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VIOLATIONS OF HUMAN RIGHTS OF MIGRANTS WORKERS IN INDIA DURING COVID-19 PANDEMIC

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ABSTRACT

The world is facing the outbreak of coronavirus. All the countries are responding to this outbreak in their specific way. India also took some drastic measures to deal with this problem. India started by imposing a 21-day nationwide lockdown in India on 24th March 2020 to stop coronavirus from spreading. This had a very severe impact on the plight of the migrant labourers. Most of the migrant labourers were stuck in cities and were unable to go to their native places. Due to the closure of factories and working during the lockdown many migrant workers had to face a loss of income, loss of a place to live and food shortage. Due to these difficulties, migrant workers had no option but to go back to their native place where they could manage their needs. However, due to lack of transportation facilities they were forced to walk back to their places along with their families including their small children. Many workers died mid-way due to exhaustion, accident, starvation etc.

INTRODUCTION

Migrant workers are those workers who move from their native places to other areas to earn a living by working at any temporary jobs. Some migrant workers come under the unorganised sector and therefore are not protected by government which means they do not get minimum wages stipulated by Minimum wages act. This happens mainly because of their illiteracy and because they belong to the backward community which makes them ignorant towards their rights. The problem of migrant workers has come to the limelight in recent times in India.

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They have been facing major human rights violation due to the political situation of the country as well as their economic background.

India went through a nation-wide lockdown in March 2020 due to the Covid-19 Pandemic. The lockdown was announced four hours before it was implemented. This led to sudden shutting down of business and other activities of the country. Merely all the sections of the country were adversely affected by the lockdown however migrant workers were particularly found hard-hitting without work during the lockdown phase. Since all the businesses were shut these migrants were left without work and therefore were forced to move back to their native places due to loss of livelihood and lack of employment hoping to meet their family to get a sense of security. Migrant workers were left with no food and shelter, poor health and lack of other basic facilities during the lockdown. The government has a duty to protect the well being and health of the population but while protecting the population from the spread of Covid-19 the government failed to protect the health of marginalised people who facing health conditions due to starvation and lack of basic health care facilities. Additionally, Police forces were taking actions to punish all those who were violating orders given by the government however these resulted in abuses against people who were in serious need of help making their condition even worse. The International Labour organisation had already predicted that 400 million workers would get poverty-stricken during the pandemic.² They are often denied basic facilities such as nutrition, health care, shelter and sanitation because they belong to the informal sector.³

This paper will focus on the vulnerabilities that the migrant workers had to face during the lockdown and how the government authorities failed to address their human rights. The researcher will do the same by analysing different constitutional rights that the workers have which were not fulfilled by the government. Additionally, the researcher will also delve into different statutory provisions that are enacted to provide relief to migrant workers and how the government failed to implement them as well. Later, the role of the judiciary in respect of migrant workers will also be analysed.

²Shabarinath Nair, Divya Verma, *A Policy Framework For India's Covid-19 Migration*, Bloomberg Quint Opinion (May 19, 2020) <https://www.bloombergquint.com/coronavirus-outbreak/a-policy-framework-for-indias-covid-19-migration>

³Nilanjana Bhowmic, *The coronavirus pandemic has left many of India's poor without jobs, food, or a way to get home*, National Geographic, (May 27, 2020) <https://www.nationalgeographic.com/history/2020/05/they-treat-us-like-stray-dogs-migrant-workers-flee-india-cities/>

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CONSTITUTIONAL PROVISIONS

Indian constitution protects the rights of migrant workers in India. Primarily their rights are mentioned under Part IV of the constitution that is the Directive Principles of State Policy which is kind of an obligation on the state. Article 38 says that state shall strive to minimize inequalities in income status of people who are engaged in different locations.⁴ Article 41 provides that state shall within its economic capacity to ensure it makes effective provisions for securing the right to work and education, public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.⁵ Article 39 provides the state to ensure that the citizens have Right to an adequate means of livelihood, there is equal pay for equal work for both men and women, 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 that children are given opportunities and facilities to develop in a healthy manner and conditions of freedom and dignity and that childhood and youth are protected against exploitation and moral and material abandonment.⁶ Article 43 provides that the state must secure the workers living wage and a decent standard of life.⁷

