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Need for a Record on Inter-State Migrant Workers with respect to the COVID-19 Pandemic

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ABSTRACT

In the wake of the COVID - 19 pandemic in March 2020, the plight of the migrant workers all across the country made headlines. There were many estimates of millions of migrant workers being stranded due to the imposition of the nationwide lockdown. The workers were unemployed with factories and other workplaces being shut with immediate effect. The nationwide lockdown was announced on the 22nd of March, 2020 by the Prime Minister of India. The pandemic and the ensuing lockdown exposed the cracks in India's policy of dealing with the inter-state migrant workers. The article delves into the existing problems as well as suggestions in having a record of Inter-State Migrant Workers in India.

Keywords: *Inter-State Migrant Workers, Employment, Pandemic, Central Government.*

I. INTRODUCTION

Being stranded in such a situation without any source of income or basic necessities forced such migrant workers to head back to their home towns/ states. Many migrants set off with their children and their paltry belongings in order to go back home. The desperation was such that many decided to return on foot without much help from the Central or State Governments. They couldn't survive staying in the cities without any work. They'd lost their jobs and were also facing shortage of food and shelter in the cities. The plight of workers having to return to their hometowns without any trains or buses operating sparked outrage. There were workers who, for example, intended to get back to their home state in Bihar from Bangalore where they had migrated in order to find livelihood. Planning to return back home without any trains/ buses running and without any support of the administration is a pitiable state to be in, to say the very least. A total of 198 migrant workers were killed in road accidents during the lockdown.² After a lot of outrage, the Central Government set up special "Shramik" trains in order to help migrants get to their home states.

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² <https://www.hindustantimes.com/india-news/198-migrant-workers-killed-in-road-accidents-during-lockdown-report/story-hTWzAWMYn0kyyCKw1dyKqL.html> (last visited March 23, 2024).

In the matter of **Problems and Miseries of Migrant Labourers, In Re**³, the Supreme Court held that with respect to the migrant workers who had reached their native place, *“The second major task which has now to be undertaken by the States and the Union Territories concerned is of taking care of those migrant workers/ labourers who have returned to their native places after cessation of their employment. The first step in this regard is to maintain record of all such migrant workers, who have arrived at different places, towns in different states. The details of migrant workers, nature of their skill, place of their earlier employment be maintained in prescribed pro forma to be formulated by the State concerned at village level, block level and the district level so that necessary help can be extended by the state authorities and district authorities to these migrant labourers.”*

The Supreme Court also spoke about counselling centres to be set up by the State at various levels so that the migrant labourers can be made aware of all the government schemes and other avenues of employment that is available to them so that they have a source of income and need not sit unemployed at home. With regards to migrant workers who want to return to the place of their employment, the SC directed the States to take steps in order to facilitate their return so that they can be employed again.

In addition to the above, the SC also directed all the States and UT's to take all the required actions towards the identification of stranded migrant workers in their particular states who were willing to get back to their native towns and provide for their return by bus/ train. The Court also directed the States to consider the withdrawal of any prosecution or complaints against the migrant workers under Sec. 51 of the Disaster Management Act for breaking the lockdown protocols.

The Supreme Court had to take suo moto cognisance of the aforementioned matter since not much was being done for the inter-state migrant workers at the height of the pandemic. The Court directed the Central and State Governments to undertake certain actions for the welfare of the workers. The directions weren't just aimed at getting the workers back to their native places but also to provide them with alternative modes of employment. The setting up of an increased number of community kitchens for migrant workers to provide food at subsidised rates to the migrant workers was also provided for.

The Centre, State and Union Territories were directed to complete the portal for registration under the National Database for Unorganised Workers (NUDW). For the States and the Centre to come good on their promises and schemes to migrant workers, the Court directed that they get all the migrants workers registered under this database so that they can receive the benefits

³ Problems and Miseries of Migrant Workers, In Re, (2020) 7 SCC 181.

of the schemes. Through such a direction given to the Centre, State and Union Territories, the Supreme Court emphasized on the need to maintain a record on the Inter-State Migrant Workers in India. It will serve a variety of purposes. It will enable the governments to have a record of the labourers who are to be the beneficiaries of the government schemes made for inter-state migrant workers. It would also prove to be useful if there arose any other situation like the COVID – 19 pandemic in the future.

