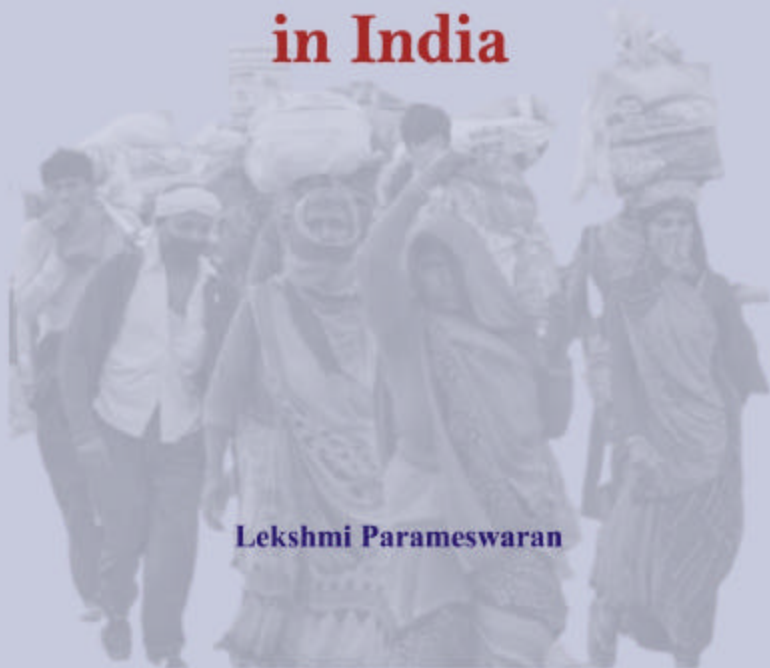


# An Overview of the Migrant Labour Crisis in India



Lekshmi Parameswaran



भारत नीति प्रतिष्ठान  
India Policy Foundation

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The nation-wide lockdown that was imposed in India on 25 March 2020 in an effort to contain the spread of corona virus disease (Covid-19) laid bare certain economic and social realities of India. Among the many hardships that people had to go through with the disease spread spiking and economic activities coming to a standstill, the country saw an unprecedented humanitarian crisis. Thousands of migrants from all over the country were on roads walking to their homes hundreds of miles away. Many were led by panic of being alienated in cities that they helped build and others did not have the resources to survive the long periods of lockdown. For long, the migrant labourers have remained invisible in big cities despite being the backbone of Indian economy. No country can be run without the long hours of hard work and toil that are put in by the migrant workers. The current migrant crisis has given us an opportunity to understand their plight and find solutions to ensure that they are not pushed to the brink every time there is a crisis.

### **Migration: An introduction**

The International Organization for Migration<sup>1</sup>, a related organisation of the United Nations defines a migrant as any person who is moving or has moved across an international border or within a state away from his/her habitual place of residence, regardless of:

- a) Person's legal status
- b) Whether the movement is voluntary or involuntary
- c) What the causes for the movement are
- d) What the length of the stay is

In India, a person is considered a migrant when he/she is enumerated in the census at a different place than his / her place of birth. Freedom of movement is a fundamental right which is

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<sup>1</sup>IOM, UN Migration

enshrined in Article 19 of the Indian Constitution. It gives the right to all citizens “to move freely throughout the territory of India and to reside and settle in any part of the territory of India.”

Unemployment remains the major factor for migration all across the world. Apart from the obvious economic factor, the other factors influencing migration are social, cultural, political, environmental, health and education. Political disturbances, caste conflicts, marriage and climate change induced disasters are some of the other important reasons for migration. Broadly, they come under the Push and Pull factors of migration.

The Push factors are those that force a person to leave a place of origin and move to another place and the Pull factors are those which attract a person to a destination.

The type of migration includes internal migration (moving within a state, country, or continent) and external migration (moving to a different state, country, or continent). Internal migration can be intra-state (within the same state) or inter-states (from one state to another). It can be either voluntary migration or involuntary migration (forced migration).

In India, internal migration is mainly of two types:

- i) Long term migration which results in the relocation of an individual or household.
- ii) Short term migration which involves back and forth movement between a source and destination. Under this comes seasonal migration in which people seasonally migrate for employment primarily due to climate change and circular migration where there is a repetitive movement of a migrant worker between the source and destination in search of employment opportunities.

The other types of migration are external migration and refugee migration. The former can be classified as - emigration from

India to various parts of the world and immigration of people from different countries to India. Refugee migration is always forced immigration.

When it comes to external migration, India constitutes 6.4 per cent<sup>2</sup> of the world's total migrants making it the top source of international migrants. According to a report released by the International Migrant Stock<sup>3</sup>, 17 million international migrants are from India. But data released by the Indian Ministry of External Affairs puts the number much higher at 30 million international migrants. Among this, over nine million is concentrated in the Gulf Cooperation Council (GCC) region of which over 90 per cent are low skilled and semi-skilled workers. UAE, Saudi Arabia, Qatar, Bahrain, Oman, Kuwait are countries hosting the maximum number of Indian migrants. India received USD 80 billion as remittances from abroad in 2018-19.

Another factor that is often overlooked is that global labour migration is gendered. According to a 2006 study by United Nations Population Fund (UNFPA), there are 95 million women migrants, which constitutes half of international migrants and they send millions of dollars in remittances to support their families. It is estimated that since 2000, there has been an increase in women migrating independently and as the main income earner, rather than just following male relatives.<sup>4</sup> In 2015, 23.9 per cent<sup>5</sup> of the total international migrants from India were women.

