



**LOCKDOWN OR KNOCKDOWN:
CRITICAL ANALYSIS OF THE REVERSE
MIGRANT CRISIS VIS-À-VIS COVID-19**

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ABSTRACT

COVID-19, popularly known as the coronavirus, has tremendously affected the globe. Even the most developed countries, bestowed with the privilege of advanced healthcare facilities, are on the verge of collapsing. The mushrooming growth of cases has had a dreadful impact on the economy and its people in a zillion ways.

This piece analyses the ramifications of the virus on the worst affected section of the society, the migrant laborers. The nomenclature itself suggests that it comprises of those who travel interstate for work security. However, under the prevailing circumstances, these people, who have catalyzed the growth of the economy and raised the country's infrastructure from dust, are severely impacted. Countries across the globe have looked upon India for its expeditious decisions and tactics to attenuate the disease. However, the meticulous decisions have been more than a curse to this vulnerable section. By way of this piece, the authors dive deep into the measures undertaken by the government and its lack of effective implementation, which compelled them to survive under horrendous conditions. The nationwide lockdown of this magnitude has stripped them of their basic rights enshrined under our Constitution. Deprived of the sources of bread and livelihood, they started a long march towards security, with fake news stoking the flames. The lockdown prevented them from crossing the borders, subsequently leading to them being pedestrianized, coupled with inhumane treatment by authorities.

The piece also throws light on the constitutionality and repercussions of diluting labor laws and its post lockdown ramifications. The role of the Judiciary as a sentinel of fundamental rights during this pandemic has also been enunciated. In view of the authors, the pandemic has produced a "humanitarian catastrophe" for the migrant laborers.

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INTRODUCTION

The outbreak of COVID-19 has had a dreadful impact on the world. Though India has been looked upon by many other nations for its strategies and prompt decisions to contain this lethal disease, however in a bid to contain the crisis, it has failed miserably to protect the most vulnerable section of the society.

Out of the umpteen affected individuals, the migrants who number more than 40 million across India were the first and the worst affected. While the affluent complaint about the low bandwidth on the streaming service, which prevents them from watching their favorite serial, some people who yearn for two-course meals a day. This pandemic seems nothing but a "lethal class war." While recovery out of this disease is still possible, the recovery of these indirectly affected vulnerable seems to be far-fetched, as of now. With just four hours to spare, the notice of implementing a nationwide lockdown left them in fetters. Subsequently, the migrants who earned their bread from daily wages, already vulnerable, reeling under decade-high unemployment rates, and having no social welfare blanket like a basic income, were rendered homeless.

The stringent lockdown has been a double-edged sword for the downtrodden. Shorn of everything, their sources of bread have dried, thus compelling them to return to their native places. According to a survey, 70% of the surveyed laborers were left with less than Rs.200¹. The terror of loss of livelihood, being fed up with virtual incarceration without employment and wages, sparked into a mass exodus of millions, who started a long bare-footed journey towards security. The stringent lockdown, arbitrary executive decisions, and the ignorance of the Courts have also led to the violation of the basic fundamental rights of these migrants.

¹ STRANDED WORKERS ACTION NETWORK, 21 DAYS AND COUNTING: COVID-19 LOCKDOWN, MIGRANT WORKERS, AND THE INADEQUACY OF WELFARE MEASURES IN INDIA (2020) [hereinafter *Stranded Workers Survey*].

GOVERNMENT PLANS AND SCHEMES - LACK OF EFFICACY AND IMPLEMENTATION

The government, at both Centre as well as State levels, issued numerous directions about migrants and other distressed low-income strata of the society whose daily livelihood was adversely affected due to the lockdown. They were:

- A. Various steps, like providing them with food, medicines, and clean drinking water, were taken.
- B. The Central Government also announced a relief package worth Rs1.7 Lakh Crores under the "*Pradhan Mantri Garib Kalyan Yojana*." Under this, the poor were entitled to get basic food materials, including rice, wheat, pulses, and a gas cylinder for three months.²The State governments were directed to transport migrants from all corners of the country and provide them with basic amenities such as shelter, food, etc.
- C. According to the official information provided by the Control rooms, a total of 21,064 relief camps were successfully set up by the governments at the State level. The migrant workers are being provided with the basic necessities here.³
- D. Various directions were issued by the government to the landlords, of the poor to not compel them to pay rent, etc. Strict orders were given to the district administrators to enforce actions against violations of the same.
- E. Mandatory directions were issued to the employers of all migrants to provide the latter with their wages without any wage cut or deduction due to the lockdown.
- F. Advisories were issued by the Ministry of Home Affairs to all the States. They suggested different steps that the administration must take about the migrants, agricultural workers, and other informal sector workers. An advisory to follow a humane approach to tackle the migrants were also issued.

² *Coronavirus | Centre rolls out Rs. 1.7-lakh-crore lockdown package*, THE HINDU (Mar 26, 2020), <https://www.thehindu.com/business/Economy/17-lakh-cr-package-with-doubled-food-rations-cash-transfers-for-poor/article31172100.ece>.

³ *Shweta, Covid-19 Update: Government Sets Up 21,064 Relief Camps*, BUSINESS WORLD(Mar 31, 2020), <http://www.businessworld.in/article/Covid-19-Update-Government-Sets-Up-21-064-Relief-Camps/31-03-2020-187813/>.

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G. The government also suggested that it intended to counsel the migrants to help them deal with the panic that has been created by the on-going situation.

H. Directions to state governments for preventing the unnecessary spread of fake news through social media etc. were sought from the Courts by the government.

