

**INDIA'S MIGRANT ISSUE DURING COVID-19: A CRISIS WITHIN A CRISIS**

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**INTRODUCTION**

The situation of migrant labourers in India has been characterized with insufficient wages, irregular and unorganized employment conditions, lack of financial security and a constant struggle to make ends meet for survival and livelihood. According to the figures of Census 2011, India witnessed movement of around 4.5 crore migrant workers in the year 2011. <sup>2</sup> In spite of the massive and indeed continuous contribution of migrant workers in the growth and development of small-scale businesses, enterprises and industries ultimately adding a significant percentage to the national economy, their socio-economic conditions remain precarious and has worsened even more in the past year of crisis.

The Corona Virus officially called as the COVID-19 virus started as an epidemic affecting only a few parts of the world in small communities or regions unexpectedly took a dramatic turn and spread across the globe in no time forcing the governments across nations to shut down schools, colleges, workplaces and every other activity part of our daily normal life. The first case of COVID-19 in India was reported in January 2020 and soon after the world shut down, the Prime Minister of India announced a 21-day national lockdown under the Disaster Management Act, 2005 which gives power to the Central Government to impose restrictions and pass specific policies with the aim of managing the disaster and thereby preventing its risks. <sup>3</sup> Globally, the World Health Organisation officially announced on 4<sup>th</sup> April 2020 that the world had crossed 1 million cases with emphasis on the tenfold increase in the previous month i.e. March 2020. <sup>4</sup>

At the time of such a chaotic health crisis faced in the recent years of modern history, it was obvious that the misery would be unequally directed towards the most disadvantaged and

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<sup>2</sup> Madhunika Iyer, *Migration in India and the impact of the lockdown on migrants*, (10 June 2020, 10:00am), <https://www.prsindia.org/theprsblog/migration-india-and-impact-lockdown-migrants>

<sup>3</sup> The Disaster Management Act, No.53 of 2005, INDIA CODE (2008), Vol. 12

<sup>4</sup> WHO Coronavirus Disease (COVID-19) Dashboard, WHO, (4 June 2020, 6:14 A.M), <https://covid19.who.int/>

socio-economically backward sections of society. Moreover, the disadvantaged class were rendered even more helpless without any safety net or government support when the announcement of lockdown came without any prior intimation to the public. While a huge chunk of the privileged population of the country faced the pandemic inside the safe walls of their comfortable homes with all facilities, the migrant labourers on the flipside suffered and fought the pandemic in the scorching summer heat while struggling to meet the basic needs of food, clothing and shelter. Being a democratic state that chooses its own representatives through the process of Universal Adult Franchise, it is bare minimum to expect a sense of responsibility and full disclosure of information from the authorities especially such information that has potential to immediately disrupt the survival and daily functioning of a large section of society. Mere prior notice could also aid them in the process of preparation and prevent any additional damage to their health and livelihood.

### **EVOLUTION OF LABOUR MOVEMENT AND LABOUR LAWS IN INDIA**

The history of labour exploitation in India can be dated back to the colonial period and recalled from well-known events that unfolded during Gandhi's Satyagraha movements in Champaran district, Kheda and in form of Ahmedabad Mill strike in the pre-independent era.<sup>5</sup> The events highlighted the marginalization and economic suffering of the class of agricultural labourers, peasants and mill workers. Despite several instances of labour exploitation in the Indian territory including the Chargola Exodus where large number of strikes were witnessed in the rich tea gardens of Assam, labour struggles and their problems were not in the limelight or covered in literatures by academicians and scholars for a long time. The Labour movement in India started taking an uproar only after the Royal Commission on Labour came about in 1931 further triggering publication and research on labour history. A clear parallel can be drawn between the attitude of colonial government and the current authorities pertaining to lack of enough emphasis on labour issues and problems especially the migrant workers. It was not until the 1960s when study of labour and their issues became a part of curriculum for students and academicians. The Commission also led

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<sup>5</sup> BIPIN CHANDRA &ORS, India's Struggle for Independence 1857-1947 335 (8<sup>th</sup>. Ed. Penguin Book House, 1988)

to the fulfillment of some of the then existing demands of the labour class by passing historical labour legislations like Trade Unions Act, 1926, Workmen's Compensation Act, 1923 etc.<sup>6</sup>

