

EFFECTS OF COVID-19 PERIOD ON BASIC HUMAN RIGHTS OF WORKERS IN INDIA

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ABSTRACT

India was one of the leading countries to implement the initial lockdown to contain the COVID-19 pandemic, but still, the lockdown failed and within a few months, India joined the list of countries most affected by the corona virus epidemic. Why did this transpire? What were the reasons abaft this? Where did the Indian government miss? This manuscript endeavors to study the lacunae in the lockdown plans of the Indian Government and highlights the mistakes committed by the Government which caused the lockdown in India to fail and further exposed the domestic migrant laborers to unbearable difficulties. The manuscript argues that the fundamental and economic rights bestowed upon the domestic migrant workers and other laborers under labor laws and the Indian constitution were breached extensively during the lockdown and that the state's policies during the lockdown worsened the condition of the domestic migrant workers. The constitution is the touchstone for any act passed in our country. It has, through directive principles of state policy and fundamental rights, provided safeguards to protect the interest of weaker and disadvantaged class of labour. During the unprecedented global crisis resulting from Covid-19 pandemic, workers became one of the most vulnerable groups in India. When the first lockdown was announced and all transport came to a standstill and people were locked up in their homes, these very workers were yearning to go back home in the absence of any means of their wages, unable to buy food or pay rent to their landlord. Most host states, that benefit from the hard work and labour of these "guest" or "migrant" workers, have just not been able to instill a sense of trust, leave alone give these workers what they demanded in this moment of pandemic driven crisis: some transparency and communication forget a life of dignity which would let them earn through their hard work and provide for their families. The massive human tragedy as lakhs of migrant workers found themselves stranded during the lockdown, without any means of getting food or work. Indian judiciary in the process of judicial interpretation has played a creative role in protecting the interest of bonded labour, child labour, contract labour, women workers, labour getting less than minimum wage and labour becoming jobless on closure of establishments by invoking the new concept of public interest litigation especially during the pandemic period.

Key words : Covid-19 pandemic, workers, lockdown

Introduction

Human Migration is a significant aspect of social science and the oldest action against poverty. (Galbraith 1979). However, there has been a significant difference in the migration process of developed and developing countries. While in India the migration is more induced by push factors like penuriousness, unemployment, regional disparities, family movement, marriage, natural calamities, etc those in developed nations are more pull factors like prosperity, safety, freedom, etc. Migration and regional disparities are strongly interlinked and the volume of migration within a given territory varies with the degree of diversity of areas included in that territory, diversity of people, the difficulty of intervening obstacles, and fluctuations and checks in the economy (Lee 1966). Migration is a reason for helping billions in getting rid of poverty, improving health, education, income, and

conflict and the decline in migration leads to a less-flexible economy. (Castles 1986). Low migration was one of the reasons for the slow recovery of the economy from the 2007–08 financial crisis (Batini et al. 2010).

The Indian government's response to dealing with the COVID-19 pandemic was undoubtedly very swift, but it also manifests an apparent lack of planning and coordination in the scale of its implementation. India could not get many benefits of implementing early lockdown and within a few months, it joined the list of countries most affected by the corona virus epidemic.

Before analyzing the lockdown policy of the Indian government it would be feasible to discuss some important studies on COVID-19 and the situation and the context of imposing lockdown. Viruses have differing capacities to infect persons. As with other corona viruses such as SARS or MERS-CoV, COVID-19 is more contagious and each person infected with this virus is expected to infect around 2.5 individuals with COVID-19. The Fatality Rate or chance of dying from the latest corona virus is around 4.4 percent, but this peril differs by geography and can even shift over the course of a pandemic, it is withal less hazardous than SARS (10 percent) or MERS-CoV (34 percent). So, if COVID-19 is less pernicious than other viruses, then how has it traveled so far and so astronomically immense that it has brought the entire planet to a halt? The replication appears to be simply that the current coronavirus is less lethal. Thousands of individuals have transmitted the virus nescient that they were still contaminated with either no symptoms or rather minor symptoms. This designates that the epidemic had already spread to several countries until health ascendant entities became apprised of the issue and commenced to suggest control steps. Since no vaccine and medication were available for COVID-19 hence observing lockdown and keeping the infected person under mandatory quarantine was the best option available. China's ambiguity in timely sharing the nature and severity of the disease and the WHO's laxity in taking timely action made the problem more acute and universal. The governments around the world were caught by surprise as they had little knowledge and expertise to deal with the problem. Their response was ambivalent and very few understood the trouble that was brewing up.

