Supra* note 20.

Even with all this information on the condition of migrant workers in India, the Centre and the states failed to consider that their plight might be the most affected with the recent lockdown that was imposed in March 2020.

Problems that migrant workers face with the lockdown

The lockdown, which was imposed without much warning, resulted in the stranding of millions of migrants in cities unfamiliar to them away from their families and without food or wages but there is a lack of adequate data, especially with the dynamic nature of the situation, to track their details and patterns of migration.⁵⁶ With this lack of data comes the problem of accessing the public distribution system for food rations and the failure of Aadhaar⁵⁷ which inhibits the reach of cash transfers proposed by the government.⁵⁸ The crisis was accompanied by a complete shutdown of economic productivity which meant that these migrants had no access to wages and as mentioned earlier, many of them send their wages back to their families so without any form of income both the migrants and their families are suffering.⁵⁹ Once the lockdown restrictions were relaxed in certain states, factories and businesses reopened and job opportunities resurfaced but with the goal of kick-starting economic activity, these states have diluted⁶⁰ their labor legislation to benefit employers.⁶¹ Uttar Pradesh has suspended all labor legislations except four, Gujarat has followed its lead allowing for the functioning of only three legislations, and most states have made reforms to ensure fast-track issuance of licenses and increase working hours.⁶² These reforms will have a severe impact on the welfare of migrant

⁵⁶ Sunanda Sen, "Rethinking Migration and the Informal Indian Economy in the Time of a Pandemic", *The Wire*, June 01, 2020, available at: <https://thewire.in/economy/rethinking-migration-and-the-informal-indian-economy-in-the-time-of-a-pandemic> (last visited on June 1, 2020).

⁵⁷ Smriti Singh, "Understanding Aadhaar: The Unique Identification Authority of India and Its Challenges" 27 *Hum. Rts. Defender* 21 (2018).

⁵⁸ Mishra Lakshmidhar, "Can Globalization and Labour Rights Co-Exist?" 44 *Indian J.L & Econ* 118 (2001).

⁵⁹ Divya Ravindranath and Umi Daniel, "Understanding the Impact of COVID-19 Lockdown on Migrant Workers' Children" *The Wire*, May 05, 2020, available at: <https://thewire.in/rights/covid-19-lockdown-migrant-workers-children-implications> (last visited on May 5, 2020).

⁶⁰ Renu Kohli, "Covid Crisis: Why panic labour reforms can be counterproductive" *Financial Express*, May 13, 2020, available at: <https://www.financialexpress.com/opinion/why-panic-labour-reforms-can-be-counterproductive/1956914/> (last visited on May 13, 2020).

⁶¹ Atul Gupta, "Labour Reforms in the Age of COVID-19: What's the Right Balance?" *Bloomberg Quint*, May 13, 2020, available at: <https://www.bloombergquint.com/coronavirus-outbreak/labour-reforms-in-the-age-of-covid-19-whats-the-right-balance> (last visited on May 13, 2020).

⁶² Vatsal Bhandari, "Mindless Relaxation of Labour Laws will only hurt India's Economy more" *Quartz India*, May 11, 2020, available at: <https://qz.com/india/1855123/up-gujarat-labour-reforms-to-worsen-covid-19-hit-indian-economy/> (last visited on May 11, 2020).

laborers who will suffer from lower consumption, choked supply chains and will be forced to engage in child labor for more wages.⁶³

In realizing the hardships and suffering faced by the migrants, many petitions have been filed in the Supreme Court highlighting the piteous plight of migrant laborers,⁶⁴ seeking the assurance of wage payments,⁶⁵ pleading immediate relief to those engaged in the informal sector,⁶⁶ and asking for migrants to be allowed to travel back to their villages,⁶⁷ but they were to no avail as the court disposed of them all. Responding to this inactivity on the part of the Supreme Court, Balakrishnan Rajagopal, United Nations Special Rapporteur on the Right to Housing, and Olivier De Schutter, United Nations Special Rapporteur on Extreme Poverty and Human Rights stated that as the Supreme Court is the apex court of the country, it had the power to order the implementation of relief efforts that would help internal migrants stranded in intolerable conditions after losing their income and being forced out of their homes.⁶⁸ Unlike the Supreme Court, the High Courts of Karnataka,⁶⁹ Gujarat⁷⁰ and Tamil Nadu⁷¹ have made significant strides in ensuring that they are sensitive to the migrant crisis. Following their lead and urged by various national and international organizations, the Supreme Court finally pronounced a favorable ruling ordering the governments to register all the migrants and ensure that they are provided with transport, shelter, food and water until they can return to their home states.⁷² The delayed judicial action could have been combated by comprehensive legislation for the welfare of migrants but unlike the organized sector, migrant laborers are governed by only one terribly implemented law – the Inter-State Migrant Workers Act, 1979.⁷³