The establishment of the International Labour Organization which came as a result of the World War I led to widespread demands pertaining to labour problems such as reforms in wages, social security, general welfare and social justice for the working class across borders.<sup>7</sup> With the development of the International Labor standards and labour conventions and treaties, India's labour movement also started taking a drastic yet progressive turn. Moreover, with the enactment of the Constitution of India after independence, new goals and aims emphasizing on social welfare were established for new India. Adhering to the goals and desires of the founding fathers behind the Constitution, the concepts of Right to Work, Dignity of Labour and Social Equality became the source and reasons for several legislations enacted in the post-independence era.<sup>8</sup>

The Industrial Disputes Act, 1947 was one of the first legislations of newly independent India. It aimed to prevent disputes between workers within the industry and help in establishing healthy and harmonious working environment for labour. The Act also attempted to balance the interests of the workers as well as the employers by providing for dispute resolution which would prevent any unnecessary halt in the production process as well as safeguards for the employees pertaining to the conditions of work.<sup>9</sup> Payment of Bonus Act, Equal remuneration Act, Payment of Wages Act, Payment of Gratuity Act, Unorganised Sectors Social Security Act etc are other post-colonial legislations that were enacted to line with the social justice aims of the constitution. With the changing circumstances, globalization and increasing complexities in markets and trade, the Industrial Disputes Act and other labour laws have been amended and reformed in theory multiple times to keep them up to date and promote better working conditions for labourers.

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<sup>6</sup> Sanat Bose, *Indian Labour and Its Historiography in Pre-Independence Period*, 13 *Social Scientist* 3, 3-5 (1985).

<sup>7</sup> Nobel Prize History, (15 June, 2020, 7:15 P.M), <https://www.nobelprize.org/prizes/peace/1969/labour/history/>

<sup>8</sup> INDIA CONST. art 38-39

<sup>9</sup> Industrial Disputes Act, No. 14 of 1947, INDIA CODE (1993), VOL. 15

However, the recent migrant issue rendered all these detailed legislations covering almost all aspects of the lives of labourers redundant and ineffective owing to the poor application of the laws and ineffective implementation on the target population at the ground level.<sup>10</sup>

### **A CRISIS WITHIN A CRISIS**

With the close down of all shops, collapse of businesses, production and manufacture units during the lockdown, it was obvious to predict the devastating impact on the economy of the nation and the world at large leading to grave effects for the common man such as salary cuts and loss of jobs to millions. The biggest concern of the crisis was that most migrant workers are daily wage labourers who were left with nowhere to go when they were rendered jobless overnight especially without the creation of any social support mechanism mandated by the government. The nature of work of the migrant labourers is informal as they are unskilled in comparison to the educated population thus, their migration from their rural hometown/villages to cities in search of big money often leaves them in an unsecure often low waged occupation. The sad reality of poverty traps them in the same poverty ridden cycle because of the inability to afford good education or gain skill for a formal, secure job. The living conditions of migrant workers who come from rural households have been deplorable since years, even before the pandemic with the urban poverty level getting strained without any improvement in the lifestyle of migrant workers.<sup>11</sup>

The announcement of the lockdown led to a heightened sense of fear and panic for these individuals who had already been living a hand-to-mouth existence further causing confusion and distress to the mass of daily wage earners, seasonal migrant workers, contract labourers etc who were most often the bread-earners of their respective families. On top of that, with the abrupt suspension of all means of transport mandated by Clause 6 mentioned in the 2020 Guidelines of Essential Commodities Act, 1955 without the creation and establishment of any kind of alternative arrangements for commuting worsened the situation even more for this

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<sup>10</sup> S.I.A. Muhammed Yasir, *Labour Legislation in India – A Historical Study*, 6 I.J.A.R 34, 35 (2016)

<sup>11</sup> Sengupta, A, *Migration, Poverty and Vulnerability in the Informal Labour Market in India*, 4 TBDS, 99, 110-116 (2013)

section of society. The guidelines strictly restricted the use of transport only for the purpose of essential goods and case of fire, law, order and emergency services.<sup>12</sup>

At a time when directions, policies and new guidelines were passed on a daily basis to handle the crisis at hand, it is a thing to ponder why no central or even state authority/institution consider the return of thousands of migrants as an unprecedented ‘emergency’ for the ones who were walking miles on road risking their lives and of the fellow others during a global health crisis. Even after amendment of the guidelines after relaxation of lockdown rules, operation of flights, waterways and railways was kept mainly limited to the movement of cargo. The railway stations and bus terminals became overcrowded during this time because of the sudden emergency outflow of migrant labourers.<sup>13</sup> Due to this situation, safety measures such as social distancing that was mandated by the orders and directions of the government were violated. The migrant workers from unprivileged section of society were simply left trapped without any safe shelter wandering around the inter-state boundaries struggling to fend for themselves. Further, the state of affairs was aggravated due to the absence of coordination between the central and state governments with the ineffective implementation of existing policies and orders put in place in an attempt to handle this unfolding humanitarian crisis.