In India, COVID-19 was a tragedy that migrant laborers are often stigmatized and unjustly blamed for the spread of disease (Lau et al. 2019). But in reality, they were one of the worst affected groups. The impact of the pandemic on domestic migrants of India was extreme and the poor and marginalized were the hardest hit. Migrants died due to reasons ranging from starvation, suicides, exhaustion, road and rail accidents, police brutality, and denial of timely medical care (Guha et al., 2019). The announcement of the lockdown triggered mass exodus and reverse migration of unskilled and semi-skilled laborers from major urban cities who walked back to their villages without food and money. (Singh et al., 2019). The continuous reverse migration of millions of migrant workers to their native villages had a very detrimental impact on their physical, mental, and economic well-being. As per an estimate putting together the numbers of short-term seasonal/circular and long-term occupationally vulnerable workers gives us about 128 million (12.8 crores) workers whose livelihoods may have been adversely impacted with the onset of COVID-19. (Vasudevan 2019). The COVID-19 pandemic induced reverse migration brought many families to their native places and the onus shifted on creating more jobs for a person particularly under the Mahatma Gandhi National Rural Employment Guarantee Act (MNREGA) scheme- 2005, which is a rural employment scheme that guarantees 100 days of employment to all. However, schemes have their limitations and not all can find jobs under the scheme. There have been reports of tussles between the already registered laborers working in villages under various schemes and migrant laborers returning home due to lockdown amidst pandemic.

Apart from economic problems the migrants also had to encounter various psychosocial issues like high degrees of anxieties and fears due to various concerns related to the COVID-19 pandemic. There were reports in print media related to many migrant workers facing serious nervous breakdown and depressive psychotic disorders. This manuscript will endeavor to study the reasons due to which the lockdown in India couldn't prosper as per the prospect and the adverse impact it had on the migrant population, concretely the inter-state migrants. The study is predicated on secondary data and through an analytical and descriptive approach, it endeavors to appraise

the lockdown policy of the Government of India and underlines the reasons about the failure of the lockdown. The literature available on the migration, newspaper reports, surveys, government of India census-2011 has been widely consulted for the study. The first part of the manuscript provides a glimpse of international human rights and labor laws, business and human rights, and the rights of migrant workers in India. The second part of the manuscript focuses on the demographic conditions of migrants in India whereas the third and final part of the manuscript critically examines the COVID-19 lockdown policy of the Indian Regime.

Labour rights or workers' rights are a group of legal rights and claimed human rights having to do with labour relations between workers and their employers, usually obtained under labour and employment law. Initial periods of imperialism were based on exploitation of the labour class. With the emergence of ILO at international level and with the inhumane treatment meted out to workmen being replaced with an outlook of dignity of labour. These rights are a relatively new addition to the modern corpus of human rights. The modern concept of labour rights dates to the 19th century after the creation of labour unions following the industrialization process. Karl Marx stands out as one of the earliest and most prominent advocates for workers' rights. The UN guiding principles on Business and Human Rights recognize that the activities of business enterprises may have a negative impact on human rights. This has resulted in the "Protect, Respect and Remedy" framework in 2008 which outlines the duties and responsibilities of states and business to address business-related human rights abuses. These UN guiding principles were unanimously endorsed in June 2011 by the UN Human Rights Council, and have three pillars:

- The state duty to protect human rights absolutely uses by third parties, including business enterprises, through appropriate policies, regulation and adjudication.
- The responsibility of business to respect human rights; they should "avoid infringing on human rights of others and should address adverse human rights impact with which they are involved."
- The provision of more effective access to remedies for the victims of human rights abuse.