II. INTER-STATE MIGRANT WORKMAN ACT, 1979

This act was passed to regulate the employment of inter-state migrant workers and provide for their conditions of service. It also provided for the registration of such inter-state migrant workers as well as all the contractors who recruited these workers to be licensed. This act has now been subsumed by the Occupational Safety, Health and Working Conditions Code, 2020. The definition of an “inter-state migrant worker” is provided under the Act as *“any person who is recruited by or through a contractor in one State under an agreement or other arrangement for employment in an establishment in another State, whether with or without the knowledge of the principal employer in relation to such establishment.”*

The Act prohibited employers from employing inter-state migrant workmen without obtaining a certificate of registration for the same for their establishment.

The definition of “inter-state migrant worker under the Occupational Safety, Health and Working Conditions Code, 2020 is *“a person who is employed in an establishment and who— (i) has been recruited directly by the employer or indirectly through contractor in one State for employment in such establishment situated in another State; or (ii) has come on his own from one State and obtained employment in an establishment of another State (hereinafter called destination State) or has subsequently changed the establishment within the destination State, under an agreement or other arrangement for such employment and draws wages not exceeding the amount of rupees eighteen thousand per month or such higher amount as may be notified by the Central Government from time to time.”*

As per Justice Bhagwati in the case of **Bandhua Mukti Morcha v. Union of India**⁴, *“The Inter-State Migrant Workmen Act being a piece of social welfare legislation intended to effectuate the Directive Principles and ensure decent living and working conditions for the workmen when they come from other states and are in a totally strange environment where by reason of their poverty, ignorance and illiteracy, they would be totally unorganised and helpless and would become easy victims of exploitation, it must be given a broad and expansive*

⁴ Bandhua Mukti Morcha v. Union of India, (1984) 3 SCC 161.

interpretation so as to prevent the mischief and advance the remedy.”

Had the Act been effectively implemented and there existed a well maintained record of inter-state migrant workers, then there would've been a reliable record of inter-state migrant workers which would've been of great use during the COVID – 19 pandemic when there was not enough data for the Central and State Governments. In the wake of the problems faced by inter-state migrant workers during the pandemic, a need for a record of inter-state migrant workers in India is highly necessary.

Migrant workers leave their home states in order to find livelihood and a better life. They usually end up having to work in places that offer them meagre wages. They leave behind their entire lives and barely receive any support, be it from the government or their employers. As per the 2011 Census Data, the total number of inter-state migrant workers in the country are 4,14,22,917.

Majority of the inter-state migrant workers are from the economically under-developed states in India. According to the 2011 Census, Uttar Pradesh, Bihar, Rajasthan and Madhya Pradesh accounted for around half of the total inter-state migrants. These states have the highest incidence of poverty, and lag behind in human development. As per NITI-Aayog's National Multidimensional Poverty Index (2015-16), poverty levels in Bihar, Uttar Pradesh and Madhya Pradesh were 51.9 per cent 37.7 per cent and 36.6 per cent respectively.⁵

The Standing Committee on Labour in 2011-12 has acknowledged that, *“The system of employment of inter-state migrant labour is an exploitative one. Such migrant labour is recruited from various parts of a particular State through contractors or agents for work outside that State in large construction and other projects. This system lends itself to various abuses.”*

The committee came up with the 'The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Amendment Bill, 2011'. The committee placed emphasis on substantial issues such as registration, passbook, payment of minimum and equal wages, journey and displacement allowance, free medical facilities, suitable residential accommodations etc. of the migrant workers.