### **THE CONTINUING LOSS AND SUFFERING**

The uncertainty in the time of the pandemic has also led to a lack of financial security for the working poor, as about 89% of all workers in India fall under the category of informal workers. Of these workers about two-thirds are not covered by any minimum wage laws. This is especially the case with inter-state migrants who constitute the “footloose laborers”<sup>14</sup> of the country. Between 2011 and 2016, the magnitude of inter-state migration was estimated to be

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<sup>12</sup> The Essential Commodities Act, No. 10 of 1955, INDIA CODE (1988), Vol. 27

<sup>13</sup> Amlegals, *COVID-19 Outbreak: How About Essential Commodities*, (5 May 2020, 10:20 P.M), <https://www.mondaq.com/india/operational-impacts-and-strategy/928382/covid-19-outbreak-how-about-essential-commodities>

<sup>14</sup> Sunanda Sen, *Rethinking Migration and the Informal Indian Economy in the Time of a Pandemic*, THE WIRE, (1 June 2020, 8:14 P.M), <https://thewire.in/economy/rethinking-migration-and-the-informal-indian-economy-in-the-time-of-a-pandemic>

approximately nine million over a period of year in India. According to the *Economic Survey*, 2017, workers mostly from the states of Uttar Pradesh, Bihar, Madhya Pradesh, and Rajasthan migrate to states like Delhi, Kerala, Maharashtra, Gujarat, and Tamil Nadu in search of jobs. In cities, they are usually employed in menial jobs leading a precarious existence working long hours for low wages, often in poor working conditions and living in squalid surroundings. Among these workers include agricultural laborers, coolies, street vendors, domestic servants, rickshaw pullers, garbage pickers, auto-rickshaw and taxi drivers, construction workers, brick kiln workers, workers in a small way-side hotels and restaurants, watchmen, lift operators, delivery boys, etc that we often see and interact with in our day-to-day lives.

A closer look at the history and situation of informal labour sector in India produces the immediate inference that most existing laws, policies and institutions which are in place to advance the goals of the labour class merely emphasize on or are accessible to the formal sector only whereas the bulk of labour class in India is filled with unorganised, informal and seasonal migrant workers. With the ease of doing business which has been promoted in the recent years by the current government, small businesses, enterprises and industries have become common. This expansion of freedom and opportunity for the employers comes at a cost to the workers of the informal sector. The small businesses cannot afford the extra cost that comes with providing better employment conditions and social security benefits to their employees which is relatively easier for large-scale businesses that are capable of balancing risks and costs equitably between both the employer and employees. Unfortunately, in the informal sector, the entire brunt of suffering and costs falls on the labour.<sup>15</sup> The results of which, one can witness with the Migrant Crisis of 2020.

The difficulty in organisation of the informal sector due to problems of irregularity, non-registration, unincorporated business worsens the situation even more and renders even the law-making bodies helpless. At such a difficult crossroad, the only question that the scholars and law-makers need to address is whether there is a solution to provide the informal sector

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<sup>15</sup> Meghnad Desai, *Informal Work*, 48(3) IJIR 387, 387-389 (2013)

the benefits of the formal sector with the existing irregularities or is it more feasible to attempt to transform the entire labour class of India to formal sector? <sup>16</sup>

### **AN ISSUE OF INTERNATIONAL IMPORTANCE**

During a year where everyone was confined to their homes, social media became the main source and platform where people interacted with one another and also got their share of information. The social media avenues and *whatsapp groups* were consistently flooded with tips, tricks and myths about the novel pandemic where everyone tried to give their expert opinions on the future and present. Amidst the chaos of fake chaos and a dilemma about what to believe and what not, the citizens became aware about the instances of police brutality across the globe. Unfortunately, India was not left behind in this race and this is aimed at bringing the same into broad daylight. There have been recent instances of Police Brutality that took place and came to the forefront through the circulation of inhumane videos on media and sadly the instances have continued ever since then for some reason or the other.