Indian labour laws are closely connected to the Indian independence movement and the campaigns of passive resistance leading up to independence. There is no denying that the worst hit section or class of people ever since the nationwide lockdown was haphazardly and recklessly declared, have been our "workers". This is a rather generic term that stretches across sectors; it covers the vast number of those who work in our unorganized sector, migrant labourers and landless labourers. Right from a mason, carpenter, kedia, plumber, zardori embroidery workers, to one who drives an auto rickshaw and one who sells vegetables for a living. Basically, any such person who lives a hand-to-mouth existence and is at risk of losing even a day's earnings or wages leading to their entire family becoming unable to afford a good meal the next day. Workers in India are set to face longer days and lower pay a "race to the bottom", academics, activists and unions said, as six states plan to suspend labour laws to help industry recover from the corona virus lockdown. It is not only regression; it's a deep slide into a bottomless pit and a race to the bottom of labour standards, labour economist K.R. Shyam Sunder, one of the prominent professor at the Xavier School of Management, told the Thomson Reuters Foundation.

Indian Constitution on Rights of Workers

"The founding fathers of the Constitution cognizant of the reality of life-wisely engrafted the foundational Rights and Directive Principles...by securing and protecting as effectively as it may, a social order in which justice, social, economic and political shall inform all the institution of the national life and to minimize the inequalities in income and endeavor to eliminate inequalities in status, facilities and opportunities, not only among individuals but also amongst groups of people residing in different areas and engaged in different vocations." The growth of labour law and industrial jurisprudence in India subsequent to 1950 bears close resemblance to the growth of constitutional law. The constitution has, through directive principles of state policy and fundamental rights, provided safeguards to protect the interest of weaker and disadvantaged class of labour.

India has a quasi-federal system. The Constitution of India demarcates the separation of powers between central government and state administrations in terms of legislative items such as labour welfare, policing, inter-state

transport etc. which may be legislated on either by central government, state government, or both. The union list contains those items which may be legislated upon by the central government alone. The state list contains those items which each state may legislate upon. The concurrent list contains those items which may be legislated upon by central and state government. The welfare of workers is a subject of the concurrent list.

The constitution of India is the touchstone for any act passed in our country. Legislation therefore follows different patterns in India as some are enacted and enforced by the central government, others are enacted by the central government yet enforced by the state government, or are enforced by both. Meanwhile the state governments may also enact legislation or pass notifications to enforce policy guidelines of central government. This means that there is a variety in the implementation procedure of Acts, as well as their coverage from state to state. In total there are 44 or 47 central labour laws, depending on which authority is consulted and 200 state labour laws. As some scholars have commented, "the Indian system of labour laws is very extensive and dauntingly complex." The fundamental rights and directive principles of the state policy enshrined in Part III and Part IV mentions working class related benchmark laws.

Article 14 of the Indian Constitution explains the concept of equality before law and equal protection of law. It is a concept implying absence of any special privilege by reason of birth, creed or the like in favour of any individual, and also the equal subject of all individuals and classes to the ordinary law of the land. According to Dr. Jennings, equality before the law means that among equals the law should be equal and should be equally administered, that like should be treated alike. Article 19 ensures protection of certain rights regarding freedom of speech and expression which includes the right to form associations or unions.

Article 23 prohibits human trafficking and all kinds of forced labour. Under this article, the traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law. Article 24 prohibits employment of children in factories. It states that "No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any hazardous employment." Article 39 provides certain principles of policy to be followed by the state towards securing:

- That the citizens, men and women equally, have the right to an adequate means of livelihood;
- 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 the 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.

Article 41 provides that 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. Article 42 ensures that the state shall make provision for securing just and humane conditions of work and for maternity relief.

Article 43 provides that the state shall endeavor to secure, by suitable legislation or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, condition of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the state shall endeavor to promote cottage industries on an individual or co-operative basis in rural area. Article 43-A ensures that 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 organizations engaged in any industry.