A study<sup>6</sup> by the United Nations estimates that in 2020, India will have the world's largest young population. With lack of

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<sup>2</sup>Pew Research 2017

<sup>3</sup>Population Division of the United Nations Department of Economic and Social Affairs, 2019

<sup>4</sup>Sussie Jolly, 'Gender and Migration,' *Bridge*, 2005

<sup>5</sup>India Labour Migration Update, *International Labour Organisation*, 2018

<sup>6</sup>'The power of 1.8 billion,' *United Nations Report*, 2014

employment opportunities in India, the country was expected to see an increase in the emigration of qualified professionals. Good education and better academic opportunities are other reasons contributing to external migration. However, with the travel restrictions due to the Covid-19 crisis as well as the resultant economic slowdown, this section will be amongst the hardest hit.

### **Migration in India**

According to the 2011 Census of India, there are 453.6 million internal migrants in India which is 30 per cent higher than the 309 million internal migrants recorded in the 2001 Census. Migration has both positive as well as negative impacts. The biggest positive factor is that migration helps in meeting the demand and supply gap of labour required in big cities. It is crucial for economic growth and also helps improve the socio-economic conditions of poor. The economic remittances sent by the migrant workers help their families to meet their basic needs, increases consumption and encourages them to invest in health, education and assets. According to a report<sup>7</sup> by Food and Agriculture Organisation, outmigration helps take care of the nutritional needs of households. Migration exposes the workers to new skills and also exposes them to a new culture which helps them to adapt to new places and also aids them in finding better opportunities. There is also lesser pressure on the source states especially with respect to increasing population and dwindling resources as many of its residents employed elsewhere. It has also given people an option to deal with the adverse effects of climate change<sup>8</sup>.

Among the negative factors, it is the change in demographic profile in source states that does lasting damage to an economy. It makes the women and elderly solely in charge of economic

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<sup>7</sup>State of Food and Agriculture report by Food and Agriculture Organisation, 2018

<sup>8</sup>Human Migration in India, *Drishti*

activities in source states as most the men migrate to other states or districts. In rural areas, this means women have to bear a disproportionate burden as they are in charge of both household work as well as agricultural activity. There is also a corresponding change in demographic profile in the destination states that is caused by the influx of migrant workers. The increased competition puts pressure on the existing resources which forces many of them to live an inferior quality of life. There is also seen an increase in the rise of slums where people lack even basic amenities. This leads to greater health risks but many of the migrants do not have access to any health services.

In addition to this, the fact that many of the migrant workers are unskilled or underskilled make them easy victims of bonded labour, exploitation, trafficking and gender-based violence and crimes. Unscrupulous labour agents coerce workers to work for wages that are below the stipulated minimum wages and those engaged in seasonal labour often get into debt traps and bondage. They are also kept out of the democratic processes in their destination states as they do not have the right to vote. The lack of awareness among migrant labourers about their rights further contributes to the problem and it keeps alive the vicious circle of exploitation. Above all, the loss of human capital in the source state and lack of optimum opportunities in the destination states leads to economic and social inequalities.

The key source states are Uttar Pradesh, Bihar, Rajasthan, Madhya Pradesh, Andhra Pradesh, Chhattisgarh, Odisha and the key destination states are Delhi, Maharashtra, Gujarat, Haryana, Punjab and Karnataka<sup>9</sup>.

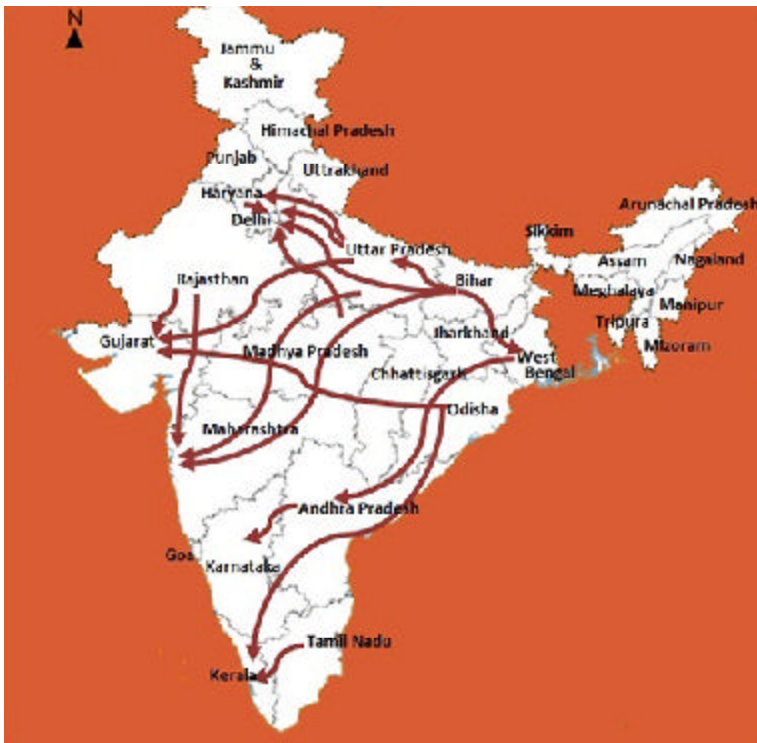
Uttar Pradesh and Bihar account for the highest number of migrants with 20.9 million people having migrated outside from these two states. Together with these two, Rajasthan and Madhya Pradesh accounted for 50 per cent of India's total inter-state

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<sup>9</sup>Census 2011



migrants. Delhi and Mumbai remained the favoured cities with 9.9 million choosing it as their destination cities. Overall, Maharashtra, Delhi, Gujarat, Uttar Pradesh and Haryana hosted 50 per cent of the country's inter-state migrants. The other important destination states are Tamil Nadu, Gujarat, Andhra Pradesh and Kerala. It is interesting to note that Uttar Pradesh serves both as a destination city as well as a source city.