India being one of the founding members of the International Labour Organisation (ILO) which has ratified a total of 47 conventions and 1 protocol of the same brings into the spotlight various lapses in the sphere of labour law and the alarming state of rural workers at large which needs to be improved. <sup>17</sup> The situation of migrant labourers is not merely an issue of national importance but an international humanitarian crisis by the virtue of India's ratification of various international treaties and conventions concerning human rights and rights of labourers, children and women.

Though Guidelines issued by the Ministry of Home Affairs as per the Essential Commodities Act, 1955 categorically exempt "essential services" from the lockdown, lack of coordination and miscommunication resulted in mayhem and fear among the general masses even after the existence of enough authorities in place in theory as per the legislations. In this unexpected situation, a lot of statutes were reviewed and directions, notices and orders were passed every day by State Governments in pursuance of safety measures directed by the Central

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<sup>16</sup>*Bose, Supra* note 5 at 6

<sup>17</sup> Ministry of Labour and Employment, (June 19<sup>th</sup> 2020, 8:34 P.M), <https://labour.gov.in/lcandilasdivision/india-ilo>

Government. Section 188 of the Indian Penal Code<sup>18</sup> was a recurring of these orders. Since the announcement of the lockdown, the police machinery had adopted various techniques, ranging from non-violent method of clicking a picture of the violators holding placards saying how they are ‘samaj ke dushman’ (enemy of society) to causing direct physical violence against public ranging from vicious lathi charges to dragging ‘violators’ on the roads. A live example would be the events that unfolded in several parts of Gujarat where tear gas and lathis were used to tame helpless migrant workers. More than 90 workers were immediately detained for violating the orders imposed under the Epidemic Diseases Act, 1897.<sup>19</sup> It is important to note as previously stated that these workers usually had no safe housing in the city/town of work thus thousands of them walked miles in groups to reach home struggling to make ends meet for them and their families. Furthermore, there is the case of a man who died after being beaten up by the police in West Bengal. The ‘violation’ had stepped out of his house to buy milk. Imagine the lack of humanity and the plight of the family whose breadwinner stepped out to buy milk and come back home in a coffin. Even the Disaster Management Act, 2005 which was the primary central law in force to contain the spread of coronavirus provides for a maximum arrest for a period of one year for proven non-compliance of orders by the concerned authorities.<sup>20</sup> However, the police taking the law in their hands with the blatant use of force and violence is a clear violation of Human Rights to say the least but to look at it legally, one needs a closer look into relevant provisions.

## LEGAL ASPECTS AND PROVISIONS

### *Constitutional Provisions*

The COVID-19 crisis not only saw loss and suffering every single day but also an uneven and inequitable treatment of the persons suffering from the same crisis. The divide between the privileged and unprivileged section started becoming clearer when one side had the ability to stock up necessities, food supplies and toiletries lasting for over a month while on the other

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<sup>18</sup> Indian Penal Code, No. 45 of 1860, INDIA CODE (2002), Vol. 18

<sup>19</sup> Mahesh Langa, *Migrant Workers, police clash in Ahmedabad*, THE HINDU, (May 18 2020, 9:43 P.M), <https://www.thehindu.com/news/national/other-states/migrant-workers-police-clash-in-ahmedabad/article31613118.ece>

<sup>20</sup> The Disaster Management Act, No.53 of 2005, INDIA CODE (2005), Vol 12



hand, some persons on the road could not even procure one meal a day. Right to Equality enshrined in Article 14 of Constitution of India<sup>21</sup> was unfortunately denied to more than half of the Indian population when the government failed to treat everyone facing the same health crisis equally. The effects of the money and muscle power is evident from the time and effort used by the government to organize flights for students and other residents mostly from good income families who were stranded abroad while thousands of migrant workers often from marginalised sections were denied even train tickets from one part of the country to their homes. The migrant crisis also brings focus on the blatant breach of the principle of ‘equal pay for equal work’ enshrined under Article 14. The same principle was elaborated and argued in *State of Orissa v. Balaram Sahu*<sup>22</sup> where there was a contention on the entitlement of equal pay by the daily wage, casual workers in the State of Orissa for undertaking the same responsibilities and duties as the permanent employees. The Supreme Court elaborated on this point of law by upholding the dissimilarity between the duties and responsibilities of casual workers and permanent employees. The Apex further emphasized on the qualitative difference under Article 14 of the Indian Constitution. However, the Court made it clear through the judgement that the State must ensure that minimum wages are prescribed and paid to workers in an attempt to bring socio-economic parity.<sup>23</sup>

Article 19 of the Indian Constitution is an umbrella provision constituting six freedoms within its purview.<sup>24</sup> The ones applicable to the migrant crisis are Article 19 (1) (e) that specifically provides for the right to reside and settle in any part of the territory of India read with Article 19 (1) (g) which allows for any person to practise any profession, or to carry on any occupation, trade or business.<sup>25</sup> True economic growth and realization of these fundamental rights in its true sense without compromising on the lifestyle would occur only with even and equitable territorial development all over the country. In the present situation, the workers are often forced by their dire circumstances to migrate in order to run their households often doing menial jobs.