Any law including labour legislation contravening any fundamental right is void. Any citizen affected by such a law has a right of access to Supreme Court or High court under articles 32 and 226 respectively. The Supreme Court under article 136 has jurisdiction to entertain an appeal by special leave against award of the industrial

tribunal. Chief justice Kania expressing majority opinion has affirmed that the functions and duties of the industrial tribunals are very much like those of a body discharging judicial functions, although it is not a court. Justice P.N. Bhagwati treated a letter as public interest litigation in order to ensure observance of the provisions of various labour laws in relation to workmen employed in the construction work of various projects connected with the Asian Games. It gave a new dimension to minimum wage, employment of children and enforcement of labour laws in public interest litigation. In the instant case, the court ruled that non-observance of the provisions of the Equal Remuneration Act, 1976, is, in effect and substance, breach of the principle of equality before law, enshrined in article 14 of the constitution. Likewise, non-observance of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 and Inter-state Migrant Workmen (Regulation and Employment and Conditions of Service) Act, 1979 is violative of article 21. Explaining the scope of the expression 'traffic in human beings and beggar and other similar forms of forced labour' under article 23, the court observed that the word 'force' must therefore be construed to include not only physical or legal force but force arising from the compulsion of economic circumstances which leaves no choice or alternatives to a person in want and compels him to provide labour or service even though the remuneration received is far less than the minimum wage.

National Legislation on Workers' Rights

Like Anglo-American laws, the law of labour legislation in India springs from a rather random mixture of statutes and judicial decisions. Among the earliest statutes found, in tracing back its genealogy, are the workmen's Breach of Contract Act, 1859, the Employer's and Workmen's (Disputes) Act, 1860 and certain provisions of the Indian Penal Code, 1860. These legislations, however, hardly protected the interests of workers. The position has changed since 1919, when two major developments took place, namely, (i) the Government of India Act was passed and (ii) the International Labour Organization was set up of which India is a founder member.

A number of labour legislations can be traced directly or indirectly to the Conventions and Recommendations adopted by the International Labour Conference. The Trade Union Act, 1926, amended by Trade Union (Amendment) Act, 2001 provides for the registration of a trade union by the state. A trade union has to represent at least 100 workers or 10 per cent of the workforce, whichever is less, compared to maintain that in order to become registered, a trade union needs to have a minimum of 100 members. The Industrial Dispute Act, 1947, sets out the framework for industrial relations. There is a highly legalized framework that governs disputes and failure to follow the stages can result in a strike or lockout being declared illegal. The practical result of the law is to make it extremely difficult for trade unions to take any industrial action within the law. The level of state intervention in the actual industrial relations process, and the emphasis given to the maintenance of 'industrial peace' effectively circumscribes the possibility that collective bargaining has developed as the primary form of industrial relations in India. Under the Child Labour (Prohibition & Regulation) Act, 1986 the engagement of children up to 14 years was prohibited in certain hazardous occupations and processes and to regulate the conditions of work of children in other employments. The government has amended this legislation in the year 2016 and enacted the Child and Adolescent Labour (Prohibition & Regulation) Act, 1986 which came into force with effect from 1st September, 2016. The amended act covers complete prohibition on employment or work of children below 14 years of age in all occupations or processes linking the age of the prohibition of employment with the age for free and compulsory education under Right to Education Act, 2009. The Act provides stricter punishments to the employers contravening its provisions. The government has framed the Child Labour (Prohibition & Regulation) Amendment Rules, 2017 and also reviewed the schedule of hazardous occupations and processes to make it more comprehensive.

Impact of New Labour Laws on Workers' Rights

With a view to reform the archaic labour laws and to facilitate the ease of doing business in India, the Government of India decided to consolidate twenty nine central labour laws into four labour codes. The Indian parliament, in its most recent monsoon session, which was delayed and thus shortened because of the Covid-19 pandemic, cleared three key labour bills. Opposition parties made a last ditch attempt, writing a joint letter to the Vice-

President and Chairman of the Rajya Sabha Venkaiah Naidu. The parties said that the Bills were passed in the absence of the opposition parties. "These Bills affect the livelihood of crores of workers across the country. It will be a great blot on our democracy to have these Bills passed unilaterally today", they said. The parties had sent a common memorandum to President Kovind, urging him to return the Bills, arguing that their passage in the Rajya Sabha was flawed. These bills have 411 clauses and 13 schedules, and run into over 300 pages, and affect every person in employment in India.

