

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 6

2023

© 2023 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to submission@ijlmh.com.

Writing a Story for the World: Tracing India's Response to Migration and Reverse Migration During the Pandemic

ROMITA ROY¹

ABSTRACT

The advent of the Covid-19 pandemic in 2020 has impacted almost all sections of the society. Its effect has been greatly reflected on human mobility thereby rendering the international migrant community in a state of despair. The imposition of travel restriction and sealing of international borders by almost all countries around the globe have resulted in a large number of these migrants being stranded abroad in a state of economic recession with no means to return to their home countries. Against such a backdrop, it becomes pertinent for us to study the challenges faced by them, the assistance offered to them by the governments and their socio-legal consequences. The pandemic unraveled multiple social fissures which exposed the hollow claims of equality and equal protection of law envisaged upon each citizen by the Indian Constitution. This article aims to analyze the ostensible and systematic ignorance of both the legislature and the judiciary towards ensuring basic-necessities of the international migrant community, thereby unearthing the naked discrimination served towards them.

Keywords: Migration, International Law, Equality, Legal semiotics, Migration Policy, Reverse Migration, Human Rights.

I. INTRODUCTION

The word “migrants” in contemporary neo-liberal times is a major cataclysm that continuously streams heart-wrenching images of struggle for basic livelihood. India has the largest diaspora and is ranked one of the highest origin countries of international migration. The country also holds its position among the largest recipient of remittances with its average annual remittance being USD 78.6 billion²

The corona-virus pandemic has witnessed to what many scholars term as “reverse migration”. Lockdowns, travel plans and immediate policy responses which were unprecedented brought human mobility and the global economic markets to a standstill. The sealing of both internal

¹ Author is a student at O.P. Jindal Global University, India.

² UNDESA (2020). International migration 2020 highlights. Available at: <https://www.un.org/en/desa/international-migration-2020-highlights>

and international borders triggered an unseen exodus of migrants stranded in their destinations, thereby increasing their vulnerability to economic and social risks.³ The temporary suspension of economic activities across the globe led to job losses and economic uncertainties compelled the migrant workers to return to their home countries. It further paved the way for rampant wage theft, forceful retrenchment and other coercive practices.⁴ In one of its reports, the IOM defined these ‘stranded migrants’ as “*previously stranded individuals who have returned to their country of origin/resident country (irrespective of the modalities of the return)*”⁵

While a number of studies and media reports have focused on the issues faced by the internal migrants, a similar focus has been missing for the international returnee migrants. According to the data of the Ministry of External Affairs, over 12,69,549 Indians were brought back by the Indian government under the Vande Bharat Mission carried out during the pandemic.⁶ These migrants who were mostly working as expatriates in the middle East faced severe hardships abroad including job losses and lockdown which forced them to return to India. Stranded with the challenge to choose between ‘life’ and ‘livelihood’, they were left with no alternative but to migrate back to their villages. However, their return to India did not prove to be of much relief, as they were welcomed with much stigmatization and were prejudiced to be the carriers of the disease, thereby adding difficulties to their migration experiences.⁷

The pandemic subsided subsequently. However, significant issues cease to exist concerning the reintegration and repatriation of these people. This paper aims to enquire the social and economic challenges faced by the returnee migrants and shall analyse the comprehensive policies undertaken by the Indian government to ensure the safe return, welfare and reintegration of these reverse migrants in the Indian Economy. Moreover, the issues that plague the condition of migrants in contemporary times have become more complex in the post pandemic world where the global economy is slowly recovering, and nations are struggling to

³ Ratha D, Supriyo D, Eung K, et al. (2021) *Resilience COVID-19 Crisis Through a Migration Lens*. Report for KNOMAD - World Bank. Migration and Development Brief No. 34, Washington, DC: Migration and Remittances Team, World Bank Group. Available at: https://www.knomad.org/sites/default/files/202105/MigrationandDevelopmentBrief34_0.pdf [Google Scholar]

⁴ Subramaniam G. (2020) *Losing More than Their Health – COVID-19 and Migrant Worker Wage Theft (Pt 4)*. Institute for Human Rights and Business. Available at: <https://www.ihrb.org/focus-areas/migrant-workers/covid19-migrant-workers-wagetheft> [Google Scholar] [Ref list]

⁵ IOM (International Organization for Migration). (2020a). Covid-19 impact on stranded migrants. https://www.iom.int/sites/default/files/documents/issue_brief_return_task_force.pdf.