Legislative protection offered to inter-state migrants

⁶³ Vivek Dehejia, “India needs Labour Reform but must do it in the Proper Way” *Livemint*, June 01, 2020, available at: <https://www.livemint.com/opinion/columns/india-needs-labour-law-reform-but-must-do-it-the-proper-way-11590929529779.html> (last visited on June 1, 2020).

⁶⁴ *Mahua Moitra v. Union of India*, Writ Petition No. 470/2020.

⁶⁵ *Harsh Mander v. Union of India*, Writ Petition No. 10801/2020.

⁶⁶ *Swami Agnivesh v. Union of India*, Writ Petition No. 10802/2020.

⁶⁷ *Jagdeep S Chhokar v. Union of India*, Writ Petition No. 10947/2020.

⁶⁸ United Nations Human Rights Office of the High Commissioner, *COVID-19: Urgent help for India's forgotten migrant workers must follow Supreme Court Ruling, say UN experts*, OHCHR, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25926&LangID=E> (last visited on Sept. 08, 2020).

⁶⁹ *Mohammed Arif Jameel v. Union of India*, Writ Petition No. 6435/2020 C/w. Writ Petition No. 6603/2020.

⁷⁰ *Suo Motu v. State of Gujarat*, Writ Petition No. 42/2020.

⁷¹ *AP Suryaprakasam v. Superintendent of Police*, H.C.P No. 738/2020.

⁷² *In Re: Problems and Miseries of Migrant Laborers*, Writ Petition No. 6/2020.

⁷³ The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, (Act 30 of 1979).

The Inter-State Migrant Workers (Regulation of Employment and Conditions of Service) Act, 1979⁷⁴ is an Act that provides for fair and decent conditions of work as well as protection from exploitation and arbitrary use of power by employers. According to this Act, all business establishments or contractors employing five or more inter-state migrants must be registered or licensed, respectively, and the employers must maintain a detailed record of all the migrant workmen and the wages that they are paid.⁷⁵ In addition to this, employers must ensure regular payment of wages at par with other non-migrant employees, displacement allowance, journey allowance, suitable accommodation, free medical care,⁷⁶ and protective clothing.⁷⁷ The effective implementation of this law would have equipped the government with a detailed list of all the inter-state migrants employed in various states and it would have aided the migrants by providing a system of accountability to enforce their rights, but in the light of the recent crisis, it has become more than apparent that these vulnerable groups go unnoticed in the ordinary course of life.⁷⁸

One reason as to why the Act has seen such terrible execution could be the numerous compliance requirements that the Act envisages which mandates that all employers or contractors must, in addition to providing equal pay to migrants, ensure other social protections like free medical care, payment of various allowances, and adequate accommodations.⁷⁹ All these factors make the employment of migrants more expensive than the employment of local labor, thus making the law a disincentive to formalization of migrant labor⁸⁰ and a hindrance to providing adequate social security nets to migrants especially at a time like this when they are most vulnerable.⁸¹

So, whose responsibility is it to ensure the effective implementation of this Act? The states or the Centre? It is true that if the provisions of the Act were properly complied with the Government would have had comprehensive data on the migrant workers⁸² and this would

⁷⁴ *Ibid.*

⁷⁵ *Supra* note 51.

⁷⁶ U.N. Commission on Economic Social and Cultural Rights, *The Right to the Highest Attainable Standard of Health*, UN CESCR, UN Doc E/C.12/2000/4 (Aug. 11, 2000).