The first major change comes in the form of the freedom that employer will have to hire and fire workers. Currently, any establishment with over 100 workers needs permission from the government during any process of retrenchment. This threshold has now been increased to 300. The introduction of a new nomenclature like 'inspector cum facilitator' gives an impression that the codes are labour friendly. The hierarchy of such inspector cum facilitators is such that it would make surprise inspections difficult. Amalgamation has been an excuse to push through anti-workers provisions.

The Industrial Relations Code also makes it near impossible for workers to strike as the new law would now require workers to hand in a 60 days' notice before striking. In case of pending proceedings before legal tribunal, the strike can only happen after 60 days of the completion of such proceedings.

The commitment of the government to labour could be gauged by the fact that the annual meeting of the Indian Labour Conference, the highest tripartite body, was not convened even once in the last five years. The claim that the provisions in the codes are for the welfare of unorganized sector workers, including gig economy workers, is a half-truth as a huge swathe of the workforce, which includes migrant workers, home-based workers and self-employed workers, has been left out. These workers have been either partially or inadequately covered or not covered at all in the codes. These codes make categorizations based on the numbers of workers engaged and employed and does not have a universal coverage of the benefits it purports to give. The experts committee of Labour Commission of India recommended that the NMW to be Rs. 375 per day or Rs. 9,750 per month for all wage workers, irrespective of sectors, skills, occupations and rural-urban location.

Indian Judiciary on Workers' Rights

Indian judiciary in the process of judicial interpretation has played a creative role in protecting the interest of bonded labour, child labour, contract labour, women workers, labour getting less than minimum wage and labour becoming jobless on closure of establishments by invoking the new concept of public interest litigation. Indeed the court assumed the role of protector of weaker, poor and struggling masses of the country. Further the courts through the judicial process have tried to uphold human dignity. They have elaborated the notion of social justice and sought to ensure just and humane conditions of work.

The Hon'ble Supreme Court in *Vishaka v. State of Rajasthan* made a significant contribution by evolving a code against sexual harassment. The court ruled that it shall now be the duty of employer or other responsible persons in work places or other institutions, whether in the public or private sector, to take all steps required to prevent and deter the commission of acts of sexual harassment and to provide the procedure for the resolution, settlement or prosecution of such acts of sexual harassment. The court in an epoch-making judgment in *Bharat Bank v. Employees of Bharat Bank* opened the door of article 136 of the constitution for entertaining a special leave to appeal against the decision of labour courts/tribunals.

In an important case of *M.C. Mehta v. State of Tamil Nadu* the Supreme Court held that the employment of children within match factories directly connected with the manufacturing process of match sticks or fireworks should not at all be permitted. The principle of equal pay for equal work was upheld by the Supreme Court in 1982 in *Randhir Singh v. Union of India* and held that even though this principle is not expressly mentioned in the Indian Constitution as a fundamental right, it is certainly a "constitutional goal" and hence can be enforced in cases of unequal scales of pay based on irrational classification. Right to livelihood is organically a part of labour rights. In 'pavement dwellers case' a five judges bench of the Apex Court had ruled that right to livelihood is included in right to life guaranteed by article 21 of the constitution. The court opined that "If right to livelihood

is treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood. In view of the fact that article 39(a) and 41 require the state to secure to the citizen an adequate means of livelihood and the right to work, it would be sheer pedantry to exclude the right to livelihood from the content of the right to life."