Part III of the constitution that is Fundamental rights also guarantees certain rights in favour of migrant workers. Article 14 states that everyone should be equal before the law. Article 15 states that no one should be discriminated⁸ and article 16 states that everyone should get equal employment opportunity.⁹ Article 21 that is Right to life is the most fundamental right as it concerns our existences and includes all those aspects of our lives which makes life meaning full and worth living without which we cannot live as a human being. It includes all the minimum necessities and basic requirement that are unavoidable for a person's life.¹⁰ This article also includes right to livelihood as held in *Olga Tellis v. Bombay Municipal*

⁴Constitution of India, 1950, Art. 38

⁵Constitution of India, 1950, Art 41

⁶Constitution of India, 1950, Art 39

⁷Constitution of India, 1950, Art 43

⁸Constitution of India, 1950, Art 15

⁹Constitution of India, 1950, Art 16

¹⁰Constitution of India, 1950, Art 21

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Corporation¹¹, right to shelter and right to health. Article 21 also includes right to live with human dignity.

The Supreme court in *Kharak Singh v. State of Uttar Pradesh*¹² held that right to life is not limited to mere animal existence but also extends to the right to live with human dignity, including shelter, clothing, and nutrition. In *Delhi development, horticulture Employees Union v. Delhi administration*¹³ the supreme court held that broadly interpreted and as a necessary logical corollary the right to life would include the right to livelihood and therefore the right to work. Referring *Olga Tellis & Ors. v. Bombay Municipal Corporation & Ors.*¹⁴ the court further observed that this country has so far not found feasible to incorporate the right to livelihood as a fundamental right in the Constitution this is because the country has so far not attained the capacity to guarantee it and not because it considers it any less fundamental to life advisedly, therefore, it has been placed in the chapter of directive principles of state policy at article 41 of which enjoins upon the state who make effective provisions for securing the same within the limits of its economic rights. This means that the supreme court has recognised that it cannot be included in fundamental rights due to economic limitations but yet it has to be raised to right to livelihood which is a part of article 21.

The conjoined reading of Part III and Part IV of the constitution implies that the state should ensure that migrant workers in this time of pandemic are ensured with suitable food, shelter and health care facilities as well as transportation facilities.

However, in reality, the migrant workers during the lockdown had to face a loss of employment and lack of livelihood. They were left with no food and shelter as they were unable to earn their living. Daily wage workers were left with no option but to go back to their native places which was also a hardship for them as there were no transportation facilities available. Images of millions of workers floated around the time of lockdown where these workers were walking to their way back home with their families including infants as well. Many of them even lost their lives in an attempt to go back home. This exposed the severity of the impact of lockdown on the migrant worker. This indicates that the authorities failed to address the human right concerns of migrant workers during the pandemic.

¹¹1986 AIR 180

¹²1963 AIR 1295

¹³1992 AIR 789

¹⁴1986 AIR 180

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Loss of employment leading to lack of livelihood including no food, shelter and health care facilities is a violation of the right to livelihood. Secondly, Unavailability of transportation facilities violates article 19 of the constitution which provides the right to move freely in any part of the country. Migrant workers dying on their way back home due to inadequate facilities is also a violation of article 21. Additionally, when these migrant workers were going back to their native places to resolve their sustenance issues, they were beaten up by the police authorities because they considered the migrants to be violating the government order. This is a violation of their right to human dignity under Article 21.

While it is understood that government had announced the lockdown to protect the health of citizens and that these laws cannot be strictly enforced during the pandemic as laid under disaster management act the object to which is to stop the spread the virus,¹⁵ however, to protect the health of the citizens from the virus the government failed to protect the health of those who were suffering through malnutrition. It was therefore the duty of the government to have balanced the situation with rights of the migrant workers. The government, therefore, failed to look into the fundamental right to life and liberty of migrant workers to move freely throughout India so that they could go back to their native places with safety and dignity which is guaranteed under article 14, 19 and 21 of the constitution.