From the above-listed measures, it is intelligible that the government took assorted steps to tackle the issues of the migrants. A PIL was also filed in the Apex Court regarding the conditions of the migrants and the lack of government assistance to the. However, finding no merit in the PIL, the Court, in whose view, the measures taken by the government were adequate, dismissed the same.⁴

The question which gains importance is "whether these measures reach the suffering migrants or not?" While taking *Suo Moto* cognizance of the issues, the Apex Court asked a similar question.⁵ The Bench said, "*We are not disputing that Centre has not taken steps, but whoever needs help is not getting it.*" In hindsight, if the expeditious measures are undertaken were implemented effectively, there would not have been instances of thousands of laborers blockading the highways, out of utter frustration.⁶ The Court further noted that as the country continues to be in lockdown, the migrants need "succor and help by the concerned Governments," and that "steps need to be taken by the Governments in this challenging situation to extend helping hand to migrant laborers."

Similarly, while taking *suo moto* cognizance of the penury of the migrants (who kept traveling in trains going back to their native places due to the lockdown), the National Human Rights Commission [NHRC] also issued notice to the Union Ministry of Railways, the Home Ministry and the Gujarat and Bihar Governments. According to the NHRC,

"The poor laborers cannot be treated in such an inhumane manner just because they are poor, and the government has paid for their tickets. Any shortcoming on the part of the

⁴ Alakh Alok Srivastavav. Union of India, 2020 SCC OnLine SC 345 [hereinafter *Alakh Alok*].

⁵ *SC Suo Motu Hearing*, BARANDBENCH (May 28,2020), <https://www.barandbench.com/news/litigation/migrant-crisis-amid-the-COVID-19-pandemic-supreme-court-hears-the-matter-suo-motu-live-updates>.

⁶ Rajeev Dikshit, *25,000 migrants on Bihar border block highway*, THE TIMES OF INDIA (May 17, 2020),<https://timesofindia.indiatimes.com/city/varanasi/25k-migrants-on-bihar-border-block-highway/articleshow/75780212.cms>.

*government agencies cannot be covered under the excuse of the unprecedented situation amid countrywide lockdown."*⁷

It brought forth the numerous hardships faced by the migrants and the failure of the government in implementing the above-mentioned measures. While stating the plight of the migrants, the NHRC also mentioned the ill-arrangements of water, toilets, and food for the migrants at railway stations. No compliance with social distancing methods was also censured. It also condemned the situations where elderly persons and children were asked to return due to the cancellation of trains.

Thus, what is reflected is that though the government has taken varied steps to solve the migrants' crisis, the same has not been implemented efficiently. Thus, it is no longer a trade-off between lives and livelihoods but between lives and lives. Just and humane treatment is the need of the moment. Moreover, better planning methods and a more thoughtful policy-making process may prove to have a softening effect on the plight of these nation builders.

ROUSING UNEMPLOYMENT CRISIS: "THE VISIBLE INDIA" V/S "THE INVISIBLE INDIA"

The Migrant laborers constitute about 80% of India's workforce. While the projects are supervised by the opulent, these projects are built on the back of the suffering labor class. They are the spine of the country's infrastructure, which raise the projects and see them emerge from the dust.

Their sufferings were such that they've come to hate the cities and factories owing to the inhumane treatment by their employers. Hapless migrant labor who sought to cross the border due to the saddening demise of his son was denied crossing the border and treated inhumanely.⁸ Succumbing to the grave situation, he expressed his miserable condition and considered himself, along with the other laborers, nothing but a cog in the wheel, who just keep spinning continuously throughout their life.

⁷ NHRC issues notice to government on migrant worker deaths, THE HINDU (May 28, 2020), <https://www.thehindu.com/news/national/nhrc-issues-notice-to-govt-on-migrant-deaths/article31697865.ece>.

⁸ Coronavirus Lockdown: Weeping Rampukar Pandit Becomes Symbol Of India's Migrant Worker Tragedy, THE HINDU (May 17, 2020), <https://www.thehindu.com/news/national/rampukars-tears-shock-humanity/article31609524.ece>.

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Whilst the industrial activities are restoring, and the winter's crop is ready for harvest, there is an acute shortage of laborers who aid the process. The Supreme Court (*hereinafter* 'SC'), in *State of Madras v. VG Row*⁹, assumed for itself the role of sentinel *qui vive*, in defense of citizens' fundamental rights. The present delicate situation called for a meticulous approach on the part of the SC. However, letting its guard down, Hon'ble CJ S.A. Bobde, averred that "*this is not a situation where the declaration of rights has much priority or as much importance as in other times.*"¹⁰

The disturbing visuals of worn-out migrants, traveling long distances, and painfully trudging along roads have been circulated on various media platforms. They do not do this out of choice but are compelled to carry such arduous journeys to reach their villages, which they earlier used to travel only for "greener pastures."

There has also been a mind-boggling rise in the unemployment figures after the commencement of the nationwide lockdown. The job destruction numbers are staggering, worse than India has ever imagined.

According to the inferences drawn from the survey released by the Centre for Monitoring of Indian Economy (CMIE)¹¹, nearly 12 crores Indians lost their jobs in 2 weeks after the lockdown was imposed. Even if 8 crores, out of these, were the sole bread earner of the family, almost one-third of India's households faced a livelihood crisis.¹² Comparing the figures with that of the US (during the Great depression period) combined with Europe, the loss of jobs was not more than 5 crores in number. This reflects that the Indian figures are the biggest in history and may have a permanent job and livelihood crises in the country. Moreover, the situation may further worsen if the economy goes into recession. According to the IMF, many migrants may never get their lost jobs back if this happens.¹³ Reeling under

⁹ State of Madras v. VG Row, AIR 1952 SC 196.

¹⁰ Krishnadas Rajgopal, *Executive with its three 'Ms' of money, men and material is better-suited to deal with COVID-19 crisis: CJI*, THE HINDU (Apr.26,2020), <https://www.thehindu.com/news/national/executive-with-its-three-ms-of-money-men-and-material-is-better-suited-to-deal-with-COVID-19-crisis-cji/article31436791.ece>.