**Internal Migration Flows, 2001 (Source: IIPS, Mumbai)**

According to a report by the United Nations<sup>10</sup>, nearly 60 per cent of urban male migrants and 59 per cent of urban female migrants have migrated from rural areas. 52 per cent of seasonal workers

<sup>10</sup>Decent work for migrant workers in India

are either illiterate or have not completed primary education and 55.4 per cent are casual workers. Most of these migrant workers are young with half of them in age group of 15-29 years and they come from socially deprived and poorer groups.

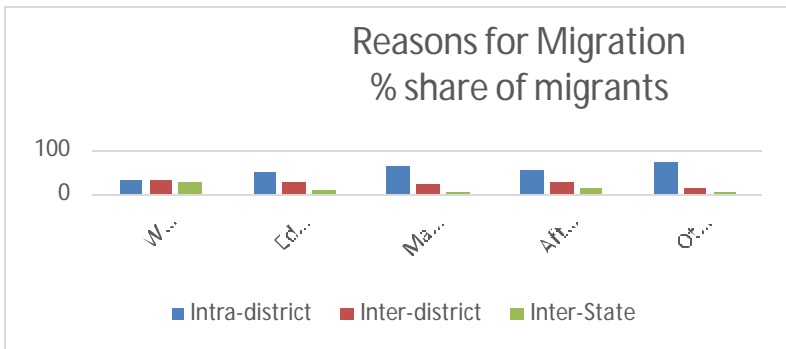
It is estimated that there are more than 120 million<sup>11</sup> seasonal migrants in India. Climate change and higher population densities are major factor that forces people to migrate to urban areas. Other than the major migration corridors, North-east has recently become a major source for migrant labourers.

A notable trend that has been observed in the recent years is that intra-district migration has been growing at a faster pace than inter-state migration in India. The number of inter-state migrants grew at a rate of 55 per cent between the 1991 and 2001 Census. But this number came to just 33 per cent between the 2001 and 2011 Census. This is in sharp contrast to the rate of growth that inter-district migration has witnessed. The inter-district migrants increased from 30 per cent between the 1991 and 2001 census to 58 per cent between 2001 and 2011. The intra-district migration, i.e. movement within the same state increased from 33 per cent to 45 per cent between 1991-2001 and 2001-11. When the aspect of gender is taken into consideration, it can be seen that two-thirds of women who had migrated cited marriage as the reason and among men, work and business accounted for one-third of total migrations<sup>12</sup>.

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<sup>11</sup>Survey, Institute of Human Development

<sup>12</sup>S IrudayaRajan and Bernard D' Sami, 'The way forward on migrant issues,' *Frontline*



Source: Census 1991, 2001, 2011

The gender gap gets increasingly evident when the reason for migration is equated with the distance of migration. For every woman who migrated for work, business or education both within and across states, the number of men who migrated was 3.2, 4.3 and 7.4 respectively<sup>13</sup>.

The major sectors where migrants are employed are agriculture labour, construction, domestic work and other services like security guards and drivers, textile, brick-kilns, transportation, mines, quarries, industrial non-skilled workers and small and tiny road side businesses like tea shops and small eateries. Amongst these, the biggest employers are the construction sector which has employed 40 million, domestic work -20 million, textile industry – 11 million and brick kiln work – 10 million<sup>14</sup>.

The rate of urbanization and the subsequent increase in demand for labour and comparatively high wages contribute significantly for people from rural areas moving to urban centres. An interesting point to note here is that in India majority of the migration is short-term.

<sup>13</sup>Abhishek Jha and Vijdan Mohammad Kawoosa, 'What the 2011 census data on migration tells us,' *Hindustan Times*

<sup>14</sup>Deshingkar P. and Akter S. 2009, 'Migration and Human Development in India', Human Development Research Paper

### **Decoding the migrant crisis**

India has 90 per cent of its population working in the informal sector. The International Labour Organisation (ILO) has predicted that due to the lockdown and the subsequent migrant crisis, about 400 million workers will fall deeper into poverty and many of them will be forced to return to their places of origin in the rural areas.

From the migrant crisis that unfolded in India, it is evident that the Census has failed to capture the extent of internal migration in the country. This is primarily because it is difficult to take into account the short-term seasonal movement as well as the number of dependents who move along with the earning member of a household.

What compounds this problem is that many of those who migrate in search of better opportunities are engaged in the informal sector which constitutes 93 per cent of India's total workforce. According to an estimate by Crisil, India has a workforce of 46.5 crore individuals. Of this, around 41.5 crore individuals work in the informal sector of the economy. The informal economy also includes regular wage workers who work on a contractual basis for the organised sector. It needs to be noted that a large percentage of migration that happens in the country is distressed or forced migration. The source states often lack the resources to aid people in finding jobs even for subsistence. Many of these states like Bihar, Madhya Pradesh, Rajasthan, Uttar Pradesh etc. see long period of droughts, deforestation and have ecologies that have been exploited and are no longer conducive for any agricultural activity. For more than two decades, India has been witnessing an agrarian crisis. Productivity has been falling every year and it has had an adverse impact on small landholder subsistence economies. Compounding the situation were low investments in agriculture, improper price mechanisms, lack of capital formation, all of which were leading farmers into a vicious debt trap.