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<sup>21</sup> INDIA CONST. art 14

<sup>22</sup> *State of Orissa v. Balaram Sahu*, AIR 2008 SC 5165

<sup>23</sup> *State of Orissa v. Balaram Sahu*, AIR 2008 SC 5165

<sup>24</sup> INDIA CONST. art 19

<sup>25</sup> INDIA CONST. art 19

The current issue at hand where there are instances of denial of basic necessities like food, clothing, shelter with safe and healthy living conditions for the migrant workers can be termed as a clear violation of Article 21 provided by the Constitution of India.<sup>26</sup> Over the course of legal development, the scope of Article 21 has been evolved and made more inclusive through various judicial pronouncements across the world. In *Munn v. Illinois*,<sup>27</sup> the meaning of life which is recognised as a human right which became a fundamental right in most civilised nations was transformed to include quality of life. The same principle was laid down in the Indian landmark judgement of *Kharak Singh v. State of Uttar Pradesh*<sup>28</sup> expanded the phrase personal liberty to include more than mere animal existence.

In *Delhi Development Horticulture Employee's Union v. Delhi Administration*<sup>29</sup>, the petitioners who were daily wager employees in the Jawhar Rozgar Yojna filed a petition contending their right to life. They claimed that their right to life under Article 21 included the right to livelihood and thus, they were entitled to the right to work. The Apex Court through its verdict dictated at that time that the Indian State had not found a uniform effective mechanism for the implementation of right to livelihood as part of fundamental rights under Part III of the Constitution. It instead laid down the onus of the Directive Principles of State Policy prescribed under Part IV which directs the State through Article 41<sup>30</sup> to make effective provision for securing the same according to the capacity of its economic resources within the limits of development.<sup>31</sup>

In another instrumental judgement of *D.K. Yadav v. J.M.A. Industries*, the Hon'ble Apex Court while deciding on the matter of termination of service of a worker held that Article 21 of the Constitution that lays down the fundamental right to life also includes the right to livelihood and therefore no worker could be terminated from their service in an unfair,

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<sup>26</sup> INDIA CONST. art 21

<sup>27</sup> *Munn v. Illinois*, 94 U.S. 113 (1877)

<sup>28</sup> *Kharak Singh v. State of Uttar Pradesh* (1963) AIR 1295, 1964 SCR (1) 332 (India)

<sup>29</sup> *Delhi Development Horticulture Employee's Union v. Delhi Administration*, AIR 2010 SC 6645

<sup>30</sup> INDIA CONST. art 41

<sup>31</sup> *Delhi Development Horticulture Employee's Union v. Delhi Administration*, AIR 2010 SC 6645

arbitrary and unlawful manner as that would deprive the person of their means to earn their living.<sup>32</sup>

The Constitution of India also provides for Directive Principles of State Policy under Part IV (Article 38-51) to aid in achieving the goals of a welfare state and social, economic and political justice as well as equality of opportunity and status as mandated by the Indian Preamble. Article 39 of the Constitution aims to secure to the citizens the right to adequate means of livelihood and puts a responsibility on the State to also ensure equal pay for both men and women for the same job or activity.<sup>33</sup> Right to work and secure wages with a good standard of living is provided for in Article 41 and 43.<sup>34</sup> Even though Directive Principles of State Policy are not enforceable in the Court of law and citizens cannot approach the Court to get protection against the violation of these rights, the judgement of the landmark case of *Minerva Mills Ltd. & Ors v. Union of India*, DPSPs were given the equal weightage as the Fundamental Rights and they were placed on an equal footing.<sup>35</sup> The principles enshrined in Articles 39(a) and 41 must be given enough weightage for the true realization of enforceable fundamental rights. The obligation upon the State to secure adequate means of livelihood and the right to work to each and every citizen comes with the unspoken inclusion of the right to livelihood within the broad umbrella of right to life. Any denial of the right to livelihood which is outside the exception of procedure established by law is a downright offensive to the principles of Right to life under Article 21.