⁶ Rajan, S. Irudaya, and H. Arokkiaraj. “Return Migration From the Gulf Region to India Amidst COVID-19.” *IMISCOE Research Series*, vol. 207–225, 2 Dec. 2021, https://doi.org/10.1007/978-3-030-81210-2_11.

⁷ International Organization for Migration (2020). c) Migration Research. In *Economic Impacts on Migrants - Understanding the migration & mobility Implications of COVID-19*. Geneva: IOM. COVID-19 Analytical Snapshot, COVID-19 Analytical Snapshot no. 10, 10 April, Available at: https://www.iom.int/sites/default/files/our_work/ICP/MPR/covid-19_analytical_snapshot_10_-_economic_impacts_on_migrants.pdf [Google Scholar] [Ref list]

provide valuable employment opportunities. This is further complicated by the background of the migrants themselves, along with human rights issues which may exist in the destination countries like UAE and Saudi Arabia. The paper is divided into three parts. The introductory part provides an overview on the plight faced by the international migrant community of India. The second part reflects on the repatriation mission undertaken by the Indian government, alongside analyzing the various policies put in place to ‘safeguard’ the migrant workforce in the wake of the pandemic. The fourth part delves into the legal semiotics of such policies and concludes by understanding the factors influencing the reverse migrants’ future movements, as it is important to systematically study the process of ‘return’ of the migrants as an integral component of the circular migration continuum.

II. DIFFERING PATHS, DIFFERING PROBLEMS: BORDER AND RULE⁸

The crux of international migration is that it entails diversified factors: migrants originate from various Indian States, and are destined to different countries; where they are employed in different types of occupation. While some of these migrants engage in various white-collar or blue-collar jobs, others migrate for higher education purposes, thereby bringing a distinction in the type of visas each category holds. While the lockdown was lauded as a pre-emptive strategy, its economic repercussions has placed the migrant community at its distress pitfall. Over the last few decades, emigrations from India have mostly been destined towards the Gulf countries, followed by US. However, it is the nature of contrast that brings in the distinction. While migration to the western countries have largely been facilitated by the highly educated and skilled workers, the lesser skilled or unskilled workers mostly emigrate to the Gulf region and engage in employments of ‘temporary’ nature. These predominant nature of unskilled labourers in the Gulf region, thus forms the basis of large-scale return migration to India.⁹ In their destined countries, these workers were mostly partially or fully excluded from any means of social security or health insurance benefits.¹⁰ The pandemic rendered most of them jobless. Thus, in such a state of jobless and surviving on their meagre savings, being affected by the virus would have worsen their financial woes. It is this economic setback that they feared more than the virus itself. Additionally, their families back in India, who are dependent on these remittances would have also experienced a setback in the event of such circumstances.

While the Central Government assured that every Indian migrant stranded abroad are ‘safe’ and

⁸ S Irudaya Rajan and H Arokkiaraj, “Return Migration from the Gulf Region to India Amidst COVID-19,” *IMISCOE research series* (2021) <https://doi.org/10.1007/978-3-030-81210-2_11>.

⁹ Rajan, S. I., & Saxena, P. C. (2019). *India's Low-skilled Migration to the Middle East*. Palgrave Macmillan.