The magnitude of the crisis becomes clear when the fact that the bottom 50 per cent is cultivating 0.4 per cent of the total cultivable lands<sup>15</sup> is taken into consideration. The average land holdings have reduced to 1.13 hectare which implies that most of the agricultural lands have been acquired by real estate developers and it has robbed small and marginal farmers of their living and they have been forced to move off their states and seek employment in other cities. The inherent caste bias in many of these societies as well as political conflicts also push people who are at the lower end of the hierarchy out of their villages.

However, the city life does not provide them any respite. Illiteracy and lack of critical vocational skills make these migrants easy targets in big cities and they are often exploited for their cheap labour. The lack of awareness about their rights means that they do not possess any bargaining power and they are forced to accept arrangements that are not at par with the stipulated terms and conditions. Many of them do not have any monetary benefits and some are even forced to work in hazardous conditions. Their plight worsens when political parties take up the issue of migrants and portray them in a negative light for taking up the jobs of those who are permanent residents of an area. This makes these migrant workers hide their true identity and they agree to work on terms that are unfair to them. Due to all these factors, the remittances sent by them have a low threshold and provides only basic subsistence to families.

### **Reverse Migration**

It is estimated that over 23 million<sup>16</sup> inter-state and intra-state migrant labourers will return to their homes due to the ongoing crisis. In the coming days, the real magnitude of the migrant crisis will be brought to the fore with millions of workers

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<sup>15</sup> Ajay Dandekar, Rahul Ghai, 'Migration and Reverse Migration in the Age of COVID-19,' *Economic & Political Weekly*

<sup>16</sup> Sridhar Kundu, 'Overpopulated, Too Reliant On Agriculture, Rural India Can't Absorb Reverse Migrants,' *IndiaSpend*

returning to their home states and adding further pressure on an already fragile economy. The rural economy is already overburdened, excessively dependent on agriculture and has underemployment as well as hidden unemployment. It is clear that India is grappled with a grave situation which has the power to destabilise the economy.

Prof Irudaya Rajan, India's leading expert on migration in an interview<sup>17</sup> to a media portal pointed out that reverse migration will also put considerable pressure on the destination states as migrants constitute 30-40 per cent of the economies of cities. It is evident that industries will no longer be able to function at full capacity as a huge section of its labour force has left their respective work places as a result of the economic downturn. He has also estimated that around 30 per cent<sup>18</sup> of the migrants will not return to cities due to the way they were treated during the Covid-19 crisis. Many of the employers turned their backs to the migrants without paying them their dues and some of the migrants did not even have access to emergency medical care.

Lack of jobs in the source states was the very reason the migrants went to other states and have been living in despicable conditions. When these people go back to their homes, what await them are joblessness and an economy that will not be able to grant them an income even for subsistence. Perhaps in the coming days, poverty caused by economic distress will take more lives than the pandemic or create criminals in their struggle for survival.

The rural economy which constitutes 70 per cent of India's population contributes only 48 per cent of India's Net Domestic Product<sup>19</sup>. The annual per capita income of rural economy is Rs

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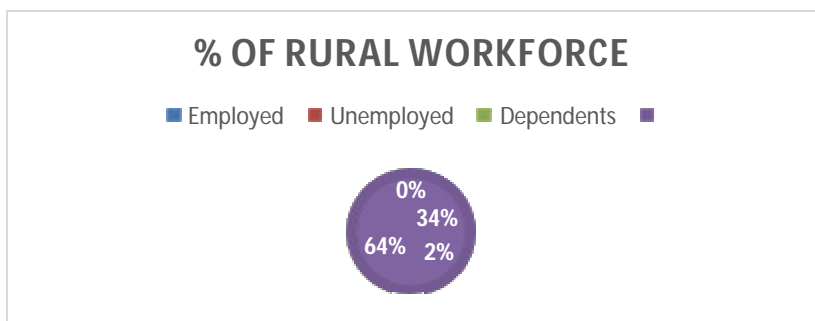
<sup>17</sup> Interview: 'Migrant labourers now have an opportunity to punish their employers', *Quartz*

<sup>18</sup> 30% of migrants will not return to cities: Irudaya Rajan, *Times of India*

<sup>19</sup> National Account Statistics, 2017

40,928 in 2015-16, less than half the urban per capita income of Rs 98,435 which points to a majority of population already living in sub-standard conditions and also lower productivity of workforce as compared to the urban areas. According to National Account Statistics 2017-18, the productivity gap rose to 13 per cent in 2017-18 which was below 12 per cent in 1970-71. A 2014 study by the Reserve Bank of India stated that to create one per cent rise in employment in rural economy, the sector will have to grow by 25 per cent. With the economy shrinking, this means that rural India do not have the means to employ the returning migrants.

What makes the situation worse is that in India, only 36 per cent of the rural population was working or available for work in 2017-18<sup>20</sup>. The remaining 64 per cent of the population--mostly children below the age of 14 years and the elderly--is dependent on them. Of those who are part of the labour force, 5.8 per cent-15.8 million-were unemployed for the major part of the year. Out of the employed, only about 4.6 percent had regular salaries while about 90 per cent did not even have a job contract.



Source: Periodic Labour Force Survey, 2017-18

<sup>20</sup> Periodic Labour Force Survey, 2017-18

In India, Bihar is expected to be the worst hit due to reverse migration. Nearly, 10 lakh workers are expected to return to the state. According to data released by Centre for Monitoring Indian Economy (CMIE), the unemployment rate in Bihar was highest in the country at 10.3 per cent last year and by April 2020, the state's unemployment rate increased by 46.6 per cent from 31.2 per cent, almost twice the national average.

