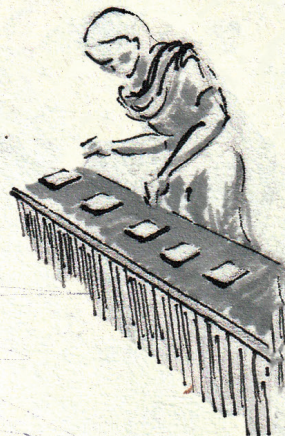




Labouring in South Asia



Status, Issues and Possibilities



Labour Dialogue 2022 Labouring in South Asia: Status, Issues and Possibilities

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Foreword

I present before you the Labour Dialogues of 2022.

This year, we decided to focus on the following themes- gig work and labour rights in South Asia; challenges before the labour movement in South Asia; South Asian migrant labour in the Gulf countries; fair wage, social protection and workplace safety for informal workers; and promoting the rights of migrant workers.

The Labour Dialogues brought together trade union activists, academics, feminist activists, journalists, industry experts and others to discuss on these themes, and draw appropriate strategic lessons. We are very happy that this year, speakers from across South Asian countries viz. India, Pakistan, Bangladesh, Sri Lanka and Nepal came and participated in the Labour Dialogues.

We hope that the labour activists will find this anthology particularly useful.

I am grateful to Rosa Luxemburg Stiftung for their generous financial assistance that made the Labour Dialogues possible. I thank Rajiv Kumar for his support throughout the entire process. I also thank the CEC team for their efforts in organising the Labour Dialogues and preparing this publication.

We will continue to organise these conversations in the future as well. Your comments and suggestions on the anthology are highly welcome.

Warmly,

LOKESH S

Executive Director

Centre for Education and Communication

Labour Dialogue I 13th June 2022

Gig Work and Labour Rights in South Asia Evolving Practices and Challenges

Speakers

Prof. Babu Mathew

National Law School of India University, Bengaluru

Aruna Jaysena

Research Scholar, South Asian University

Akriti Bhatia

Labour Rights Activist and Founder, Paigam Network

Moderator

Lokesh

Executive Director,
Centre for Education and Communication

The aim of this Labour Dialogue was to examine the evolving world of gig/platform work in the economies of India and her South Asian neighbours, the impact that this new field of work is having on the existing economy, the evolving organising practices adopted/developed by the gig workers, and the challenges & potentials for cross-national learning & action to ensure decent work for gig workers.

LOKESH

I welcome you all to today's Labour Dialogue. We initiated this Labour Dialogue programme in 2020, to discuss the various challenges faced by the working class communities today, and to collectively develop appropriate strategies to address those challenges.

Today we will be discussing about gig work, one of the evolving realm of work in contemporary times. In the countries of South Asia with large segments of informal sector, gig work had initially promised work-hour flexibility, decent remuneration, greater sense of agency and control by the 'partners'. Parroted as drivers of economic growth, today the gig/platform companies are expanding their control into all realms of the lives of the workers. In the name of fast delivery, the gig workers are being compelled to race against time, putting their lives into serious jeopardy. While initially promising inclusion through technology, gig work today is characterised by absence of any form of social security or labour rights, especially in the South Asian economies. What have been the experiences of gig workers, how they are coping with the workplace challenges and what long term strategies can be evolved to address those challenges – we will be discussing about those questions today.

PROF. BABU MATHEW

I thank CEC bringing all of us together to discuss on this very important issue. The condition of the gig workers is a matter of grave concern across the world today. Their numbers are continuously increasing. In India itself, now we officially have more than 15 million gig workers. This number is going to expand even further. This is so, because unemployment is so massive. When there is an army of unorganised, informal workers on such a giant scale as we have in our country, it is only natural that people would be too desperate for any form of employment, including precarious forms of employment in gig platforms. In that sense, today neo-liberalism has attained the peak of social injustice, so far as employment related matters are concerned.