¹⁰ Rajan, S. I., & Saxena, P. C. (2019). *India's Low-skilled Migration to the Middle East*. Palgrave Macmillan.

that in consultation with the host countries, the Ministry of External Affairs are enabling ‘legal, smart and stable international migration’¹¹, however, the Supreme Court alongside with other High Courts, were flooded with multiple public interest litigations, urging the government to rescue these migrant workers abroad and bring them back at the earliest. Amidst much chaos, the Gulf-Countries had the *Kafila* Sponsorship method for recruiting workers whereby the recruiter sponsors the travel and accommodation facilities of the workers in the GCC countries (excluding Bahrain). Often times, they are provided with dorm-like accommodations and in the case of domestic workers they were allowed to stay at the sponsor’s house, thereby increasing their vulnerability as they lived at the mercy of their recruiters. However, there was a shift in the scenario when it concerned the Indian migrants living in the European Countries, as the imposition of travel restrictions alongside halting of work permit issuance placed the migrants in a deserted position with no access to their work place or any income.¹²

Amidst such challenges, a common challenge faced by the migration community was visa expiration, which further exacerbated the situation, for failing to renew their visas would render them as ‘undocumented’. In countries like US and Europe, the Indian migrant community comprises of students, young professionals holding Optional Practical Training (OPT) for F-1 students, people on temporary visas like the H-1B visa, and B-2 visa. The Migration crisis hit by the pandemic has unfolded an arena of anomalies concerning the social and economic security. The international migrant community was devoid of any legal provisions to safeguard them. Much surprisingly, the consular services by the Indian embassies then shifted to virtual mode owing to lockdowns. Such a shift made the services a far-fetched idea for most of these migrants especially the low-skilled workers. At such a juncture, it was only the Indian embassies abroad that they could reach out for immediate help. Instead of being proactive in assisting the stranded Indians, the embassies temporarily suspended their services. Such an action is grossly against the ethos of embassies as published on the official website of the Ministry of External Affairs, Government of India that reads “*Provide relief/repatriation and financial assistance to distressed Indians, subject to the rules applicable*”.¹³ What is pertinent to note here is that the website also reads circumstances which permits derogation from such services and that is only

¹¹ “MEA’s Role in Enabling Safe, Legal, Smart and Stable International Migration during Covid-19” (*Ministry of External Affairs, Government of India*) <<https://www.mea.gov.in/press-releases.htm?dtl/32934/MEAs+role+in+enabling+safe+legal+smart+and+stable+international+migration+during+Covid19>>.

¹² IOM (International Organization for Migration). (2020b). Understanding the migration & mobility implications of COVID-19. Grand-Saconnex, Switzerland. Retrieved from https://www.iom.int/sites/default/files/our_work/ICP/MPR/covid-19_analytical_snapshot_10_-_economic_impacts_on_migrants.pdf.

¹³ “Guide to Consular Services” (*Ministry of External Affairs, Government of India*) <<https://www.mea.gov.in/guide-to-consular-services-menu.htm>>.

limited to situations where a citizen might have been involved in illegal activities.

Left in the lurch by the Indian Consular, these migrants became even more vulnerable to the potential social and economic risks alongside the health risk that the pandemic unveiled to them. It was at this juncture, when the Indian Government embarked on its largest repatriation mission.

III. MISSION VANDE BHARAT: ASSISTANCE AMONGST TRAVEL RESTRICTIONS

The history of the land has witnessed that India has embarked on several evacuation missions, particularly in the Middle-East, for the region has experienced multiple conflicts over the last few decades. To date, the largest evacuation conducted by India was in the 1990 during the Gulf war, when the government airlifted more than 170,000 Indian citizens marooned in Kuwait. Fast forwarded to 2020, amidst the much more intensified calls for repatriation and the number of requests for evacuation of stranded Indians growing overwhelmingly, the central government announced its repatriation mission, Vande Bharat in April. It was the joint venture of the Ministry of External Affairs, Home Affairs and Civil Aviation, in tandem with the efforts of the state government, to bring back stranded Indians from abroad in ‘special flights’ operated by Air India.¹⁴ Alongside the Vande Bharat mission, the Indian Navy, under the name “Samudra Setu”, deployed ships to the Gulf Countries. Indian embassies, high Commissions and consulates were envisaged with the duty of accounting for the list of distressed migrants. Protocols were devised to reach out to them through embassy official websites and social media platforms.