A survey conducted by Institute of Population Sciences in February 2020 found that 80 per cent of the migrants from Bihar are landless or have less than one acre of land. According to National Sample Survey of 2007-08, 5.64 per cent of the population moved out of the state. The statistics when compared with the lack of developmental activity in the state and lower agricultural output are staggering and point to a much larger humanitarian crisis than what was seen on the streets.

Another study by Centre for Development Studies (CDS) stated that Bihar gets the second highest domestic remittance in the country and the remittances account for close to 5 per cent of the entire state's GDP. The state received Rs 9,53,61,300 in March 2017. The National Sample Survey 2007-08 has found that 70 per cent of the remittances in Bihar are used to procure food items. The remaining is consumed in household maintenance and healthcare.<sup>21</sup> This in effect means that households will no longer have any money to meet their basic expenses and these families who were already getting only basic sustenance will get pushed to the brink of poverty. The state administration which is busy fighting the Covid-19 battle do not seem to have taken into account the long-term consequences of reverse migration.

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<sup>21</sup>Rounak Kumar Gunjan, 'No Remittance, Likely Contagion: Reverse Migration of 10 Lakh Workers Will Test Bihar's Ability to Feed, Cure,' *News18*



Kerala is yet another state that will have to bear the brunt of reverse migration in the coming days. Of the total international migrants, 2.5 million are from the state of Kerala. Prof Rajan has pointed out that internal migrants were essentially filling gaps left by those migrating to other countries. In Kerala, that situation will change when a significant portion of migrant population return following the Covid-19 crisis. A study<sup>22</sup> conducted by CDS had found that each non-resident Keralite supports four people back home. In 2014-18, the state's remittances rose from Rs 71,142 crore to Rs 85,092 crore—accounting for 35 per cent of Kerala's GDP and 39 per cent of its bank deposits over that period. From this, over Rs 30,000 crore, flowed into households: towards savings, paying bills and school fees, repaying debt, funding weddings, building/buying/renovating homes<sup>23</sup>.

According to rough estimates, around three lakh Indians are expected to return from the Gulf countries by the end of December. Of these, one lakh will be eventual returnees and one lakh would want to re-migrate once economic activities resume. Both these scenarios are equally challenging as the former would mean that the returnees who have enough savings will be looking for investment avenues which are absent and the latter will be able to find jobs in a post Covid-19 world only if they acquire new skills. In the present situation, the state government do not have the resources to train these migrant labourers. Also, the migrant workers come back to a reality where the home state is used to internal migrants working at a lesser cost. This essentially means that those who have returned from abroad will find themselves in a situation where they will be either rendered jobless or they will be forced to work for a nominal charge. The Dubai-based PravasiBandhu Welfare Trust had found that 95 per

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<sup>22</sup> Kerala Migrant Survey, 2018

<sup>23</sup> Siddhart Premkumar, 'The Gulf Boomerang: India's Biggest Reverse Migration From A World Devastated By COVID-19,' *Outlook*

cent of the migrants from Kerala across the GCC return home with next to no savings. With a drastic fall in remittances, there will be complete economic collapse in the state of Kerala if immediate measures are not taken to address the problem of reverse migration.

Likewise, it was reported that over 30,000 tribal labourers from Jhabua district in Madhya Pradesh have returned from Gujarat, Rajasthan and Maharashtra and another 30,000 from this district were left stranded in these States<sup>24</sup>. It is clear that the tribal population is among the section that will bear the adverse effects of reverse migration. According to the Ministry of Tribal Affairs<sup>25</sup>, tribal population people living below the poverty line in 2011-12 were 45.3 per cent in the rural areas and 24.1 per cent in the urban areas as compared to 25.7 per cent persons in rural areas and 13.7 per cent persons in urban areas below poverty line for all population. It has to be noted that this population already suffers from hunger and also malnutrition and with the lockdown restricting their movement even to collect minor forest produce, many of the families will not have the means to survive.<sup>26</sup>

The Central government which has announced a Rs 20 lakh crore relief package with the focus on making India self-reliant has said that it will lead to reforms in land, labour, liquidity and laws, and would provide relief to small and medium enterprises, which employ most of the migrant workers. But this may not be enough as the dip in demand has meant that the employers no longer have the means to pay the workers. And it is unlikely that the workers who have already left the big cities would want to come back as they have to face the twin problems of an economic crisis as well as a health emergency. The rising cases of Covid-

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<sup>24</sup>Sidhart Yadav, 'A long walk home for 30,000 tribal workers in M.P,' The Hindu,

<sup>25</sup>Ministry of Tribal Affairs, Annual Report 2018-19

<sup>26</sup>Dilip Chakma, 'COVID-19 in India: Reverse migration could destroy indigenous communities,' *IWGIA*

19 means that they will have no access to healthcare and will most probably on their own if they test positive for the virus.

From the crisis that unfolded on the streets of India, it is clear that the migrant labourers have never felt part of the cities they find employment opportunities in. Now when they go back to their homes, they are likely to face discrimination in their villages as they will be putting added pressure on the resources during a pandemic. The lack of any social security net has exposed the gaps in existing laws as well the administration's ability to address the issue.

### **Legislations for Migrant Workers**

An important legislation governing inter-state migrants in India is the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979. It was enacted to prevent exploitation of migrant labourers and ensure that their terms of employment are fair. The law is applicable to all the establishments employing five or more migrant workmen from other states. It is also applicable to contractors who have employed five or more inter-State workmen.