Plight of workers during Covid-19

The Covid-19 pandemic has created significant social and political upheaval. One casualty of this upheaval has been the protection and rights guaranteed under our constitution and our laws to working people. Labour migration has often been observed as the safest channel for human trafficking which represents a violation of the fundamental rights and core labour standards relating to forced labour, discrimination, freedom of association and, not infrequently, child labour enshrined in the ILO declaration fundamental principles and rights at work. During the unprecedented global crisis resulting from Covid-19 pandemic, workers became one of the most vulnerable groups in India. Since March 24, when the first lockdown was announced and all transport came to a standstill and people were locked up in their homes, these very workers were yearning to go back home in the absence of any means of their wages, unable to buy food or pay rent to their landlord. Most host states, that benefit from the hard work and labour of these "guest" or "migrant" workers, have just not been able to instill a sense of trust, leave alone give these workers what they demanded in this moment of pandemic driven crisis: some transparency and communication forget a life of dignity which would let them earn through their hard work and provide for their families. The massive human tragedy as lakhs of migrant workers found themselves stranded during the lockdown, without any means of getting food or work. Much of this could have been averted had the laws on migrant workers been properly implemented, and all of them been duly documented. Many of these workers have not been paid for months. The Supreme Court asked factory owners and other private industrial establishments to negotiate terms and enter into settlements with their workers on the payment of wages during lockdown period. The Ministry of Home Affairs dropped its crucial order that required all employers to pay wages to workers for the period the units were shut during lockdown as the several companies had moved the Supreme court against this order of MHA and the apex court asked the government to not take any coercive action against them. Again, had the laws relating to the timely payment of wages been enforced, many of these workers would not have been forced to take desperate measures like walking thousands of kilometers back to their homes. The union government and several state governments have seized the opportunity to bring in ordinances to curb the recognized and hard earned rights of the workers in the organized sector as also the unorganized sector. In this unprecedented global crisis due to Covid-19, the precarious conditions of laborers are being grossly neglected by the government.

It has been reported that states like Uttar Pradesh and Gujarat are paving the way to dilute the rights of these workers by diluting labour laws. A trade union with a statewide presence and another with national presence filed a petition under Article 32 of the constitution challenging validity of these notifications. Allowing the writ petition, the Supreme Court held, existence of public emergency is prerequisite for exercising power under s.5 which is not subject to " subjective satisfaction" but must be proved as " objective fact". The following elements are required to be satisfied to constitute public emergency: (1) there must exist a grave emergency (2) the security of India or of any part of its territory must be "threatened" by such emergency (3) the cause of the threat must be war, external aggression or internal disturbance. The relationship between cause and effect must exist and thus, implicit in s.5 is principle of proportionality. The court further held that economic slowdown created by Covid-19 Pandemic does not qualify as internal disturbance threatening security of state though it has put severe burden on existing, particularly public health infrastructure and has led to sharp decline in economic activities. The court is of the opinion that Covid-19 has not affected security of India, or part of its territory in a manner that disturbs peace and integrity of country. Hence, recourse to emergency powers for issuing impugned notifications was unjustified. The Hon'able Supreme Court Through this decision has elevated the rights of labour to the status of

basic human rights, which majoritarian governments are, under the constitution, obliged to respect, and cannot erase with the stroke of pen.

Conclusion

Migration is conventionally not taken positively in India and migrants face arduousness in having access to health care facilities, ration facilities, and other amenities. The migrants who already face language, cultural, licit, regulatory, and practical barriers further got more alienated after the invocation of sudden lockdown by Indian Government under the Disaster Management Act-2005. Today, the important issue is how to save the human rights and dignity of worker of India, in agriculture, road construction, and brick kilns, beedi workers, hand loom weaver, sugar factories, transporters and those employed in various undertakings for which dignified livelihood is a very distant goal. Some challenges faced by workers in India during Covid-19 pandemic are struggling with low wages, physical, sexual and mental exploitation with safety and security of employment. In the era of globalization, it is necessary to argue important aspects of labour standards and labour rights and aim of achieving a system where there are no barriers to the smooth process of the Rule of Law. Uniform labour standards in the context of unorganized sector workers, like migrant workers, should be implemented in rural and urban areas. The government should promote NGO initiatives and the formation of workers self-help groups to build an active movement for effective awareness raising, networking, advocacy and lobbying in order to prevent abuse and exploitation of workers.

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