While India’s rescue mission has been successful in bringing back large number of Indian migrants stranded abroad, yet it had its own challenges. Migrants with limited savings to rely on faced great deal of hardships in paying the exorbitant fares for flight operated through the Vande Bharat Mission. To much contrary, the Indian Civil Aviation Minister, HS Puri stated that “the rates were reasonable when compared to repatriation flights of other countries”¹⁵ However, passengers from countries like UK and the US continued to report that the fares for one way flight was as high as return flights, thus doing little assuage to the distress of the passengers.¹⁶ Furthermore, the US Government alleged that US carriers were banned from

¹⁴ Rajan, S.Irudaya and H.Arokkiaraj. 2021. Unprecedented repatriation programme: India’s Vande Bharat Mission in 2020. MoLab Inventory of Mobilities and Socioeconomic Changes. Department ‘Anthropology of Economic Experimentation’. Halle/Saale: Max Planck Institute for Social Anthropology.

¹⁵ Smitha, N. 2020. Exorbitant ticket fares make special flights unaffordable for stranded students, Deccan Chronicle. 8 June 2020. Available online at: <https://www.deccanchronicle.com/nation/current-affairs/080620/exorbitant-ticket-faresmake-special-flights-unaffordable-for-stranded.html>.

¹⁶ Ibid.

entering India, albeit Vande Bharat flights were operating out of India, thereby attracting “competition disadvantages”.¹⁷

A greater deal of hardships was encountered by the blue-collar migrants, for they not only had to deal with the exorbitant prices but also suffered due to lack of access to information. As most of these notices and updates were published in English and the official embassy websites, this class of the migrant workers were barely aware of the same. Many of these workers were undocumented who registered for amnesty in countries like Kuwait.¹⁸

Upon arriving to India, another set of challenges awaited the migrant workers. The protocols governing international arrivals mandated for 14 days-compulsory quarantine alongside Rt-PCR tests. It is pertinent to note that the quarantine services were paid and most of the blue-collar migrants had to exhaust their savings to pay an extravagant price of around Rs 1500 per day for availing the ‘compulsory quarantine services’.

IV. ENGAGING WITH THE DIASPORA: THE LEGAL SEMIOTICS

While the governmental policy of compulsory bearing of air fare expenses by the international migrants received its much-deserved criticism, it must be noted that for many of the internal migrant’s expenses of travelling in the “*Shramik*” trains were state-sponsored¹⁹. Further, it should be noted that the expenses mandatory institutional quarantine facilities and Covid-19 tests were borne by the states for the internal migrants while the international migrants were compelled to pay such exorbitant prices. The crux of the matter is that the thin line differentiating between internal and international migrants cease to exist when viewed from the eyes of the Indian law. They then comprise to be citizens of the nation, as is enunciated in Part II of the Indian Constitution. Such differential treatments enforced by government sanctioned policies stands to be in gross violation of the right to equality, guaranteed by article 14 of the Constitution of India. The Apex Court in the case of *Bandhua Mukti Morcha v. UOI*²⁰ have recognized the financial plight and inevitable sufferings of the migrant workers due to cessation during the outbreak of the pandemic. The two-bench judge in the said case revisited the policies and directions suggested for ameliorating the hardships of this community. However, the Court has limited its interpretation of ‘migrant workers’ to only include “inter-state migrant workers”

¹⁷ Levin, Alan. 2020. US restricts Air India’s ‘Vande Bharat’ flights citing ‘unfair’ limits on its airlines. The Print. 23 June 2020. Available online at: <https://theprint.in/india/us-restricts-air-indias-vande-bharat-flights-citing-unfair-limits-on-itsairlines/446832/>.

¹⁸ Id 7, at page 2.