¹¹ Mahesh Vyas, *21 million jobs added in May*, UNEMPLOYMENT RATE IN INDIA (Jun 02, 2020), <https://unemploymentinindia.cmie.com/kommon/bin/sr.php?kall=wtabnav&tab=4080>.

¹² Yogendra Yadav, *India lost more jobs due to coronavirus lockdown than US did during Depression*, THE PRINT (Apr 8, 2020), <https://theprint.in/opinion/india-lost-more-jobs-due-to-coronavirus-lockdown-than-us-did-during-depression/397693/>.

¹³ *Imf Chief Kristalina Georgieva We Have Entered Recession*, ECONOMIC TIMES (May 13, 2020), <https://economictimes.indiatimes.com/news/international/business/imf-chief-kristalina-georgieva-we-have-entered-recession/articleshow/74852225.cms>.

decade-high unemployment rates and a surplus of laborers, the States will have many more mouths to feed.

As per a survey, nearly 67% of workers in India lost their jobs due to the COVID-led lockdown.¹⁴ Furthermore, according to the World's Bank report on the Impact of COVID-19 on Migration and Remittances, the lockdown has impacted nearly 40 million migrants in India.¹⁵

All these figures reflect the unprecedented hardships that the migrants will continue to face in the long term. The fact that around 90% of the Indian workforce is involved in the informal sector is yet another challenge as the workers are not very skilled. However, to tackle this issue, the Indian government is devising a plan to re-skill unemployed migrants and other unorganized sector workers, after the lockdown.¹⁶ This will help in developing skills and rehabilitating them. According to the Ministry of Skill Development and Entrepreneurship, the structural alterations that this pandemic will bring into the economy may prove to be an opportunity for focusing on skilling the unskilled laborers.

In hindsight, India can be cleaved into two: '*Visible India*,' which consists of the privileged, and an '*Invisible India*,' one which is unrecognized and dust under the carpets. The crisis has palpably brought forth the glaring distinction between these two parts.

It is further clear that though the scale of the health crisis is unknown even today, the crisis of employment loss is already on an ever-increasing high rate. In the foreseeable future, when the migrants ruminate about the crisis, all they will recall is hunger, homelessness, and unemployment.

¹⁴ 67% of workers lost jobs during lockdown: Survey by Azim Premji University, INDIAN EXPRESS (May 13, 2020), <https://indianexpress.com/article/business/economy/67-of-workers-lost-jobs-during-lockdown-survey-by-azim-premji-university-6407333/>.

¹⁵ Lockdown, job loss impacted 40 mn migrant workers in India: World Bank, BUSINESS STANDARD (Apr. 23, 2020), https://www.business-standard.com/article/current-affairs/lockdown-job-loss-impacted-40-mn-migrant-workers-in-india-world-bank-120042300143_1.html.

¹⁶ Yogima Seth Sharma, Government prepares an action plan to reskill unemployed migrant and informal sector workers post lockdown, ECONOMIC TIMES (Apr. 28, 2020), <https://economictimes.indiatimes.com/news/economy/policy/govt-prepares-an-action-plan-to-reskill-unemployed-migrant-and-informal-sector-workers-post-lockdown/articleshow/75433631.cms?from=mdr>.

LOCKDOWN AND LIVELIHOOD ANNIHILATION: A CRY OF DESPAIR

*"Deprive a person of his right to livelihood, and you shall have deprived him of his life."*¹⁷

The lockdown had shut off all access to resources and movement of these downtrodden. Resultantly, the migrants who earned their bread through daily wages were left in a state of misery. Amidst the expanding terror of COVID-19, where the country is gripped by the health crisis, the migrant workers did not fear the virus but feared starvation. With no stringent steps by the government, the migrant laborers were dejected and were not able to make ends meet. Hence, the workers started their long march to security.

This exodus of workers to their villages invited a direction to the governments to provide them food and shelter, yet no assurance of any kind of compensation was given.

Whilst the lockdown was a policy decision to contain the outbreak of the lethal virus, this decision infringed upon the fundamental right to livelihood of the migrants. The Judiciary, in this regard, interpreting the word 'life' in Article 21 broadly and expansively, the Court in the case of *Board of Trustees v. Dilip kumar*¹⁸, had elegantly highlighted that "the right to life" guaranteed under Article 21 covers "the right to livelihood." The Apex Court, in *Olga Tellis*¹⁹ popularly known as the "*Pavement Dwellers Case*," made a similar observation.

Emphasizing upon the close relationship of life and livelihood, the Court observed that "*If the right to livelihood is not treated like a parcel 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 to the point of abrogation.*"

The Courts have recently heard various petitions regarding issues of the migrants. Addressing a petition for providing wages to them amidst this pandemic, a bench of the SC questioned "*why are wages required in the when meals are already being provided by the government,*" thus failing to acknowledge that food is not the only tool for survival.

The American Judge Justice Field, in one of the celebrated case *Munn v. Illinois*, elegantly highlighted that "*the word 'life' does not merely include 'animal existence,' but a life with*

¹⁷*Olga tellis v. Bombay Municipal Corporation*, (1985) 3 SCC 545 [hereinafter *Olga Tellis*].

¹⁸ *Board of Trustees of the Port of Bombay v. Dilip Kumar*, (1983) 1 SCC 124.