⁷⁷ Babu Mathew, "A Brief Note on Labour Legislation in India", *Asia Monitor Resource Centre*, April 01, 2003, available at: <https://www.amrc.org.hk/content/brief-note-labour-legislation-india> (last visited on May 27, 2020).

⁷⁸ *Supra* note 48.

⁷⁹ *Supra* note 51.

⁸⁰ *Supra* note 22.

⁸¹ Kolitha Wickramage, Lawrence O. Gostin, Eric Friedman & Rapeepong Suphanchaimat, "Where are the Migrants in Pandemic Influenza Preparedness Plans?" 20 *Health & Human Rights* 251 (2018).

⁸² *Supra* note 14.

have greatly eased the management of the mass migration of laborers following the lockdown⁸³ but, a report by UNESCO and UNICEF in 2013 on the ‘Social Inclusion of Internal Migrants in India’ found that the system of governance for internal migration was poorly developed and contained many discrepancies and variations, in implementation, across states.⁸⁴ Dagmar Walter, Director of the International Labor Organization’s Decent Work Team for South Asia, advised both the Central and state governments to practice effective social dialogue mechanisms of consultation and collaboration accompanied by the International Labor Standards which provide a strong foundation in developing policies that will lead to a sustained recovery.⁸⁵ She also emphasized the need for coherent and uniform and coordinated countrywide measures across three pillars: protecting and securing jobs and incomes of vulnerable groups in unorganized sectors, protecting frontline and outreach workers, and protecting small and micro enterprises.⁸⁶ While Kerala and Maharashtra have taken steps to make their policies more migrant-friendly there is a clear need for a cohesive legislative framework that is targeted at the welfare of internal migrants.⁸⁷

IV. Suggestions and conclusion

The containment measures proposed by the government were enforced at a time when the existing social and economic conditions showed signs of decline with consumption and demand, especially in the agrarian industry, at a low, creating a need for agricultural labor in states that need it the most.⁸⁸ Therefore, failure of migration has left northern states like Punjab and Haryana, where crops are ready to be harvested, lacking in the supply of labor⁸⁹ while states with a greater number of agricultural migrants have been struggling with a fall in wages

⁸³ Siddharth Sivaraman, “Is the Inter-State Migrant Workmen Act 1979, a Dead Letter? *Observer Research Foundation*, April 21, 2020, available at: <https://www.orfonline.org/expert-speak/inter-state-migrant-workmen-act-1979-dead-letter-64979/> (last visited on May 21, 2020).

⁸⁴ UN Educational, Social, and Cultural Organisation, *For a Better Inclusion of Internal Migrants in India*, UNESCO & UNICEF, available at: <https://ruralindiaonline.org/library/resource/policy-briefs-for-a-better-inclusion-of-internal-migrants-in-india/> (last visited on May 27, 2020).

⁸⁵ Sidhant Mamtany, “International Labor Organization Opens up on India’s Migrant Crisis; shares 3-pillars of response”, *India TV News*, June 02, 2020, available at: <https://www.indiatvnews.com/news/india/india-unlock-migrant-crisis-international-labour-organisation-3-pillars-of-response-622680> (last visited on Sept. 08, 2020).

⁸⁶ *Ibid.*

⁸⁷ S. Irudaya Rajan (ed.), *Handbook of Internal Migration in India* (SAGE Publications India Pvt. Ltd., New Delhi, 2019).

⁸⁸ Ranjini Basu, “Economic Slump: Busting Official Myths on Consumer Preferences” *News Click*, Sept. 14, 2019, available at: <https://www.newsclick.in/Slump-in-Market-Economic-Slowdown-Nirmala-Sitharaman> (last visited on May 14, 2020).