### ***Legislative Provisions***

On account of containing the spread of COVID-19, the Prime Minister of India, Narendra Modi announced a nationwide curfew for a period of 21 days on March 24, 2020 invoking the strict implementation of The Disaster Management Act, 2005. The impact of the same could be seen on everyday basis of almost every citizen of this democratic nation. The legislation has a wide interpretation of the word 'disaster' which is not limited by its name

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<sup>32</sup> D.K. Yadav v. J.M.A. Industries, AIR 2015 SC 5564

<sup>33</sup> INDIA CONST. art 38-39

<sup>34</sup> Id at art 41-43

<sup>35</sup> *Minerva Mills Ltd & Ors v. Union of India* (1980) AIR 1980 SC 1789

and takes within its purview all man-made as well as natural disasters which have caused or have the potential of causing human loss and suffering and the control of which is beyond the control of society in general.<sup>36</sup> The Act also establishes Disaster Management Authority at National, State and District levels. Section 51 of the Disaster Management Act, 2005 prescribes penal punishments for persons non-complying with the directions and orders of Central or State Government or any other authorities established under the Act.

Another legislation which was in operation during the COVID-19 crisis was the Epidemic Diseases Act, 1897.<sup>37</sup> The legislation was amended by the recent Epidemic Diseases (Amendment) Ordinance, 2020.<sup>38</sup> The original Act which aimed to contain and prevent the spread of dangerous diseases has been modified by the ordinance to include specific provisions for healthcare personnel who are involved at the frontline to fight the deadly virus. The key features of the Act include safeguards and protection against any act of violence committed against the healthcare service workers. It also makes provisions for quarantine facility owing to the specific contagious nature of the disease at hand.<sup>39</sup> Although the legislation claims to cover all dangerous diseases, the lack of any comprehensive definition of a dangerous disease puts blot on the effectiveness of the Act and its application on potential diseases and health catastrophes of future. Moreover, the Act places immense powers in the hands of the government authorities without any provisions prescribing punishments or compensation against their illegal actions which creates a lot of scope for misuse and arbitrary use of power by the State and its agencies.

The recent instances of police brutality that came into the forefront in 2020 forces one to take a closer look at the penal provisions. According to the language of Section 188 of the IPC, the provision mainly deals with any kind of disobedience of orders, summons, directions issued by the State which includes all public servants. The sanction mandated by this provision however in no interpretation implies violence on the violator. Even if the disobedience or omission to do an act required by the State relates to human life, health and safety which was definitely the case with the COVID-19 virus, the punishment cannot be

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<sup>36</sup> Supra note 5

<sup>37</sup> The Epidemic Disease Act, No. 3 of 1897, INDIA CODE (2013), Vol. 12

<sup>38</sup> Epidemic Diseases (Amendment) Ordinance, 2020, INDIA CODE (2020), Vol. 6

<sup>39</sup> Epidemic Diseases (Amendment) Ordinance, 2020, INDIA CODE (2020), Vol. 6

more than imprisonment of 6 months plus fine<sup>40</sup> and that too if the step by step procedure is followed as per the Criminal Procedure Code.<sup>41</sup>

*This further takes us to the notion that whether the police officers get an authority to initialize the attempt of lathi charge in case of the irregularity of violators?*

The answer to this rhetorical question is no. At most, the police have authority to detain an individual for not adhering to the conditions of lockdown and gives the offender right to be released on bail on account of offence being bailable.

The outcome of lathi charges by police authority and mercilessly beating the people who went out to accommodate essential goods for their mere survival are an example of the major misuse of powers done by the state authority in order to mislead a riot and where the people of the state who chose the government ultimately becomes the victim in such cases. In these instances, what most of the common public can do is to educate one another and make them understand the rights and obligations which the Constitution of India has given to the citizens so that they can understand what rights cannot be infringed if such cases of curfew arise. The curfew is justified on account of public welfare but the disproportionate use of force is not justified. If the curfew is seen from the perspective of public welfare then it can be somehow justified on the grounds of social, secular and republic but when there is use of force in such circumstances then it is not justified.