OTHER EXISTING LEGAL PROVISIONS

There are various labour laws in India including Minimum Wages Act 1948, Interstate Migrant Workmen (Regulation of Employment) Conditions of Service Act 1979, Trade Union Act 1926, The Unorganised Workers' Social Security Act, 2008 etc. These acts are only applicable to the organised sector.¹⁶ During the pandemic, many states came out with ordinances which contained exemptions from complying with certain labour laws to curb the effect of Covid-19.¹⁷ These measures are bold steps to boost the economy however they raise concerns to protect the rights of migrant workers as these labour laws provide social security to the workers. The constitutional validity of such a measure is a question as these measures violate certain rights that are enshrined in the constitution. When Trade union act is

¹⁵Disaster Management Act, 2005, Art. 35

¹⁶Dr. W.N. Salve, *Labour Rights and Labour Standards for Migrant Labour in India*, International Labour organisation <https://www.ilo.org/legacy/english/protection/travail/pdf/rdwpaper22a.pdf>

¹⁷Winy Daigavane, PavanaBelmannu, *Impact of the Global Pandemic on Indian Labor Laws*, Jurist, (May 20, 2020) <https://www.jurist.org/commentary/2020/05/daigavane-belmannu-labor-law-suspensions-india/>

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suspended it violated article 19 of the constitution. Additionally, Minimum Wages Act and the Factories Act, 1948 are suspended which results in the violation of the right to live a dignified life as well as the right to livelihood of labourers as they do not get fixed minimum income. Industrial Dispute Act 1947 also stands suspended when the right to access justice is considered as a fundamental right in the case of Anita Kushwaha v. PushapSadan.¹⁸ Additionally, in Sanjit Roy v. State of Rajasthan,¹⁹ it was held that payment of wages lower than the minimum wage to a person violates Article 23 which means a labourer should not get less than a minimum wage because it is given to them to meet the famine situation. In the instant case giving less wage than a minimum wage on the grounds of covid-19 pandemic would lead to exploitative situation towards the labours which is violative of the constitutional rights of a labourer. To conclude the situation of COVID-19 does not justify the neglect of migrant workers when they are especially in distress and need help.

ROLE OF JUDICIARY

The role of the judiciary was very essential during the lockdown to showcase their judicial activism when the government did not do much in the interest of the migrant workers. However, the judiciary also failed to protect the rights of migrant labours. The Supreme Court in one petition seeking payment of minimum wages to the workers during the lockdown held that there was no need to pay minimum wages since basic facilities of food and shelter were already being provided.²⁰ The Supreme Court on the deaths of migrant workers stated that the situation could not have been preventable. The Supreme Court has not realised their responsibility towards the welfare of the migrant workers and instead stated that it is the responsibility of the state. Additionally, the supreme court could have taken Suo moto cognizance to take effective decisions to provide relief to the workers but failed to do so stating non-interference in the policy.²¹ Justice Khanna has dissented in this case stating that the validity of an emergency could not be tested in courts of law.²²