¹⁹ *Olga Tellis*, *supra* note 17.

dignity." Unfortunately, when it is time to provide meaning to these observations, the Indian Courts have put up unnecessary procedural questions. These questions were in stark contrast to a survey, according to which 90% of the migrant workforce did not even receive ration.²⁰ Escalating their sufferings, close to 90% of these vulnerable did not receive remuneration by their employers, leaving them on the verge of starvation. The Apex Court thereby seems to be letting its guard down as role of sentinel qui vive, in defense of citizens' fundamental rights. The Indian poor, already vulnerable, having no social welfare blanket like a Universal Basic income, have been suffering miserably. Addressing a petition regarding payment of wages to the workers, the Apex Court struck another blow to the workers' right by holding that no coercive action can be taken against employers concerning payment of wages amid the COVID-led lockdown²¹.

Moreover, the instances of migrants' suffering in our country have been skyrocketing. For instance, given the continuing lapse of the State machinery to provide adequate means for shelter, 16 hapless workers who decided to cover the long journey to their home, were mowed down by a goods train.²² The inexhaustible sufferings and no assurance from the government compelled them to adopt measures that one could have never imagined. In another shocking incident, 18 migrants were found crammed in a cement mixing truck traveling towards their place of origin.²³

While addressing a PIL to identify stranded migrants and providing them with shelter, food and ensuring free transportation to their native places, after the death of some migrant laborers who were killed as they slept on the railway tracks, the Apex Court averred that "*How can we stop them from walking? It is impossible for this Court to monitor who is walking*" However, the root cause of walking to their native places, which was them being subjected to inhumane and horrendous conditions, was strangely overlooked. The failure of the government to provide them with adequate means of transport was also completely

²⁰ Stranded Workers Survey, *supra* note 1.

²¹ W.P. 11193/2020 SC (2020).

²² Ajeet Mahale, *16 migrant workers run over by goods train near Aurangabad in Maharashtra*, THE HINDU (May 08, 2020), <https://www.thehindu.com/news/national/other-states/16-migrant-workers-run-over-by-goods-train-near-aurangabad-in-maharashtra/article31531352.ece>.

²³ Sidharth Yadav, *Coronavirus lockdown | Despair packs migrant workers from U.P. into a concrete mixer truck*, THE HINDU (May 02, 2020), <https://www.thehindu.com/news/national/other-states/coronavirus-lockdown-despair-packs-migrant-workers-from-up-into-a-concrete-mixer-truck/article31491203.ece>.

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ignored. This show of utter ignorance did no justice to the motto of the Court "*Yatodharmastato Jaya.*"

Even when certain arrangements were made by the States to transport the migrants to their respective state, after being cooped for a significant period of 4-5 weeks, preposterous conditions were imposed, which were practically impossible for them to abide by. For instance, they were expected to carry a medical certificate after getting tested.²⁴With no shelter and electricity, they were also expected to send an SMS to confirm their registration.²⁵However, when everyone thought justice was dying, the Karnataka High Court(*hereinafter* 'HC') came to the rescue and opined that "*this(sending of SMS) is an exercise undertaken to exclude a large number of migrants.*"

The struggle doesn't end here. Further aggravating their situation, they were often left at the borders of their states that were unwilling to make arrangements to transport them to their residence safely. Aggrieved by the lack of effective implementation of the proposed measures, a tenacious girl of Bihar covered an arduous journey of 1200 Kms carrying her father on the rear side of the bicycle.²⁶

In light of the above, it is of utter disappointment to note that the right to livelihood of these hapless reverse migrants, was crumbled and rendered meaningless.

COVID-19 AND THE MASSIVE HEALTH CRISIS

The rapidly spreading virus has constantly been testing the healthcare capabilities of all countries. Some of the most developed healthcare systems are on the brink of collapse due to the mushrooming growth of positive cases, and the gravity of the threats posed by the pandemic.

The draconian lockdown has been a chaotic process that has had far-reaching consequences bringing economic ruin to the migrants. They are the most vulnerable in terms of adverse

²⁴ Ajeet Mahale, *Migrants' travel: BMC directs hospitals to issue mandatory medical certificate*, THE HINDU (May 04, 2020), <https://www.thehindu.com/news/cities/mumbai/migrants-travel-bmc-directs-hospitals-to-issue-mandatory-medical-certificate/article31496577.ece>.

²⁵ *SMS confirmation system used to exclude migrants from travelling to their States: HC*, THE HINDU (May 28, 2020), <https://www.thehindu.com/news/national/karnataka/sms-confirmation-system-used-to-exclude-migrants-from-travelling-to-their-home-states-hc/article31698452.ece>.

²⁶ *India's 'bicycle girl' Jyoti Kumari*, THE HINDU (MAY 26, 2020), <https://www.thehindu.com/news/national/indias-bicycle-girl-jyoti-kumari/article31677071.ece>.

effects on health conditions. With the limited financial resources, overcrowded and uninhabitable conditions in detention centers, non-accessibility of information about the virus, and the limited access to healthcare services give an additional challenge during the outbreak of COVID-19.

The right to a healthy environment is a fundamental right guaranteed under Article 21 of the Constitution.²⁷In similar lines, the Telangana HC, in a recent judgment, observed that "*the medical emergency of the COVID-19 pandemic cannot be cited as an excuse to violate the right to life and health under Article 21 of the Constitution*".²⁸ Thus, an emergency of any kind cannot stand an excuse for the fundamental right to health. In the same judgment, the Court also emphasized the inability of the state to provide quality healthcare systems that led to the growth of Private hospitals. However, the migrants have no other option but to get treated in the government hospitals only, due to the humongous amount the private hospitals demand.

The poor access to health services is another challenge that stands as a roadblock. Moreover, due to the lack of wages and proper financial conditions, the sufferings of the migrants have further worsened. The poor, who cannot afford to get treated, often get sick, thus hampering their employment opportunities as well. This lands them into unskilled labor and hazardous jobs.