III. CURRENT RECORD ON INTER-STATE MIGRANT WORKERS

Sec. 21 of the Occupational Safety, Health and Working Conditions Code, 2020 states that, *“(1) For the purposes of this Code, the Central Government and the State Government shall collect, compile and analyse occupational safety and health statistics in such form and manner*

⁵ <https://blogs.worldbank.org/en/peoplemove/inter-state-migrant-workers-india-policy-decent-world-work> (last visited March 23, 2024).

as may be prescribed.

(2) The Central Government and the State Governments shall maintain the database or record, for inter-State migrant workers, electronically or otherwise in such portal and in such form and manner as may be prescribed by the Central Government:

Provided that an inter-State migrant worker may register himself as an inter-State migrant worker on such portal on the basis of self-declaration and Aadhaar:

Provided further that the workers who have migrated from one State to any other State and are self-employed in that other State may also register themselves on that portal.”

As per information given by the Minister of State for Labour & Employment, Mr. Rameswar Teli in 2021, the Labour Bureau has launched All India Survey on Migrant Workers with effect from 1st April, 2021, with the following objectives:

- a) To estimate the number of domestic/internal migrant workers in the country.
- b) To collect data on their household characteristics, socio economic conditions and working conditions.
- c) Study the impact of COVID19 on their work.

The Survey will cover over 1.2 Lakh households in rural as well as urban areas.

Additionally, the Ministry of Labour & Employment has also launched the “eSHRAM” portal, a National Database of the Unorganised Workers. It has been made available to the States/UTs for registration of unorganised workers including migrant workers. The main objective of the “e-SHRAM” portal is to create a nationwide database of unorganised workers seeded with Aadhaar. It will also facilitate the delivery of Social Security and welfare Schemes to such workers. The portal also aims to facilitate portability of benefits of welfare schemes to the migrant workers. This portal will be the first ever national portal on workers in the unorganised sector.

In a written reply to a question in the Rajya Sabha, the Minister of State for Labour and Employment, Mr. Rameswar Teli provided certain information with regards to the All India Survey on the Inter-State Migrants Workers:

The sample design adopted in the All India Survey on Migrant Workers is a stratified multi-stage design. The first stage units (FSU) will be the 2011 census villages (Panchayat wards in case of Kerala) in the rural sector and Urban Frame Survey (UFS) blocks as per the latest phase of UFS in the urban sector. The ultimate stage units (USU) will be households in both the sectors. A Software has been developed for capturing the information from the respondents. The identity of the respondents will not be revealed while finalizing the results, they’re always kept anonymous.

IV. CONCLUSION

The lack of data on inter-state migrant workers is a glaring mistake on the part of the government (past and present). There has never existed concrete data on the migrant workers in India. In a country like India, where unemployment is extremely high, the chances of persons moving out from their hometowns to cities and towns in search of employment is very high. The estimates of the number of inter-state migrant workers are already pretty high. If the situation continues as is, that number is only going to increase. The pandemic shone some light on the plight of these inter-state migrant workers and called for some accountability on the part of the Central and State Governments. The need for having a record on the inter-state migrant workers in India had never been greater. While the governments at the Centre and the State level may roll out schemes catering to such migrant workers, their effectiveness in actually reaching out to and benefitting the workers is questionable. In this case, The Supreme Court's directions in the matter of **Problems and Miseries of Migrant Labourers, In Re**⁶ regarding counselling centres being set up seems to be a good way of going about things. This would serve multiple purposes. Firstly, it would enable the inter-state migrant workers to register themselves as such at a grassroots level. Secondly, these centres would also make the workers aware of the schemes that are made for them by the Central and State Governments. The survey on Inter-State Migrant Workers in India is only the first step. In order to provide welfare to the migrant workers, large scale action is required. Inter-State migrant workers form quite a sizeable part of our population that mustn't be ignored and they must not have to go through what they did during the onset of the COVID – 19 Pandemic.

⁶ Problems and Miseries of Migrant Workers, In Re, (2020) 7 SCC 181.