¹⁹ Ministry of Railways., 2020. Booking in Shramik Special Trains. Government of India. <http://164.100.24.220/loksabhaquestions/annex/174/AU481.pdf>.

²⁰ *Bandhua Mukti Morcha v. UOI*, 2021 SCC OnLine SC 441.

as is defined in clause 2(1) of The Inter-state Migrant Workman (Regulation of Employment and Condition of Service) Act, 1979²¹, which reads:

*“means any person who is recruited by or through a contractor in one State under an agreement or other arrangement for employment in an establishment in another State ...”*²²

Needless to say, that the empathy of the Supreme Court failed to reach the international migrant community of the country. Such distinction between the two different, albeit much similar community has arguably attracted the doctrine of indirect discrimination. The Hon’ble Supreme Court of India has rightly pronounced that the “inability to recognise how existing structures/institutions and ways of doing things, have consequence of freezing unjust status quo”²³. Such policies of the government formally contribute to the subordination of the already disadvantaged groups of the international migrant workers community. The policies framed by various state governments to only aid the inter-state migrants contributes to the statistical evidences which clearly indicates patterns of exclusion of certain category and thus form a ground for indirect discrimination, as has been enunciated by the apex court. Further, the Court has elaborated that the presence of intention or unconscious biases is not a requisite threshold to attract the doctrine of indirect discrimination.²⁴ As such, awarding differential treatment and drawing distinction between the migrant class workers solely on the ground of their place of work does stand to be in violation of the constitutional principle of equality before the law.

The lack of access or claim to welfare resources offered by various states have already put the blue-collar workers in a state of financial despoil. With the additional burden of being financially liable for enjoying “basic necessities”, the international migrant workers are categorically exposed to economic regression. Justice Bhagwati, speaking for the majority in the case of *National Textile Workers’ Union v. P.R. Ramakrishnan*²⁵, while dealing with the rights of workers remarked Paragraph 6:

“6.The workers therefore have a special place in a socialist pattern of society. They are no more vendors of toil; they are not a marketable commodity to be purchased by the owners of capital. They are producers of wealth as much as capital. Our Constitution has shown profound concern for the workers and given them a pride of place in the new socio-economic order envisaged in the

²¹ The Inter-state Migrant Workman (Regulation of Employment and Condition of Service) Act, 1979, Act No. 30 of 1979.

²² *Ibid.*

²³ Lt. Col. Nitisha and Ors vs Union Of India, (2021) 15 SCC 125.

²⁴ *Ibid.*

²⁵ (1983) 1 SCC 228.

Preamble and the Directive Principles of State Policy. The Preamble contains the profound declaration pregnant with meaning and hope for millions of peasants and workers that India shall be a socialist democratic republic where social and economic justice will inform all institutions of national life and there will be equality of status and opportunity for all and every endeavour shall be made to promote fraternity ensuring the dignity of the individual. Everyone is assured under Article 14 equality before the law and equal protection of the laws and implicit in this provision is the guarantee of equal remuneration for men and women for same work or work of a similar nature.”²⁶ (emphasis supplied).

Under Article 21 of the Indian constitution, the Supreme Court has read “the right to live with dignity with access to at-least bare necessities of life” withing the meaning of Right to Life.²⁷ Further, to provide with food security to those in need qualifies to be the bounden duty of both the State as well as the central government. In examining the statement of objects and reasons of The National Food Security Act, 2013, it is convincingly evident that the legislative intent in enacting the act with the objective of “ensuring food and nutritional security in human life cycle”²⁸, was to mark a paradigm shift from a welfare-based approach to a right based approach.²⁹ During the awake of the second wave of the pandemic, the Supreme Court opined that even migrants who do not possess any card under the National Food security Act cannot be abducted from its benefits and that the state and the centre is bound to provide them with free ration, especially during such periods of crisis.³⁰ Regardless, the exorbitant price for institutionalized quarantine imposed on the international migrant community arriving in India was inclusive of three-meals-a-day. While a section of the migrant community was entitled to free food, the international migrants’ plight was silently ignored by the legislature as well as the judiciary. The alarmist rhetoric of economic recession and the judicial injustice served to these migrants, unfolded a Kafkaesque metamorphosis. They bore the wrath of the laws amidst being turned down by the blindfolded statute of justice. This differential treatment and the furthering of social inequities reminds us of one of the snippets from the Animal Farm- “*All animals are equal but some animals are more equal than others*”³¹

²⁶ Ibid.