We all know, how the gig aggregators pretend to enter into contract with their 'partners'. In reality, these are actually employment contracts, and these partners are nothing but workers. But the aggregators have been using many clever techniques and terms, in order to prevent a discussion on those lines. Many eminent labour law scholars, based on international

In common law countries... it is presumed that there is an equality of relationship between the contracting parties. But when you look at the gig worker, who is forced to sign long contracts with the aggregator, written in a language completely alien to him, this feature of consensus ad idem is violated, from day one itself.

labour jurisprudence, have pointed out that the most significant part of labour jurisprudence has been the evolution of the law of contract. This law of contract got replaced by the collective contract. The individual contract of employment (with which an employee gets into employment relationship with the employer), through the process of unionisation and collective bargaining, gets converted into a collective contract. The moment a collective contract is signed as a product of collective bargaining, the individual contract of employment is thrown out. This is the major contribution of labour law, to the world of jurisprudence, including the law of contract.

In common law countries like us, the basic feature of contract law is *consensus ad idem* i.e. the idea that wherever there is a contract, the minds of the contracting parties must come into a meeting, they must voluntarily agree to the terms of the contract. It is presumed that there is an equality of relationship between the contracting parties. But when you look at the gig worker, who is forced to sign long contracts with the aggregator, written in a language completely alien to him, this feature of consensus ad idem is violated, from day one itself. The gig worker is asked to press a button, which indicates that he has read and agreed with the contract. Now the funny part is – even for expert labour lawyers, it would take many days to actually read and understand such contracts. And yet, the gig worker is expected to press the contract signing button within seconds!

Under the Indian Contract Act, there is a concept known as “unconscionable contract”, i.e. a contract which is as ‘irreconcilable with what is right or reasonable’. If between the two contracting parties, if one side has all the powers, and the other has none, then irrespective of what is written in the contract, that contract is considered as illegal. It cannot be enforced. I have no doubt over the fact that each contract that a gig worker is expected to sign, or deemed to have signed in our country, all of them belong to this category of unconscionable contract.

The gig enterprises are very clever, and they make every effort to bypass the labour laws. In our country, the labour laws are often circumscribed by definitional clauses. Let’s take the example of the Industrial Disputes Act. Three questions are crucial in answering whether you will be covered by the ID Act or not, viz. 1. Whether it is an industry? 2. Is the person a worker? 3. Is there an industrial dispute? All these definitions have been clarified over the years, through numerous litigations. That world has been expanding, to cover new kinds of enterprises in our country, over the years. Let us see how the ID Act defines an ‘industry’. There are three tests that Justice Krishna Iyer had laid out in this context, viz. 1. Is it an organised activity? 2. Is there an employer-employee relationship? 3. Do they produce goods and services for the community? If these conditions are satisfied, then the concerned object can be classified as an industry. If we use these tests for gig work, then it becomes clear that it too is an industry.

To get away from this definition, what the gig aggregators have done is to claim that there is no employer-employee relationship

in their field of activity. Similar debates are happening across the world as well, viz. whether a gig worker is a worker at all, whether a gig worker an employee, whether a gig worker can be really termed as a partner or a contractor, and so on. Such obfuscation of the employer-employee relationship has become part of the judicial discourse.

Let all those who are covered by such a legislation to have the following benefits: they will have the freedom of associations, they will have the right to get minimum wages, they can raise an industrial dispute, they can seek maternity benefit, they can seek payment of bonus, they can seek settlement of disputes. That is exactly what the Sales Promotion Employees (Conditions of Service) Act, 1976 did...

Such obfuscation of the employer-employee relationship, and presentation of “flexible labour” as the ideal - is directly related to the ideological assault of neo-liberalism. Flexible labour is nothing but completely unregulated labour, where the “law of the jungle” reigns supreme. And yet, in the name of promoting “ease of doing business”, one witnesses competitions across different regions of the country, to further flexibilise the labour and doing away with all labour protections.