⁸⁹ Dilasha Seth, “Labour Issues: Punjab to promote Maize Cultivation in coming Kharif Season”, *Business-Standard*, April 20, 2020, available at: https://www.business-standard.com/article/economy-policy/labour-issues-punjab-to-promote-maize-cultivation-in-coming-kharif-season-120041900798_1.html (last visited on April 20, 2020).

and the absence of employment opportunities due to the oversupply of labor.⁹⁰ The absence of labor has urged states in need of harvesting their crops to turn to mechanized practices⁹¹ and at a time like this when agricultural migrants are struggling to hold onto their livelihoods, the automation of the agricultural industry will only prove to worsen their situation and have disastrous impacts on their future.⁹² This struggle has brought the importance of agricultural labor to the forefront and policy makers have finally realized that these migrant laborers keep production running so, improve their existing living conditions the policies of the government should be aimed at providing adequate food rations and providing employment⁹³ through the Mahatma Gandhi National Rural Employment Guarantee Act, 2005⁹⁴ (MGNREGA).

The Mahatma Gandhi National Rural Employment Guarantee Act, 2005⁹⁵ seeks to provide at least 100 days of employment to all those who have registered themselves under the scheme and if work is not provided, they are to be compensated with wages.⁹⁶ For years since its inception, the scheme has faced budgetary cuts and lack of proper implementation⁹⁷ but with the recent influx of migrants to rural areas, there has been a rise in demand for the provision of benefits under MGNREGA. With the increase in demand for work under MGNREGA there comes a challenge faced by states like Bihar and Jharkhand that are incapable of handling the sudden arrival of migrants. These states are among the least developed states in the country and so, the implementation of MGNREGA is crucial in these states to help incoming migrants in these tough times.⁹⁸ Some ways in which this can be done is by increasing budgetary allocation, providing more employment opportunities especially ones that can boost the development of these states, increasing the minimum wage and creation of a Nodal Agency that can supervise the effective utilization of funds allotted for the implementation of the Rural Employment Guarantee Scheme.⁹⁹

⁹⁰ *Supra* note 9.

⁹¹ Natasha Foote, *COVID-19 measures could cause 'devastating' labour shortage in EU farming*, EURACTIVE, available on: <https://www.euractiv.com/section/agriculture-food/news/covid-19-measures-could-cause-devastating-labour-shortage-in-eu-farming/> (last visited on June 02, 2020).

⁹² Navpreet Kaur, "Impact of COVID-19 on Agricultural Workers" *Vikalp*, May 03, 2020, available at: <https://vikalp.ind.in/2020/05/impact-of-covid-19-on-agricultural/> (last visited on May 13, 2020).

⁹³ *Supra* note 3.

⁹⁴ The Mahatma Gandhi National Rural Employment Guarantee Act, 2005, (Act 42 of 2000).

⁹⁵ *Ibid.*

⁹⁶ Diganta Biswas, "MGNREGA and Employment Jurisprudence in India: A Study" 5 *Indian J. L & Just.* 187 (2014).

⁹⁷ Nayanika Mathur, *Transparent-Making Documents and the Crisis of Implementation: A Rural Employment Law and Development Bureaucracy in India*, 35 *PoLAR* 167 (2012).

⁹⁸ Rejitha Nair, "Basic Income Discourse in India from Human Rights Perspective" 6 *Nirma U. L.J.* 85 (2017).

⁹⁹ *Supra* note 97.

The first effort of the government to reduce the harsh impacts of the crisis on migrant laborers, street vendor and daily wage workers was the proposal to provide food through the existing Public Distribution System (PDS) and to make available cash transfers of Rs. 500 per month but compared to the wages that laborers would have earned Rs. 250 to Rs. 300 per day, and the minimum wage specified under MGNREGA Rs. 250,¹⁰⁰ the amount proposed by the government is hardly enough to tide an entire family over through this difficult time. Concerning food rations through the PDS, all those who are eligible must possess a ration card but these differ across states making the system inaccessible to migrant laborers.¹⁰¹ Recognising the inadequacy of these measures, Prime Minister Narendra Modi announced a Rs. 20 lakh crore economic stimulus package, on May 12th, aimed at alleviating the suffering of migrant laborers, street vendors, and daily wage workers. Using this allocation of funds, the government seeks to offer free rations and enhance the availability and accessibility of employment and benefits under MGNREGA. The new economic package promises a free supply of 5kg of food grains per family per month and 1kg of channa per family per month for migrant families that are neither covered under the National Food Security Act, 2013¹⁰² (NFSA) nor in possession of state cards used to collect ration, and the State governments have been tasked with its implementation.¹⁰³ However, even with the implementation of existing schemes before the pandemic, there were considerable variations across states as to the working and effectivity of the scheme,¹⁰⁴ and after the Goods and Service Tax (GST), the States are strapped for money and are forced to work with limited fiscal strength and capacity so there is a huge problem with the actual efficiency, especially considering the repeated failure to identify distressed persons,¹⁰⁵ with which this proposal will be carried out. Although it seems like an insurmountable task, this challenge can be overcome with an innovative method of identification, not using single modes like Aadhaar or 'One Nation, One Ration' Cards but

¹⁰⁰ *Supra* note 96.