After the lockdown imposition, migrants were even kept in dormitories and labor camps. This also increased the risk of contagion among them. The number of affected migrants with deteriorating health conditions has been rising phenomenally. The poor sanitary conditions, lack of proper nutritious diet, and the deteriorating mental health of the migrants have been the most deadly effects of this pandemic. Furthermore, the government has failed to provide migrants with proper food and inhabitable conditions. In an appalling incident, a starving migrant was found eating a carcass of a dog in the city of Jaipur.²⁹ Certainly, the fundamental "right to food" guaranteed under Article 21 of our Constitution³⁰ now seems no less than a pipe dream.

²⁷ State of Punjab v. Mahinder Singh Chawla, (1997) 2 SCC 83.

²⁸ Ganta Jai Kumar v. State of Telangana and ors, 2020 SCC OnLine TS 482.

²⁹ *Shocking Extent of Hunger*, INDIA.COM (May 22, 2020), <https://www.india.com/viral/shocking-extent-of-hunger-starving-man-found-eating-dead-dog-near-jaipur-viral-video-stuns-india-4036210/>.

³⁰ Chameli Singh v. State of U.P, (1996) 2 SCC 549.

THE MOST VULNERABLE AMONG THE VULNERABLE

There have been incalculable instances of migrants dying due to a lack of food and proper health conditions. The most disturbing ones are those of innocent children. In one such unfortunate incident, a 12-year-old child succumbed to death after walking a distance of around 100 km from her place of work to her native village.³¹ It has also been shown by studies that "*migrant children experience poor nutritional³² and health outcomes³³ as a result of poor conditions at their parents' workplace.*"

As per the report of the World Bank³⁴,

"The pandemic has also highlighted the global shortage of health professionals and an urgent need for global cooperation and long-term investments in medical training."

In another disturbing visual, a toddler was seen waking up her dead mother at a railway station. His mother was unwell due to a lack of food and water, and as a result, she died.³⁵ The effect on the mental health of the child cannot be explained in mere words. At the same station, a 2-year-old earlier died due to heat and inadequate food.³⁶ All these disturbing incidents call for a more humane and effective approach towards them.

Considering that many migrant families have been stuck due to the present situation, it is the need of the hour that all travel advisories that are issued by the authorities must focus on families that have children and must also ensure that they're transported to their native places safely and soundly.

Indeed, the pandemic is the first of its kind. However, India is habitual to the situation of natural disasters. The post-disaster scenario of the State of Odisha has proved that it is paramount that due care and attention is given to the health conditions of children. Child

³¹ Gargi Verma, *12-year-old walks 100 km, dies just short of Bijapur home*, THE INDIAN EXPRESS (Apr.21, 2020), <https://indianexpress.com/article/india/12-yr-old-walks-100-km-dies-just-short-of-bijapur-home-6371779/>.

³² Ravindranath, Trani J. & Iannotti, *Nutrition among children of migrant construction workers in Ahmedabad, India*. 18INT J EQUITY HEALTH, 143 (2019).

³³ Yadlapalli S. Kusuma, *Migration and health: A systematic review on health and health care of internal migrants in India*, WILEY ONLINE LIBRARY (AUG 03, 2018) <https://onlinelibrary.wiley.com/doi/abs/10.1002/hpm.2570>.

³⁴ *Lockdown in India has impacted 40 million internal migrants: World Bank*, THE HINDU (Apr. 23, 2020), <https://www.thehindu.com/news/international/lockdown-in-india-has-impacted-40-million-internal-migrants-world-bank/article31411618.ece>.

³⁵ Sheezan Nezami, *Child Trying To Wake Up His Dead Mother*, TIMES OF INDIA (May 29, 2020), <https://timesofindia.indiatimes.com/city/patna/video-of-a-child-trying-to-wake-up-his-dead-mother-goes-viral/articleshow/76047723.cms>.

³⁶ *Id.*

shelters coupled with a nutritious diet and sanitation facilities should not be compromised with. It is but the duty of the government to ensure that the physical, as well as the psychological health of the children, are taken care of.

India's majority population belongs to the arid regions. This poses an immediate risk of nutritional insecurity because of the non-viability of agriculture in the summer season in those regions. The authors suggest that the Anganwadi centres must help the families, registered or not registered. Moreover, the states must continue providing health facilities to the needy. It must be remembered that extraordinary situations demand extraordinary steps to safeguard the health of all, especially children.

CORONAVIRUS AND THE INFODEMIC

Due to the loss of employment and wages, the mental health of migrants has already been adversely affected. Adding on to this, there are times when fake news is circulated across the media, further worsening the situation.

According to DR. Tedros Adhanom (Director-General, WHO),

"We are not just fighting an epidemic; we are fighting an infodemic. Fake news spreads faster and more easily than this virus, and is just as dangerous."³⁷

Thus, the spread of fake rumors has been yet another challenge for the government. Moreover, this has led to a situation of panic for the migrant workers, who often believe in such news and act upon it. A similar panic situation had been created when some fake rumor suggesting that the imposed lockdown shall continue for three months created a ruckus among the migrants and led to blockading of national highways because of returning to native places.³⁸ It often happens that such news is spread through the media that reaches the migrants who are compelled to act upon them due to their needs. Fake news, under the prevailing circumstances, has distorted reality and pauperized the migrants.

Pressing on the need to curb the circulation of fake news and rumors, the Apex Court, in a PIL regarding migrants, stated that:

³⁷ UNITED NATIONS, UN TACKLES 'INFODEMIC' OF MISINFORMATION AND CYBERCRIME IN COVID-19 CRISIS (2020).

³⁸ T.K. Rajalakshmi, *Centre blames media "fake news" for mass migration during lockdown*, THE HINDU (Apr. 01, 2020), <https://frontline.thehindu.com/dispatches/article31228357.ece>.