According to the provisions of the law, all establishments hiring inter-state migrants will have to be registered and contractors who recruit such workmen should be licensed. It requires the contractors to maintain a register containing all details of the interstate workers and provide the same to statutory authorities for scrutiny. It entitles the migrant workers to the same pay as other workers, displacement allowance, journey allowance, and payment of wages during the period of journey. Contractors are required to ensure regular payment, non-discrimination, arranging suitable accommodation, free medical facilities and protective gear for all workers.

In effect, this law is the first step in formalizing labour that has so far remained undocumented and outside the purview of regulation. The law has at its core the life and dignity of the migrant workers. As per the provisions of this law, the moment a

migrant worker is recruited all the clauses start operating. The contractors are obliged to provide terms and conditions of the recruitment to the workers which includes - the remuneration payable which has to be in line with the Minimum Wages Act, hours of work, number of holidays, fixation of wages and other essential amenities. In cases where the contractor fails to bear the wages and other benefits of the inter-state workers, the principal employer is liable to meet them. Any violations committed under this Act are liable for prescribed punishments. It provides for a jail term of up to a year and a fine of Rs 1,000 for any violation of the law and it gives labour inspectors powers to conduct inspections and take testimonies from workers any time and two-year jail for any obstruction to their work<sup>27</sup>.

If the law is implemented effectively, it will give both the central and state governments a fair idea of how many people are employed in each sector. But the migrant crisis showed how ill prepared were the state governments in handling the situation and complete neglect in implementation of this Act. It also called into question the role of the Chief Labour Commissioner (CLC) as this office should have facilitated the migrant workers to reach their home states with the data it should have had at its disposal.

The primary reason that is often pointed out for the non-compliance of this Act seems to be the difficult provisions that would make it unviable for the contractors to hire inter-state workers. The social protection measures like providing accommodation and health facilities for the migrants come with additional costs that many of the employers are not willing to bear. This leads to the establishments under reporting the number of migrant workers employed by them. On the state government's part also, enactment of this law would mean that officers will have to physically go to all the places that employ migrant labourers and check if all the facilities are provided to

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<sup>27</sup> Chetan Chauhan, 'Migrant workers' law in focus as crisis intensifies,' *Hindustan Times*

them. The state government that are already operating at a reduced capacity do not have the resources to carry out this exercise. The problem is particularly pronounced in the urban areas where fewer than 10 per cent is employed in the formal sector and the provisions of this Act in a way incentivizes non registration of inter-state workers.<sup>28</sup>

According to state labour bureaus, less than five percent of the migrant workers are enrolled with government agencies. There is no provision which makes it mandatory for employers to file an annual report with the details of migrant workers employed. Most importantly, the law is based on the power of individuals who work in the capacity of inspectors and in most cases, they are easily influenced.

Another reason that led to the migrant crisis is the lack of a cohesive policy framework that deals with migrant labour. States that are important destination points like Delhi, Maharashtra, Karnataka, Kerala and Tamil Nadu have implemented different amendments to the Inter-State Migrant Workmen Act 1979. In a survey conducted by India Migrant Now, Kerala with a score of 62 out of 100 ranked first for migrant friendly policies followed by Maharashtra with a score of 42 and Punjab with a score of 40.<sup>29</sup> During a time when inter-state migrants are constantly willing to shift bases in search for better economic opportunities, the absence of a common code to regulate their movement and working conditions points to the neglect that this section has been facing for long.

Apart from this, there are 44 labour laws in the country. The Occupational Safety, Health and Working Conditions Code, 2019 was passed in Lok Sabha in the same year, and was referred

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<sup>28</sup>K P Krishnan , AnirudhBurman , SuyashRai, 'Migrant Workmen Act, 1979, must be rationalised to remove requirements that disincentivise formalization,' *The Indian Express*

<sup>29</sup>SiddharthSivaraman, 'Is the Inter-State Migrant Workmen Act 1979, a dead letter?' *Observer Research Foundation*

to the standing committee which submitted its report on February 11, 2020. It noted that the Code should have initiatives similar to those Odisha has adopted for migrant workers like a toll-free helpline, help desk, seasonal hostels for their children as well as strengthening of the anti-human trafficking units and the setting-up of migration support centres<sup>30</sup>. The parliamentary panel in its recommendation said that every state should have a helpline for migrant workers.

The Code is still pending to be passed in Rajya Sabha. This code repeals 13 out of the 44 labour laws and include the Factories Act, Mines Act, Dock Workers' Act and other legislations relating to those working in plantations, construction, cinema, beedi and cigarette manufacture, motor transport, and the media. It also proposes to merge the Interstate Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 primarily because the code has similar provisions like displacement and journey allowance to inter-state migrant workers. It has excluded the penal provisions.

An important positive step enshrined in this code is that it covers establishments with even one migrant workers because of which employers will no longer be able to subvert the law and break the migrants into smaller groups to avoid giving them any benefits.

The other important acts that regulate labour are –The Minimum Wages Act, 1948; the Contract Labour (Regulation and Abolition) Act, 1970; the Equal Remuneration Act, 1976; and the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.

### **International covenants**

The International Labour Organisation (ILO) which was founded in 1919 is the oldest specialised agency of the United Nations

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<sup>30</sup>Chetan Chauhan, 'Migrant workers' law in focus as crisis intensifies,' *Hindustan Times*

and its mandate is to advance social and economic justice through setting international labour standards.