¹⁰¹ Dipika Jain and Brian Tronic, "Implementation of the Public Distribution System: An Empirical Analysis of the Right to Food in an Urban Slum" 12 *J. Food l. & Pol'y* 53 (2016).

¹⁰² The National Food Security Act, 2013, (Act 20 of 2013).

¹⁰³ Srinivasan Ramani, "Coronavirus Package Will Migrant Workers Benefit from the Centre's Measures?" *The Hindu*, May 17, 2020, available at: <https://www.thehindu.com/news/national/coronavirus-package-will-migrant-workers-benefit-from-the-centres-measures/article31603590.ece> (last visited on May 17, 2020).

¹⁰⁴ Asim K. Karmakar and Debasis Mukhopadhyay, Towards a Prudent Policy for Food Security in India, 11 *US-China L. Rev.* 221 (2014).

¹⁰⁵ *Supra* note 101.

combining them with the MGNREGA Job Cards and the NSSO Surveys which may allow for positive inclusion but would drastically reduce exclusion of those who need it the most.¹⁰⁶

Coupled with the combination of identification methods, there needs to be a nuanced understanding of the people who need help and the level of distress that they are in. This understanding can only come from a consolidation of data from various sources¹⁰⁷ which will allow for the understanding of the depth and breadth of the crisis and its impact on the most vulnerable sections in society.¹⁰⁸ The question that arises now is which wing of the government or public department will be responsible for carrying out this task, especially with the dynamic nature of the situation, and the answer is that it must be a combined effort¹⁰⁹ by the Central and state governments, public and private bodies, and research experts from various fields such as economics, sociology and law, with one nodal agency such as the NITI Aayog which can bring these organizations together.¹¹⁰ As for the strategy to be used, the organizations already have that knowledge but, there has also been an increase in technological advancements, by companies like Facebook and Google, that allow for real-time tracking of movement and these kinds of non-research driven data can be leveraged for a better understanding of where people are moving so that the states can ensure the presence of necessary social nets.¹¹¹

Another problem that needs to be given precedence is the misallocation of labor where rural areas will witness excess supply of labor caused by the return of migrants from cities but low employment opportunities while cities with better employment opportunities will suffer from a reduction in available labor.¹¹² This problem of reverse migration is exacerbated by the misconception, among vulnerable classes, that COVID-19 is an “urban disease” with low fatality rates and hence can be escaped by moving to rural areas, thus leading to overcrowding of villages and small towns that are already suffering from low sanitation and hygiene

¹⁰⁶ Jawhar Sircar, “A Long Look at Exactly Why and How India failed its Migrant Workers”, *The Wire*, May 29, 2020, available at: <https://thewire.in/labour/lockdown-migrant-workers-policy-analysis> (last visited on May 29, 2020).

¹⁰⁷ Krisnah Poinasamy, *Protecting Migrant Domestic Workers in the UK*, 19 *Gender and Development* 95 (2011).

¹⁰⁸ Prathma Sharma, “Delhi HC Seeks Affidavits from Centre, Delhi Govt on data relating to Migrant Workers”, *Livemint*, June 3, 2020, available on: <https://www.livemint.com/news/india/delhi-hc-seeks-affidavits-from-centre-delhi-govt-on-data-relating-to-migrant-workers-11591123162587.html> (last visited on June 3, 2020).

¹⁰⁹ Vrinda Bhandari & Renuka Sane, “A Critique of the Aadhaar Legal Framework” 31 *Nat'l L. Sch. India. Rev.* 72 (2019).

¹¹⁰ *Supra* note 1.