### **AFFIRMATIVE ACTION**

After much chaos and suffering, it was the Apex Court that took *suo moto* cognizance of the daily distress caused to the migrant labourers by recognizing their problems and deciding to pass certain directions in their favour. A group of 20 senior advocates wrote a letter dated 25<sup>th</sup> May 2020 emphasizing on the issue as a violation of fundamental rights and the situation of migrant workers as a massive human rights crisis.<sup>42</sup> Following this initiative, a three-judge

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<sup>40</sup> Supra note 10, Section 188

<sup>41</sup> Code of Criminal Procedure, No. 2 of 1974, INDIA CODE (2002), Vol. 13

<sup>42</sup>Kruthika R, Jai Brunner, *COVID Coverage: Migrant Labourers* (9<sup>th</sup> June 2020, 6:30 P.M), <https://www.scobserver.in/the-desk/migrant-labourers-crisis-and-the-supreme-court>

bench of the Hon'ble Supreme Court directed the Centre and State Governments to facilitate the free and safe return of all the migrant workers who were stranded away from their homes or villages without any means to go back.<sup>43</sup> By virtue of good media coverage, several people in the country became aware of this ongoing crisis. As a result of which, many Public Interest Litigation (PILs) were filed seeking fulfilment and redressal of specific demands from the Court of Law. The case *Alah Alok Srivastava v. Union of India*<sup>44</sup> is one such petition demanding a dignified treatment to the migrant labourers by the local administration and concerned police authorities.<sup>45</sup> It also aims to secure provision of food, water, medical treatment and temporary shelter home/accommodation to the needy labourers till the situation gets better.<sup>46</sup> At the territorial level, governments, particularly that of Kerala and Tamil Nadu, spared no idle opportunity to establish instruments, for example, direct benefit transfer and transfer plans to aid the helpless handle the emergency as much as possible. While an economic relief package of ₹1.7 lakh crore was declared by the central government, this amount would not be adequate to cater to the gravity of the issue. Moreover, the accessibility and availability of this sum to the un-registered migrant workers who usually do not possess bank account or ration cards also raises a crucial question and points to the loopholes in the framework.<sup>47</sup>

Seeing the aftermath of the migrant crisis and its continuing financial suffering, the Lok Sabha initiated three new labour bills in the month of September 2020 in an attempt to consolidate, update and simplify laws relating to the matters of trade and commerce.<sup>48</sup> Three instrumental codes pertaining to the present matter came into existence after this major policy

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<sup>43</sup> The Print, *Supreme Court asks Centre, States to send migrant workers home free of charge*, (19 June 2020, 8:44 P.M), <https://theprint.in/india/supreme-court-asks-centre-states-to-send-migrant-workers-home-free-of-charge/445173/>

<sup>44</sup> *Alah Alok Srivastava v. Union of India*, AIR 2012 SC 4435

<sup>45</sup> Madhunika Iyer, *Migration in India and the impact of the lockdown on migrants*, (10 June 2020, 10:00 A.M), <https://www.prsindia.org/theprsblog/migration-india-and-impact-lockdown-migrants>

<sup>46</sup> Supra note 1

<sup>47</sup> Pranab R. Choudhury, *The Lockdown Revealed the Extent of Poverty and Misery Faced by Migrant Workers*, THE WIRE, (July 16, 2020, 8:34 P.M), <https://thewire.in/labour/covid-19-poverty-migrant-workers>

<sup>48</sup> Aayushi Kiran, *A Critical Analysis the three Labour Bills 2020*, (20<sup>th</sup> October 2020, 6:40 P.M), <https://www.latestlaws.com/articles/a-critical-analysis-the-three-labour-bills-2020/>

change namely The Code on Social Security, 2020<sup>49</sup>, The Occupational Safety, Health and Working Conditions Code, 2020<sup>50</sup> and the Code on Wages (Central Advisory Board) Rules, 2021<sup>51</sup>. With proper coordination and sound implementation at the ground level, the Indian legal machinery can avoid the devastating after effects of an emergency situation such as the migrant crisis of 2020 in future.

## CONCLUSION AND SUGGESTIONS

Since most of these workers are employed in a very small and medium enterprises in the informal sector, in enterprises that are teetering at the edge of collapse, given the deepening economic slowdown. Preventing shutdowns of these enterprises in the informal sector in order to ensure their survival is also essential in testing times. These enterprises should be provided with special assistance, such as a special economic package from the government to stay afloat in drastic circumstances. Most importantly, the need of the hour is to ensure that adequate measures are taken to cushion the impacts of the pandemic on the working poor in the midst of a deepening economic slowdown. This has to be done by both the central and state governments working in tandem not only to ensure adequate resources but also to implement schemes suited to the unfolding situation at the ground level. Unemployment and money problem, along with public goods and transportation shut down, hundreds and thousands of migrant workers who do not have a job security or protection were forced to trek hundreds of miles back to their home towns and villages along with some deaths on their journey.