In the subsequent years since its establishment, the ILO has adopted many international labour standards and an important component of these has been the protection of rights and dignity of migrant workers. In principle, all international labour standards adopted by ILO are applicable to migrant workers unless where exceptions are provided for. These standards include the eight fundamental rights conventions of the ILO identified in the 1998 ILO Declaration on Fundamental Principles and Rights at Work ; standards of general application, such as those addressing protection of wages and occupational safety and health, as well as the governance conventions concerning labour inspection, employment policy and tripartite consultation ; and instruments containing specific provisions on migrant workers such as the Private Employment Agencies Convention, 1997 , the Domestic Workers Convention, 2011 and social security instruments.<sup>31</sup>

The ILO also protects "the interests of workers employed in countries other than their own" (ILO Constitution, 1919, Preamble, recital 2), and has pioneered the development of specific international standards for the governance of labour migration and protection of migrant workers. It has adopted two Conventions, in 1949 and 1975, which are accompanied by non-binding recommendations.

ILO's four migrant specific instruments include – i) Migration for Employment Convention 1949 ii) Migration for Employment Recommendation 1949 iii) Migrant Workers (Supplementary Provisions) Convention, 1975 and iv) Migrant Workers Recommendation, 1975

In addition to international labour standards, migrant workers and members of their families are protected by the nine UN core

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<sup>31</sup>International labour standards on labour migration, ILO

international human rights instruments, which apply to all persons irrespective of their nationality. One of these core instruments is the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, which was adopted by the Un General Assembly in 1990 and came into force in 2003. This Convention complements the four ILO instruments on migrant workers but is broader in scope going beyond labour issues. It also sets up the Committee on Migrant Workers which is responsible for monitoring the Convention's application by States Parties.

There are also other mechanisms within the UN system relevant to the protection of migrant workers, including the special procedures mandates' of the UN Human Rights Council, and most notably the UN Special Rapporteur on the human rights of migrants<sup>32</sup>.

The Director-General of the ILO Guy Ryder at the International Labour Conference in 2014 had pointed out that though labour migration had the potential to contribute to development it comes with policy challenges and also leads to a vulnerable section being treated in an unacceptable manner<sup>33</sup>. Taking this into consideration, the conference endorsed the Fair Migration Agenda. It advocated for the realization of decent work opportunities for all migrant workers while respecting their fundamental rights. It recognised the contributions of the migrant workers in the development of a society and also pointed to the vulnerabilities of the places they come from and the conditions they are forced to work in. The conference called for the immediate institution of a governance mechanism for migrants that would allow them a share in the prosperity that they had a fair share in building.

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<sup>32</sup> *ibid*

<sup>33</sup> Shabarinath Nair and Divya Verma, 'A policy framework for India's Covid-19 migration,' *Bloomberg*



Following this, the Sustainable Development which was adopted by the United National Member States in 2015 with the aim of achieving a sustainable future for all by 2030 has touched upon the topic of migration and its contribution to sustainable development. 11 out of the 17 Sustainable Development Goals (SDGs) has targets or indicators related to migration. SDG's target 10.7 is of particular importance as it facilitates orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies.

### **Internal migration in other countries**

China is a country that has for long practiced regulating internal migration. The Hukou system in the country controls the flow of people from villages to cities. It is a family registration programme that helps the government regulate population distribution between rural and urban population with an aim to not overcrowd the big cities. The system has now been relaxed as there was a shortage of labour in big factories in cities and migration has been encouraged<sup>34</sup>.

But the Hukou system cannot be followed in India as the freedom of movement is a constitutional right. In the landmark case of Charu Khannavs Union of India and others, it was clearly established that any restrictions based on residence for the purpose of employment is unconstitutional<sup>35</sup>.

Another policy followed by China is to make their villages self-sufficient so that people do not feel the need to migrate to big cities. In Hubei district, all the people belonging to a particular village are employed in small workshops and factories making cigarette lighters or socks. The employees have eight types of social insurance and the pay is sufficient to help them lead a good life.

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<sup>34</sup> JayshreeSengupta,' Reverse migration: An opportunity for the government,' *Observer Research Foundation*

<sup>35</sup> Report of the Working Group on Migration, 2017

### The way forward

The migrant crisis in India revealed a deeper structural problem that requires urgent attention and intervention by the concerned authorities. The Human Development report by United Nation Development Programme<sup>36</sup> has pointed out that migration is integral to the process of human development and preventing it may prove to be counter-productive. Migrants are the backbone of any emerging economy and India should view the current crisis with a sense of urgency. The internal migrants as percentage of population would have increased from 30 per cent in 2001 to 37 per cent in 2011, but it is a cause for concern that the nature of movement remains unchanged. 62 per cent of the movement is within the same district, 26 per cent between districts within the same state and only 12 per cent of the movement is inter-state. Between the two Census rate of inter-state migration has remained unchanged at four per cent.<sup>37</sup>

The statistics point to a skewed distribution of opportunities and the inability of the state administration to use human resources in an effective manner. A World Bank paper based on the 2001 Census data attributed to the low rate of internal migration to mainly three factors – i) non-portability of entitlements, ii) preferential norms in educational institutions and iii) domicile requirements for state government jobs. The first factor has been partially addressed with the introduction of Aadhaar-based benefits and some of the states have reformed their Public Distribution System (PDS) to make it accessible to those migrants who work in different districts. But a nation-wide social security net is still a far-fetched reality. Migrants are left out of social and legal protection both the source as well as destination states. The law requires them to provide proof of address, ration cards, Voter IDs and Aadhaar cards to be able to access the

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<sup>36</sup>2009

<sup>37</sup>Supriyo De, 'Internal Migration in India Grows, But Inter-State Movements Remain Low,' *World Bank Blogs*

government welfare schemes. There are no institutional mechanisms to ensure the rights of migrants.