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*"We do not intend to interfere with the free discussion about the pandemic, but direct the media refer to and publish the official version about the developments."*³⁹

Furthermore, it also acknowledged the fact that the state of panic can also lead to an adverse effect on the mental health of individuals. The importance and need to calm down the migrants in such situations was also noted by the Court.

The media is the fourth pillar of democracy that gives voice to the voiceless. But if this voice is based on false facts, it is nothing but a massacre. It is thus the responsibility of the Media to ensure that unverified news, bearing capability to create panic amongst the people, is not circulated.

DILUTION OF LABOR LAWS: MODERN SLAVERY

As India turns a new leaf towards the post lockdown period, the deepest impact of COVID-19 will be discernible on the migrants. In a bid to revive the economy and introduce pro-business reforms, the raucous decision to dilute the labor laws can do more harm than good. While this delicate situation called for a robust and coordinated approach on the part of the State machinery to alleviate the crisis, contrast this, the dilution of labor laws has tormented the migrants. This decision was nothing but a blatant disjunction between their betterment and the policies adopted to tackle the crisis. The Centre of Trade Unions called this step as barbarous and further averred that these workers create wealth for the country, and they are the ones simultaneously suffering from brutal exploitation by the capitalists.

The question which is of utmost importance is: Why did the government find it necessary to dilute labor laws when the complaints about exploitation, non-payment of wages, etc. hiked, and the delicate situation called for a more stringent action on their part? The alteration in labor laws allowed industries to hire and fire much more easily. This was done to ensure that there is labor flexibility. While this will ensure labor flexibility is still unanswerable, but it will surely open ends for labor exploitability and will strip them of their basic rights enshrined under Article 14, 19, 21, and 23 of our Constitution.⁴⁰

³⁹ Alakh Alok, *supra* note 2.

⁴⁰ INDIA CONST, art 14, art 19, art 21, art 23.

Moreover, the inspection of workplaces has also been eased down, and working shifts have been augmented from eight to twelve hours. While this will only enable the employers to impose conditions of slavery on the downtrodden, the popular argument that such a deregulated mechanism will augment the growth of the economy is gravely fallacious and far-fetched. The exemption of labor laws cannot be a tool to revitalize the economy. It is an absolute violation of the basic rights of the laborers enshrined in our Constitution.

Even if the dilution of labor laws leads to an upsurge in the economy and it revives, the question which arises is: Are we that cruel to revive the economy at the cost of these hapless millions? This is a blot on humanity and ignominy for the country.

OBSERVATION OF THE SUPREME COURT AND THE HIGH COURT OF JUDICATURES: A JUXTAPOSITION

The Apex Court has acted as a guardian of fundamental rights and has never shirked from resolving issues of violation of the same. However, the migrants only faced utter disappointment, as the Court dismissed many pleas to maintain its policy of non-interference. Moreover, while addressing a petition for providing wages to laborers in this situation, strange questions have also been put up by benches several times.

It is also distressing to note that misleading statements were also made before the Court, which was not contested by the Court despite clear evidence. For instance, the Solicitor General of India nonchalantly submitted before a bench, "*There is no person walking on the roads in an attempt to reach his/her home towns/villages.*" This statement was made when the national highways and borders were flooded with migrant laborers succumbing to starvation and horrendous conditions.

The SC, after two months of non-interference, finally took *suo moto* cognizance of the plight of the migrant laborers, who were stranded in different parts of the country, dying of starvation and homelessness. It expressed anguish and averred that a lockdown of this magnitude calls for a helping hand and succor towards this section of the society.

Although the pathetic conditions of the migrant laborers had been overlooked by the SC for two months, the same had been acknowledged by various HC's. Restoring our faith in the

Judiciary, C.J Abhay Sreeniwas, Karnataka HC, expressed anguish for the migrants and opined that:

*"The Government must appreciate the major contribution of migrants in many projects which have contributed to the improvement of the economy. At a time when the migrants who have made such a huge contribution are facing distress, the Governments must come forward to help them to ensure that at the earliest, they return back to their home State."*⁴¹

Considering the fundamental right of individuals, the Court also went on to observe that no migrant must be denied the opportunity to return home due to their poverty-stricken conditions. The inability to pay for the transportation cost must not hinder any migrant from returning to his home as the very reason for the same was the loss of livelihood due to the existing pandemic situation. Furthermore, a set of directions was also issued by the Court to ensure that the conditions of the laborers do not aggravate further.

Amidst these unprecedented times, where the country is gripped in a serious health crisis, the government should keep in mind that the migrants are the most affected. The latter do not fear the virus, but what they fear is starvation. In such a delicate situation, the government must instill confidence in the minds of these downtrodden that they would be taken care of.

Taking *suo moto* cognizance of the issue, the Gujarat HC⁴² also remarked that *"it becomes the paramount duty of the Government to assure and repose confidence in the downtrodden that they will be taken care of in the best possible manner."* The Court noted that the condition of these migrants was inhumane and horrendous as they were the ones worst hit by the pandemic. Additionally, pressing on the duty of the government to provide adequate food and humane conditions to them, the lack of coordination between the various departments of the State Government was also pointed out by the Court.

Similarly, the Madras HC, in a recent order⁴³, also observed that *"despite the constant sorrow of the migrants, no action was taken thereafter. Subsequently, no progress was made, as there was a lack of coordination between states."* The HC's also prescribed certain guidelines to be followed by the government while transporting the migrants.

It is thereby implored by the authors that this humongous crisis calls for a coordinated approach between the State and Central government wherein the Judiciary must act as a

⁴¹ W.P. No. 6435/2020, Kar HC (2020).

⁴² *Suo Motu v. State of Gujarat*, 2020 SCC OnLine Guj 760.