The crisis which had affected the life and property of thousands of people across different states brought into the limelight the inefficiency of our existing laws and policies concerning this section of population. One silver lining of this situation is that these instances and the plight of the workers were widely reported by the media channels. Without the imposition of lockdown as a side effect of COVID-19, the plight and inefficiency of policies probably wouldn't have been recognised as an early stage. The time is now for the statesmen,

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<sup>49</sup> The Code on Social Security, No. 36 of 2020, INDIA CODE (2020), Vol 13

<sup>50</sup> The Occupational Safety, Health and Working Conditions Code, No. 37 of 2020, INDIA CODE (2020), Vol 1

<sup>51</sup> Madhunika Iyer, *Migration in India and the impact of the lockdown on migrants*, (10 June 2020, 10:00 A.M), <https://www.prsindia.org/theprsblog/migration-india-and-impact-lockdown-migrants>

legislators and policy makers to take action on this newly spread information and awareness of this human rights issue.

The labour laws have evolved all across the globe since the Industrial Revolution in order to make the workplace and living conditions more favourable for the working class. However, the past transformation does not imply that the present policies are perfect without flaws. The laws are dynamic and policies must continue changing and becoming more inclusive according to changing contemporary social-economic scenarios. The unexpected turn in our normal lives caused by the corona virus has given us time to reflect, become more aware and most importantly be prepared as much as possible for any potential damage to the social structure so as to preserve the dignity of the lives of the citizenry.

Despite the doctrine of sovereign immunity and the fact that the virus could not have been stopped at its origin as it was beyond the control of the Communist-Party led nation, the nation still needs to be made liable for the costs which other great nations have to bear just because of its negligent conduct of not being able to duly inform and give cautions or warning about the transmission of the virus among humans, which could have prevented this massacre or at least reduced the suffering to a certain limit. The pandemic has cost the world nearly 26,40,349 deaths as of 14th March 2021 all across the globe <sup>52</sup>while major economies and developed nations have also been broken. China caused a humongous aftermath which needs to be significantly realised by any way possible. If there would be any case where justice should be done, then this should be it. In the sectorial sector, the Micro Small and Medium Enterprises (MSMEs)<sup>53</sup> which owes 30% contribution to economic development, is now totally out of action. But the government has regarded ₹20,000 crores for this sector including other sectors like real estate, aviation, tourism and automobiles which is a view that can pull up the economy back to its development process to a certain level. The status of the health sector in India is in a crucial state and the impact of the pandemic in such a populous nation digs a deep hole in its already suffering state. The private health sector is facing a lot

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<sup>52</sup>World Health Organisation, Coronavirus disease (COVID-19) Pandemic (14 March 2021, 12:00PM), <https://www.who.int/emergencies/diseases/novel-coronavirus-2019>

<sup>53</sup> Ministry of Micro, Small & Medium Enterprises, <https://msme.gov.in/>, last accessed on 20 November 2020



of challenges whether it is for the provision of ventilators, manpower, hospital beds, testing, types of equipment, pharmaceuticals, or other consumables.

The impact of the migrant crisis during the COVID-19 pandemic must teach and serve as a wake-up call to the concerned authorities to prepare for more efficient laws and policies for the migrant labourers along with organised implementation at the ground level so that the nation is better equipped to handle and contain any potential crisis that may arise in future.

To look on the brighter side, India is in its 12<sup>th</sup> month since the virus took over and the journey has been a rollercoaster ride. With the great cooperation, dedication and selfless efforts of doctors, government officials and manufacturers/workers ensuring us basic necessities, the nation has witnessed an incredible recovery rate from the virus. According to the live data released by the Union Ministry of Health and Family Welfare, the recovery percentage of India as of 23<sup>rd</sup> December 2020 is 95.65%. However, it is important to note that the crisis is not yet over as the workers are still facing the financial brunt of their displacement even months after the lockdown. With the recognition and detection of a new variant of SARS-CoV-2 virus by the United Kingdom government, there might be a possibility of imposition of lockdowns or restrictions in future with grave impact and further worsening of the situation of these migrant labourers. The adequate precautionary measures need to be taken at this preliminary stage of a potential novel virus to avoid the fatal impacts on the health and situations of people.<sup>54</sup>

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<sup>54</sup> Ministry of Health and Family Welfare, <https://www.mohfw.gov.in/>, last accessed on 30 November 2020