Echoing similar thoughts, the report on the ‘Social Inclusion of Internal Migrants in India’ stated that “there is an urgent need to develop a governance system for internal migration in India, i.e. a dedicated system of institutions, legal frameworks, mechanisms and practices aimed at supporting internal migration and protecting migrants.” It also called for the developing of social protection architecture that allows for portability of services like PDS, health insurance and education in order to ensure easy and equal access to migrants<sup>38</sup>.

A problem that was noticed during the migrant crisis is that a substantial section of the migrant workers are unbanked. Since migrants do not possess proofs of identity and residence, they fail to satisfy the Know Your Customer (KYC) norms which have been made mandatory under the banking regulations. Because of lack of awareness, many do not feel the need to maintain bank accounts in their source states. Because of this, the migrants do not have any savings and is always forced to lead a hand to mouth existence. An effective way to deal with this situation is to introduce smart cards for migrant labourers that contains their essential personal details and which can be submitted at banks to enable direct benefits transfer. It may also be time to expedite the process of introducing ‘One Nation One Card’ that would allow migrant labourers and their families to access Public Distribution System (PDS) benefits from any part of the country. There is an urgent need to streamline internal migration so that undue panic is not created and the migrant workers will have the assurance that their needs are taken care of.

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<sup>38</sup>Saurabh Sharma, ‘COVID-19 reverse migration: They are leaving, but will they return?’ *News Click*

In all probability, the immediate way in front of central and state governments to contain the present crisis would be to ensure employment via the Mahatma Gandhi National Rural Employment Guarantee Scheme (MGNREGA). But the situation will improve in the long run only if there is equal access to opportunities for all migrants. State governments should look beyond the benefits of cheap labour and develop a policy framework that has the welfare of migrants at its prime focus. Some states like Kerala has shown the way by adopting schemes like the Migrant Workers Welfare Scheme of 2010 that offers financial support for treatment of migrants for ailments, grant for their children's education in Kerala and retirement benefits to those who complete five years under the scheme. Other schemes introduced by the state are 'Awaaz' which in addition to providing health insurance to migrants help make a database of migrants in the state and Apna Ghar project that takes care of the housing needs of its migrant population.

Above all what needs to be understood is that large scale migrations happen only when there aren't enough opportunities at their home states. Even in the Inter-State Workmen Act, it is clearly said that it is only when an employer faces shortage of skills among the locally available workers, the provision is made to employ better skilled workers available outside the state. So, the need of the hour is to ensure that every village is self-reliant which should start at the block level. With a considerable number of migrants having returned to their home states and expressing their unwillingness to go back to big cities, it is a good opportunity to revive the rural economy.

The government should encourage the setting up of small and medium enterprises and infuse more funds into the rural economy which would result in the creation of more jobs. To attract investors, the government should ensure that all the infrastructural needs to establish an industry are taken care of. There has to be regular power and water supply in addition to good roads and connectivity. Such a step will also help

decongest the big cities and in the equal distribution of labour avenues. Agriculture and allied sectors like food processing and cold storage may be areas that the government can focus on to make certain that people who have returned to their villages are not rendered jobless and pushed to utter poverty. Simultaneously, the government should also focus on skill development and developing alternate sources of livelihood to take optimum advantage of India's demographic dividend.

For those who wish to migrate, district facilitation centres should be set up and there should be a mechanism to help the migrants register themselves. This can be done by incentivizing the process. The government can make available social security benefits to all migrant labourers on registration. Panchayats can play a role in expediting this process. Helplines should also be set up to keep a check on any exploitative practices resorted to by the employers. Help should be made available to migrants to make informed choices. The government should also regulate placement agencies which often lure migrants to work in unfair conditions.

It is clear that migration flow will take a year or two to reach pre lockdown levels<sup>39</sup>. This gives ample time for industries to work in tandem with the government to formulate new policies to reinvent their business models. The migrant labourers are at present a disillusioned section and if the economic activities have to resume at the earlier pace, the issues of migrant labourers will have to be given the attention it deserves. For a few years from now, distance will play an important role and the migration patterns may witness drastic changes. People may now prefer shorter distances which can serve as an impetus for the development of rural economy. The government can turn around

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<sup>39</sup> Migrant flows will change, they will take time to come back to the city, says scientist IrudayaRajan, *Times of India*

the current scenario if it starts looking beyond the short-term policies for migrants and start formulating long-term plans for the industry. To ensure rights of labourers, these industries would need capital infusion as many of them work on thin margins because of them they are not in a position to comply with the existing laws even if they want to. The time is apt to introduce new technologies to propel rural economy and help generate job opportunities in the source states.

In the end, all these steps will be effective only if others are made aware of the importance of migrant labour in an economy and a positive perception is built about their presence in cities. As pointed out by Saji Narayanan, President, Bharatiya Mazdoor Sangh, the migrant crisis has put a start to this process with the workers being identified as “guest workers” in many of the destination states. The psychological factor remains the main driving force behind the decision of migrant workers to either stay back in cities or return to their villages. The government on its part should ensure that the migrant workers are treated at par with all others. Instead of completely relying on the contractors to provide accommodation and healthcare facilities, the government must take steps to ensure that the needs of migrant workers are taken care of. A nominal fee can be charged from the migrant workers for these facilities as it may not be feasible to give the services free of cost. What is essential is to give these workers a feeling that they are part of the states where they toil hard for a living. The biggest battle in front of India is to fight the alienation that was visible on its streets and integrate the community of migrant workers into its economy.