

Migrants, Rights and the Pandemic

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Introduction

Teeming millions on the roads trudging under inhuman conditions is a solemn reminder of the vulnerability that many amongst us suffer from, and have suffered throughout human history. The evolution of human society through ages is replete with instances of human suffering, exploitation and depravity. There is always a particular section of society that has always been made to suffer at the hands of the politically and economically powerful. We have come a long way as a society leaving behind *seemingly* many evils such as colonialism, slavery and so on. Still, there is no denying the fact that all such vices of the past have continued to subsist and survive in newer forms and manifestations. Societal strata has been so structured that it allows injustice and ‘unfreedom’ to pervade every nook and corner of human existence. What we have seen in recent times in the wake of corona pandemic raises many uncomfortable questions and concerns. It seems as though we have woken up to a new reality that makes many of us uncomfortable as to the meaning of rights that many of us seem only to *have*, whereas other *enjoy* them. The widening rift between depravity and prosperity is one such dimension of the new emerging global

society that needs reflection and a critical appraisal, more so from the perspective of rights. The saddening view of endless number of migrants walking along the roads for miles towards the native places needs to be seen and debated in the context of existing legal framework.

Migrant workers amid pandemic

Lexically speaking, a migrant is any person who for various and varied reasons leaves his native place and moves away to another place. Migrant workers are one such group of people who leave their native places in search of work to places where they get to work in different kinds of settlements.

Migrant workers’ movement is basically a *migration* from small cities and villages to big cities. This migration is also reflective of the fact that the so-called migrant workers are compelled by their *economic depravity* and often by *social marginalisation*, two factors that play an important role in denial of certain basic social-economic rights that such people should otherwise have. The societal structure in India has been such that exploitation is an inherent part of social fabric. Ironically, when migrant workers move to big cities in search of work, they end up landing up in another system of exploitation. Their living condition is deplorable and the wages paid are not enough compared to the work they do. Still, they, compelled by their trying circumstances, continue to work in

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inhuman condition, often bereft of human dignity. They serve the needs of the big cities. They serve the need of different states, away from their own native cities and states. However, in a time of pandemic, when they needed support and care, they were allowed to suffer on the 'roads'. Many of them died of hunger and fatigue. It is noteworthy, as *Indian Express* reported, that "...total number of internal migrants in India, as per the 2011 census, is 45.36 crore or 37% of the country's population."² Such a large segment of population being denied some of the basic human rights falls foul of the constitutional promise of ensuring equality, liberty and dignity. The very expression 'migrant worker' in the context of Indian society is reflective of economic disparity, which has continued to be deeper. The very idea of economic justice in the constitution has seemingly failed to be effectuated over the years resulting in a situation where teeming millions continue to live a life of hunger, and deprivation. They continue to pay the price for the failure of the state to provide them what is their constitutional entitlement.

Constitutional Perspective

There are certain provisions under the Constitution that are protective of the rights of the migrant workers. Article 39(e) states 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.

²"Indian Migrants Across India", available at <https://indianexpress.com/article/explained/coronavirus-india-lockdown-migran-workers-mass-exodus-6348834/>(last accessed on 16.07.2020)

Article 43 mandates that the State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all *workers*, agricultural, industrial or otherwise, work, a living wage, *conditions of work ensuring a decent standard of life*. Article 43-A provides 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 organisations engaged in any industry. All the aforesaid provisions are directive principles and are "fundamental in the governance of the country".³

However, it is important to note that under article 19, there are three rights that are crucial to the rights of migrant worker: to move freely throughout the territory of India, to reside and settle in any part of the territory of India and to practise any profession, or to carry on any occupation, trade or business.

Despite these constitutional provisions that are protective of the rights of the migrant worker and cast a duty upon the state, the condition of such workers is a far cry from what it should have been. Constitutional promise, it seems, has not been kept. Gandhian dream of wiping tears from every eye is yet to be realised. What intrigues the most is the fact that despite all the constitutional and legal mechanisms and provisions, there is an urgent need to ponder upon the need and ways to realise the constitutional mandate into a reality, a

³ See generally, *Akhil Bharatiya Soshit Karamchhari Sangh v. Union of India*, (1981) 1 SCC 246.

reality where such workers have a life of dignity and respect, a life where they not only have, but in reality, they enjoy constitutionally cherished fundamental rights, especially those under articles 19 and 21 of the constitution. Economic justice should not turn a Nelson's eye to the need and care of such workers that form the backbone of the economic system of the national economy. The worker in Ramdhari Singh Dinkar's poem *Mazdoor* asks poignantly:⁴

पर मेरे हित उनका भी कर्तव्य नहीं क्या?
मेरी बाहें जिनके भारती रहीं खजाने.

We find many literary portrayals that are moving, and touch the core of the problem that millions are facing today in this country. One could see a silence filled with agony, anger, humiliation and anguish writ large on the faces of the migrant labourers that could be easily seen with a constitutionally sensitive, and humane eyes as Nirala says:

“सुनी मैंने वह, नहीं जो थी सुनी झंकार.”

Conclusion

The state obligation and fundamental rights as regards improving the condition of the migrant workers need to be seen through preambular promise of ensuring the ideals of 'fraternity'. The constitutional text is infused with certain basic moral principles that should be the guidepost to frame laws, and to take measures for alleviating the deplorable conditions of the migrant labourers. A sense of collective concern and empathy for them will be the first step towards realising the constitutional ideals into reality, be it through legislation or otherwise. The constitutional expectation of these workers has remained unfulfilled. Judiciary too has a prominent role as regards addressing the violations and ensuring the protection of migrant workers' basic human rights.

⁴ We find a similar poignant portrayal in Nirala's poem *Wo Todti Pathar*:
वह तोड़ती पत्थर;
देखा मैंने उसे इलाहाबाद के पथ पर-
वह तोड़ती पत्थर।....
देखते देखा मुझे तो एक बार
उस भवन की ओर देखा, छिन्नतार;

देखकर कोई नहीं,
देखा मुझे उस दृष्टि से
जो मार खा रोई नहीं,
सजा सहज सितार,
सुनी मैंने वह नहीं जो थी सुनी झंकार।