¹¹¹ *Ibid.*

¹¹² Kashif Majeed Salik, *COVID-19: Is Pakistan ready for a likely decline in flows?*, Development Policy Institute (2020).

practices,¹¹³ lack of awareness about the transmissibility of the disease and inadequate health and public care facilities.¹¹⁴ This must be corrected with a clear message by the government, addressing the realities of the virus to ensure awareness among the citizens of the country and to assure migrants that they need not be hesitant to return to cities when the situation is under control.¹¹⁵ Additionally, they can incentivize the laborers with direct cash transfers and food handouts. Taking a page from China's book, the government can also conduct "listening" whereby the representatives make an effort to listen to the fears that these working groups have and address them specifically.¹¹⁶

Reverse migration is not the only concern for the government because many seasonal migrants are stranded in cities and unable to return to their villages. These workers are usually self-employed, running small businesses from their homes or the streets but because of the nationwide shut down they have lost their livelihoods and are forced to remain in cities with high standards of living.¹¹⁷ To protect these migrants from the 'rural bias'¹¹⁸ which affects the design of many welfare schemes and programs and to provide a social safety net to the urban poor, the government can enforce and ensure micro-loans and micro-savings which encourage good borrowing from legitimate institutions like banks and will help these small businesses and vulnerable groups from further economic shocks caused by an inevitable prolonged lockdown.¹¹⁹

Finally, the Inter-State Migrant Workers Act, 1979¹²⁰ suffers from difficulty in implementation as it requires government officials to maintain detailed records and verify all documents submitted, while imposing a duty on employers to provide facilities that they wouldn't have to provide to non-migrant laborers.¹²¹ So, to ensure a long-term plan, there needs to be significant

¹¹³ *Supra* note 3.

¹¹⁴ Roli Srivastava, "I will never come back': Many India migrant workers refuse to return to cities post lockdown", *Scroll*, May 30, 2020, available at: <https://scroll.in/article/963251/i-will-never-come-back-many-indian-migrant-workers-refuse-to-return-to-cities-post-lockdown> (last visited on May 30, 2020).

¹¹⁵ Siby Thakaran, "Protecting Migrant Rights", 37 *Economic and Political Weekly* 5076 (2002).

¹¹⁶ Xifeng Wu, "6 lessons from China's Zhejiang Province and Hangzhou on how countries can prevent and rebound from an epidemic like COVID-19", *World Economic Forum*, March 12, 2020, available at: <https://www.weforum.org/agenda/2020/03/coronavirus-covid-19-hangzhou-zhejiang-government-response/> (last visited on June 7, 2020).

¹¹⁷ *Supra* note 56.

¹¹⁸ Rehan Abeyratne, "Enforcing Socioeconomic Rights in Neoliberal India" 29 *Minn. J. Int'l L.* 1 (2020).

¹¹⁹ *Supra* note 1.

¹²⁰ The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 (Act 30 of 1979).

¹²¹ K.P Krishnan, "Migrant Workmen Act, 1979, must be rationalized to remove requirements that disincentives formalisation" *Indian Express*, May 9, 2020, available at:

improvements to the Act whereby it includes even migrants who are self-employed and keeps in mind the capacity of the state to enforce its idealistic provisions.¹²²

The last pandemic that similarly shook the country was the Spanish Flu of 1919, but the country was under colonial rule then and the period was marked by a significant marginalization of vulnerable groups and consideration only for British employees. Now, in this age of independence, India has the chance to act differently and be sensitive to the health and safety of migrant workers to prove that it is indeed a welfare state. Bringing constitutional endeavors to life with the PDS, MGNREGA and cash transfers is a good start but to truly bring about a long-term change, the government should ensure that migrant workers are integrated into the broader state level and national level policies where their voices are heard and their suffering alleviated.¹²³

<https://indianexpress.com/article/opinion/columns/india-lockdown-inter-state-migrant-workmen-act-6400710/> (last visited on May 9, 2020).

¹²² *Supra* note 54.

¹²³ Neetha N. and Rajni Palriwala, "The Absence of State Law: Domestic Workers in India" 23 *Can. J. Women & L.* 97 (2011).