⁴³ *A.P. Suryaprakasam v. Superintendent of Police and Ors*, 2020 SCC OnLine Mad 1004.

watchdog. It is but the duty of the Courts to ensure that the rights of individuals remain intact, especially when the only hope left with them is the Government and the Judiciary. Though the SC failed to acknowledge the issues of the migrants earlier, the HC's recognized and addressed them within time. The authors firmly believe that the orders of the HC's have acknowledged the duty of the Judiciary and will aid in the efficient implementation of laws by the government.

POST LOCKDOWN: REVIVAL OR DOWNFALL?

As India tiptoes towards the post lockdown period, the restrictions on movement may be minimized. However, this might not be the end of the plight of the migrants and the downtrodden sections of the society. In fact, their problems are likely to upsurge post lockdown. A new set of issues will arise once the lockdown is lifted, one of the most likely beings "Labor Exploitation." There is no denying that there will be an oversupply of workers post lockdown, as people will be desperate in getting their jobs back, and bringing their disturbed lives back to normal. This need shall force them to work even at low wages and salaries. According to experts, the post-lockdown era shall witness not only work-deficit zones but also work-surplus zones. In the latter, the situations of these hapless workers may be grim as there will be an abundance of workers, thus increasing the chances of exploitation and abuse.⁴⁴

Many critical issues, like forced labor and exploitation, will be on the rise. The main problem is that a major portion of the migrants is engaged in the unorganized sector. Thus, they do not have any formal protection under any law, thus exacerbating their situation. Their sufferings shall be aggravated as the burden of work will be more and the perks, hardly any. Distressed workers shall be desperate for a job, financial assistance, and this will increase the chances of them being exploited by the bourgeois.

On the one hand, many organizations are worried about the chances of labor exploitation and have often flagged concerns regarding the same. However, on the other, according to the industry, such situations are very unlikely to arise provided that proper rules governing

⁴⁴ Samrat Sharma, *End of lockdown not end of trouble for migrant labor*, FINANCIAL EXPRESS (May 01, 2020), <https://www.financialexpress.com/economy/end-of-lockdown-not-end-of-trouble-for-migrant-labor-heres-what-workers-may-face-when-economy-opens/1945443/>.

migrants and workers are obeyed. As per them, with the calibrated restart of production facilities in various segments of the country, and the demand for labor will be back to normal. The migrants have been suffering the most due to the lockdown. However, there is still a beam of hope in sectors where there is not enough labor available. With the migrants moving back to their homes, there will be a lot of industries where the demand for labor will be higher. Thus, in such situations, the labor class may benefit a little. The authors hope that the informal sector follows the rules and protects the workers just like the formal sector. This may prove to be a silver lining around the cloud for them in such distressing situations. However, the fact that this deadly virus has exposed the apathy of India towards the destitute migrants and the existence of the deep economic divide in our country cannot be overlooked. A huge mental crisis post lockdown also awaits India. A massive health crisis due to unemployment, alcohol abuse, hardships, domestic violence, and indebtedness is likely to arise. To no surprise, an increase in survival crimes has already begun. This lockdown has certainly pressed a need for us to think about the migrants, no matter whichever category they belong to, skilled or unskilled. All of them have been facing the brunt of the accelerating problems that have arisen therein. The government must ensure that adequate facilities are created for them, and their problems are appropriately addressed. Furthermore, the employers must sensitively handle their issues and provide them the required facilities.

SUGGESTIONS

Migrants have been suffering a lot due to the apprehension of being infected and staying away from their families. However, in view of the authors, the implementation of some below listed suggestive measures could have provided more safety to the stranded migrants in the present situation.

INDIA'S MIGRANTS AS INTERNALLY DISPLACED PERSONS [IDP'S]

The "Guiding Principles of Internal Displacement" [GDIP]⁴⁵ have been held to be an integral tool for combating internal displacement of persons, by the UN.

As per these principles, IDP's have been defined as: "*groups of persons who have been forced or obliged to leave their homes, to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized state border.*"

The lockdown forced millions of inter-state migrants of the country to move back to their native places. Resultantly, loss of income⁴⁶, uninhabitable conditions at shelter homes⁴⁷, food insecurities,⁴⁸ etc. were witnessed thereafter. The government issued an order⁴⁹ to ease the movement of migrants and transport them safely to their homes. However, this was subject to a medical examination. Therefore, the restricted movement of the migrants, by the government authorities, left them internally displaced.

Citing reasons for the absence of the intergovernmental negotiations that led to the drafting of the GDIP, India has completely repudiated the recognition of the internal displacement phenomenon and the GDIP's. However, notwithstanding the absence of a policy on IDPs, the Judiciary has been successfully protecting the rights to its displaced citizens. To mention a few, in the case of *Union of India v. Vijay Mam*⁵⁰, the importance of these principles as a "gap filler" in international and national laws was recognized. Similarly, in another case⁵¹, these principles were said to be a part of our domestic laws. The Indian government, through various ratified treaties, is under an obligation to protect the right to life, to provide an

⁴⁵ GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT, <https://www.unhcr.org/protection/idps/43ce1cff2/guiding-principles-internal-displacement.html> (last visited Jun. 3, 2020).

⁴⁶ Anindita Mukherjee, *Job loss, rent and exodus*, THE PRINT (Apr. 27, 2020), <https://theprint.in/opinion/job-loss-rent-and-exodus-COVID-19-crisis-tells-us-migrants-need-housing-security/409529/>.

⁴⁷ Saurav Barman, *Delhi Police report on migrant camps*, THE INDIAN EXPRESS (Apr. 28, 2020), <https://indianexpress.com/article/india/delhi-police-report-on-migrant-camps-fans-not-working-bad-food-6382213/>.