²⁷ *Id.*, 19 at Page 5.

²⁸ The National Food Security Act, Act No.20 of 2013.

²⁹ Ibid

³⁰ Ibid.

³¹ Orwell George. *Animal Farm*. Oxford: Benediction Classics; 2021.

V. CONCLUSION

While the virus did not discriminate against who it should affect, the glaring socio-economic differences of this country did. The virus might have robbed the rich with permanent scars arising from losing loved ones or in cases of downfall in economic and mental health conditions, however, the marginalized communities were disproportionately impacted. The alarmist rhetoric of travel restrictions and the fight for mere food and livelihood concerns unfolded a Kafkaesque metamorphosis to the migrant community, especially the blue-collar workers. The legal semiotics of the nation reveals the disparity between the constitutional promise of *equality* and *dignity to all*³² and how the Indian judicial and executive system failed to uphold these normative obligations in its true spirits. Thus, the pandemic and its subsequent lockdowns raised a multitude of constitutional rights questions, most of which failed to reach the arena of adjudication. Some of these questions which had the fate to be heard before the various High Courts and the Apex Court of the country, resulted in creating abysmal spaces and feelings of disenchantment.³³ Of the few cases which, defying all odds, managed to be adjudicated by the Supreme Court, were decided in a manner that paved the way for future deterrence for similar matters from reaching the doors of justice.³⁴ As Austin describes that the Court being the sole guardian of the Constitution of the country, reflects itself as the “most tangible evidence of the country’s independence.”³⁵ This tangible evidence has overlooked the plight of the migrant workers.

After the announcement of the ‘paid’ rescue mission by the Central Government, most of these international migrant workers in a desperation to return home have exhausted all their savings. Many of them, owing to the extreme economic hardship, survived on ‘one-meal-a-day’ or at times only on water and lived in ‘overcrowded dormitories’ to ‘save money’ and travel back to India. There has been numerous news from different countries, reporting the death of many such Indian migrant workers owing to such poor and unhygienic living conditions. Such irresistible desperation to travel back, resembles to the plight of the Speluncan Explorers, as narrated by Professor Fuller.³⁶ As depicted by Professor Fuller, the desperation among the travelers were so high that it compelled them to survive on the flesh of one of their fellow travelers. In his

³² Article 14, The Constitution of India, 1950.

³³ *Francis Coralie Mullin v. Administrator, Union Territory of Delhi* (1981) 1 SCC 608.

³⁴ Manwendra Tiwari and Swati Singh Parmar, “Of Semiotics, the Marginalised and Laws during the Lockdown in India” [2022] International Journal for the Semiotics of Law - Revue Internationale De Sémiotique Juridique <<https://doi.org/10.1007/s11196-021-09878-y>>.

³⁵ Austin Granville. *Indian Constitution: Cornerstone of a Nation*. Bombay: Oxford University Press; 1996.

³⁶ Fuller Lon L. The Case of the Speluncan Explorers. *Harvard Law Review*. 1949;62(4):616–645. doi: 10.2307/1336025.

notable opinion, Justice Foster while upholding the innocence of the explorers highlights that they were shackled in a state of nature, away from the world regulated by the states.³⁷ To much irony, the desperation of the migrant workers did not only arise within the confines of a state, but has also been stimulated by the state. The legal complexity of the peculiar situation that the stranded Indians were put through, deserved much of the judiciary's intervention.

³⁷Ibid.