CONCLUSION AND SUGGESTION

¹⁸ (2016) 8 SCC 509

¹⁹1983 AIR 328

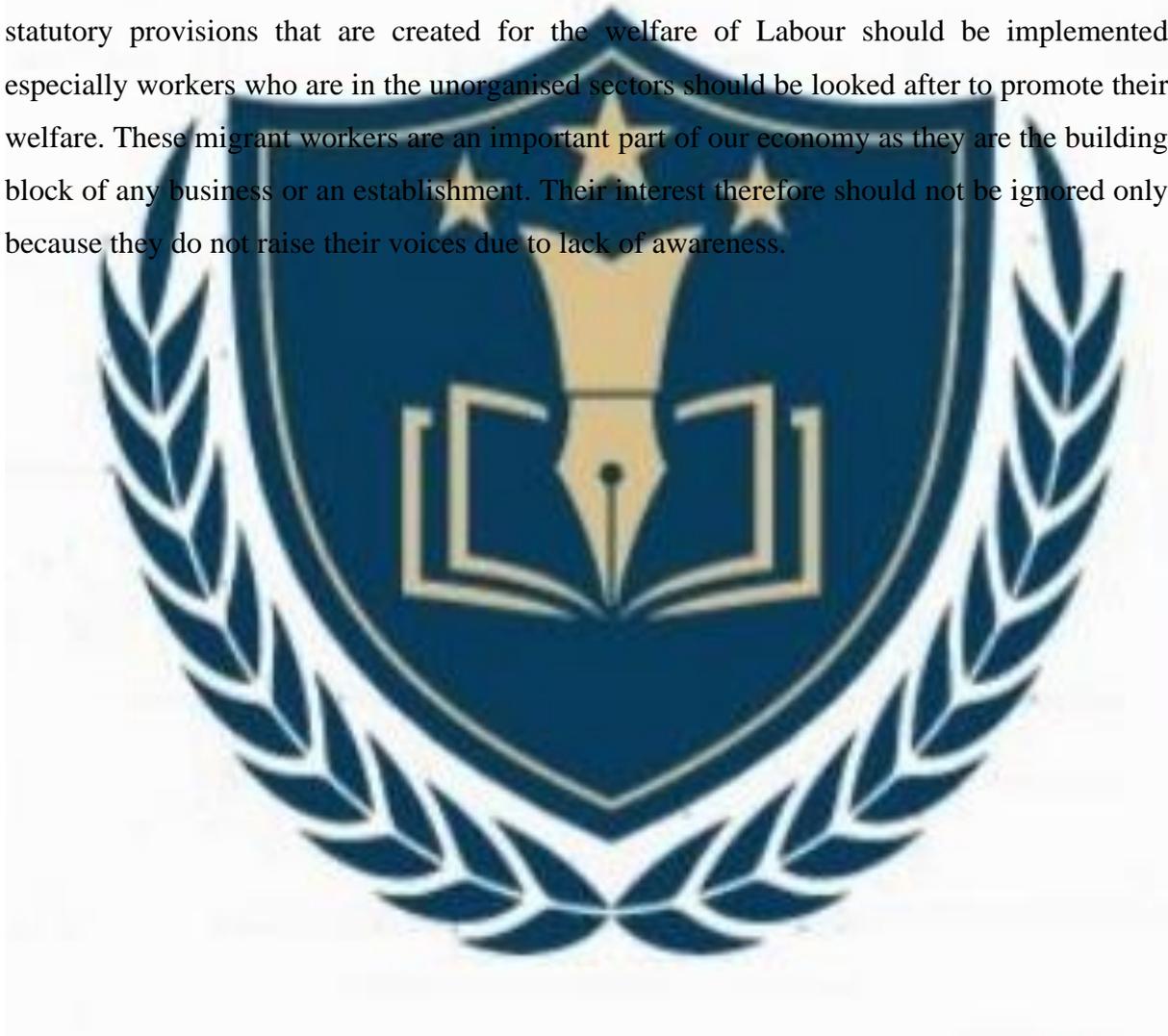
²⁰Harsh Mander&Anr. v. Union of India &Anr. **2020** SCC OnLine SC 276

²¹MahuaMoitra v. Union of India **2018** scconline sc 697

²²Negi, Chitranjali, *Human Rights Violations of Migrants Workers in India During COVID-19 Pandemic* (June 17, 2020). Available at SSRN: <https://ssrn.com/abstract=3629773> or <http://dx.doi.org/10.2139/ssrn.3629773>

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To conclude it can be said that the states have failed to work in the interest of the migrant workers even though there is a plethora of labour standards available both at national as well as international level. There is still a big gap between the basic human rights that are given to the migrant workers and the legal framework that governs their right. There is a need to consider the practical situation of the migrant workers considering they come from a marginalised community and are also unaware of their rights due to illiteracy. The authorities should work per all the international covenants that respect the dignity of a labourer. All the statutory provisions that are created for the welfare of Labour should be implemented especially workers who are in the unorganised sectors should be looked after to promote their welfare. These migrant workers are an important part of our economy as they are the building block of any business or an establishment. Their interest therefore should not be ignored only because they do not raise their voices due to lack of awareness.



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