⁴⁸ Zeba Siddiqui, *Some of us will die: India's homeless stranded by coronavirus lockdown*, (Apr. 1, 2020), <https://www.reuters.com/article/us-health-coronavirus-india-homeless/some-of-us-will-die-indias-homeless-stranded-by-coronavirus-lockdown-idUSKBN21J56D>.

⁴⁹ CENTRE FACILITATES THE INTER - STATE MOVEMENT OF STRANDED PEOPLE INCLUDING MIGRANT LABORER IN THE COUNTRY, IN WAKE OF COVID -19 PANDEMIC, <https://pib.gov.in/PressReleaseDetailm.aspx?PRID=1619318#.Xql7RCipCRY.twitter> (last visited Jun. 3, 2020).

⁵⁰ *Union of India v. Vijay Mam*, 2012 SCC OnLine Del 3218.

⁵¹ *P.K.Koul v. Estate Officer*, 2010 SCC OnLine Del 4207.

appropriate standard of living to persons (under Article 6-7 ICCPR and Article 11-12 ICESR) and to take "preventive steps"⁵² that aid in mitigating the risks posed by such a pandemic.

There is no denying that the human rights framework is applicable to these migrants. However, the recognition of the GDIP's and bringing the migrants under IDP's would permit them to invoke their rights under the international laws as well. The recognition of these principles within the Indian domestic law will help in streamlining better plans of action, data collection, and in circulating awareness about such issues, thus giving the desired acknowledgment to the phenomenon of "internal displacement."

INCLUSION OF LABOR MINISTRY IN THE DECISION-MAKING PROCESS

There has been no powerful advocacy for this distressed class, which forms an essential part of running the Indian economy. Having said that, it is quintessential to mention that the Indian economy is run by 6.5 crores enterprises that comprise 90 percent of the labor class.

Many reports reflect numbers of the stranded laborers, though that did not help this non-franchised class much for the government has failed to set up a suitable administrative framework to implement desired outcomes. To recognize migrant labor as a prominent issue, it is of utmost importance to co-opt the labor ministry in the decision-making process as it may aid in better representation of the migrants during the implementation of the policies of the government.

LONG TERM SOLUTIONS

The "Occupational Safety, Health, and Working Conditions Code," that covered unorganized workers of two classes: self-employed and wage-employed, seeks to colligate 13 primitive labor laws, was introduced in the lower house of the parliament in 2019. It also sought to subsume the ineffective labor laws like the Inter-State Migrant Workers Act, 1979.

It was announced by the labor ministry that it was planning to conduct a census of the workers engaged with the unorganized sectors, thus providing them with a unique identity.

The prime feature of the proposed law was the issuance of smart identification cards to the

⁵² OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS: CCPR GENERAL COMMENT NO. 6: ARTICLE 6 (RIGHT TO LIFE)(1982).

informal workers to help develop a proper database of the migrant laborers employed in various cities of the country. In this era of digitalization, better administrative techniques like the use of smart cards may have proved to be helpful.

Moreover, the chances of fraud and duplication by linking Aadhaar would have lessened. Linking such cards with "direct benefit transfer" in the accounts of the beneficiaries had also been planned. The ration shops would also have had access to the data of such migrants through this digital identity card. Installation of card-readers at various locations, including railway stations, bus stops, etc. was to be done. Had this been successfully implemented, it would have been very helpful to identify the stranded migrants in the present crisis. There is no denying that this data will be prone to misuse, but, even a small step for the migrants, may turn out to be of great help, considering the lethal effects that this disaster has posed.

CONCLUDING REMARKS

The fear of COVID-19 has gripped the globe, and the lockdown, of such intensity, ravaged the life of hapless millions. Under the prevailing circumstances, it is impossible to submit that India will emerge out of this lockdown unscathed. Scars of unemployment and social security are already visible, the migrants being the worst affected. We as a nation had failed to provide them food, shelter, and conveyance when these nation-builders were down and out beseeching a little assistance from us in their quest to reach their humble abodes. Instead, the police mauled them with batons for breaking quarantine rules and blatantly violated their right to dignity by spraying the workers with disinfectant *en masse*.⁵³

The insensitivity of the government to impose the lockdown arbitrarily landed them in a dilemma and subsequently pushed them to abject destitution. The authors firmly believe that the pandemic has produced a "humanitarian catastrophe" for the downtrodden from which there is very little or no way out. It will take immense will power and mental strength to overcome this lethargy. This pandemic has taken the lid off and exposed the link between labor and work security.

⁵³ Omar Rashid, *Migrants Returning Home Sprayed With 'Disinfectant'*, THE HINDU (Mar. 30,2020), <https://www.thehindu.com/news/national/other-states/coronavirus-in-bareilly-migrants-forced-to-take-bath-in-the-open-with-sanitiser/article31204430.ece>.

**LOCKDOWN OR KNOCK DOWN: CRITICAL ANALYSIS OF THE REVERSE MIGRANT CRISIS
VIS-A-VIS COVID-19**

The pandemic is symptomatic of how the Constitutional rights have blatantly been overlooked by the government while imposing arbitrary measures. The Constitution provides for checks and balances, and the Judiciary should have been pro-active in such a situation as any arbitrary decision of the Executive is judicially reviewable and falls under the ambit of Article 14, which strikes at every form of arbitrariness. The Hon'ble SC's unwillingness to hold the government accountable and to provide succor to these poor millions will severely erode its Constitutional role and status as the guardian of the fundamental rights.

The authors believe that a holistic approach is required, and a proper law is the need of the hour. It is time for a complete overhaul of obsolete legislations. An atmosphere must be created that instills within the migrant class, a sense of belongingness to the country; where they believe that they shall live with dignity and will be treated well in India, without any discrimination.