There has been litigations across the world, on the question of regulating gig labour. In a recent landmark ruling, on the 19 February 2021, the UK Supreme Court ruled that Uber drivers are ‘workers’, and not ‘independent contractors’, as claimed by the company. This ruling has wider ramifications for other countries as well. After decades of neoliberalism, there seem to be some signs of reversal of the pendulum. Recently the European Commission proposed a set of measures to improve the working conditions of the platform based workers. However in our own country, there is not much to feel optimistic about positive juridical intervention, in the field of gig work. Rather, we have been witnessing anti-labour attitudes and policies from

all the three pillars of our democracy. Nonetheless, some interesting developments are happening within our judiciary as well. Recently, for the first time, the case of a gig worker was referred to the labour court in Karnataka. The Terms of the Dispute of the case is also very interesting. It begins by asking – whether the gig worker is a worker or not? In the past the burden of proving whether someone is a worker or not, would be on the employer. But nowadays, the burden is being sought to be transferred to the worker himself. It exposes the hostile environment that the workers are forced to live in today.

Let us discuss a bit about the Social Security Code as well. It must be said that for the organised workers, the Code introduces fairly good social security standards. It provides for Employees Provident Fund, Employees State Insurance, Gratuity, Maternity Benefits, and Employees Compensation. In the Employees State Insurance, out of the 9 standards proposed by the ILO, 8 standards are there. The remaining ones are found in the Employees Provident Fund. If you want to be reasonably just to anyone in this country, then just extend the Employees Provident Fund and Employees State Insurance to them. They would address adequately the social security concerns.

But as far as informal workers are concerned, all such social securities are denied to them; they are clearly discriminated against. Remember, here we are talking about more than 90 percent of the workforce of the country! The Social Security Code does talk about universalization of social security. But what it actually entails is second class treatment with the informal workers.

For the informal workers, social security benefits are not statutory, as per the Social Security Code. Rather, it is something that the government may bring, under delegated legislation, from time to time. It covers five categories – life and disability cover, accident insurance, health and maternity, old age, crèche and any other element that the government may deem appropriate. Remember that all these benefits are already available for the formal workers in an more elaborate and clear manner. But the mischief doesn’t end here. Even these limited benefits will be available to the informal workers, including the gig workers, only if they fulfil the definitional criteria. Now who is a gig worker, as per the Code? A gig worker is someone, who is not under any employer-employee relationship! It appears that this definition has been wholly borrowed from the aggregators themselves. The Social Security Code goes out of its way to satisfy the aggregators, while defining the gig workers. The aggregators want to pretend that they are going to extend social security to the gig workers. So they have volunteered to contribute 1 to 2 percent of their total turnover, for social security of the workers. But even there, out of that total turnover, the dedicated amount shall not exceed more than 5 percent of the total wages paid to the workers. So, in that

manner, they are creating a welfare board, and promising to extend some nominal social security coverage to the workers. In reality, this is a game, a kind of carrot-and-stick policy. If you want to bite the carrot, i.e. if you want social security, then you will have to get yourself bounded by the new labour jurisprudence, i.e. you will have to accept that you are not a worker. The whole attempt is to deprive the workers of their rightful entitlements.

In India, while I do not have much hope from the judicial side, I do feel that the potential for legislative creativity in this regard is not exhausted yet. The state governments may promulgate appropriate legislations, to ensure that some modicum of justice is ensured for the gig workers. India has a rich history of pro-labour legislations. Let me remind you here of the Sales Promotion Employees (Conditions of Service) Act, 1976. Initially, the owners were able to get an order from the Courts that the Sales Promotion Employees are not workers. But then the Committee on Petitions of the Rajya Sabha intervened and said that in order to meet the ends of social justice, we must do something to make the law applicable to this group of people. And then they brought this special legislation. The Sales Promotion Employees (Conditions of Service) Act, 1976 addressed the definitional gap, and brought the Sales Promotion Employees under the ambit of legal protection.

Something akin to this can be done today as well, for the gig workers. Here I am not even insisting that the gig workers must be called as workers. I am happy to call them geek and platform 'partners', if certain conditions are met, through an appropriate legislation. Let all those who are covered by such a legislation to have the following benefits: they will have the freedom of associations, they will have the right to get minimum wages, they can raise an industrial dispute, they can seek maternity benefit, they can seek payment of bonus, they can seek settlement of disputes. That is exactly what the Sales Promotion Employees (Conditions of Service) Act, 1976 did, for the sales representatives, in spite of the law saying that they are not workers.

What we need to do today, among other things, is to form advocacy groups, and lobby with the appropriate stakeholders to explore this path of special legislation, at the state level. It is among the easiest and the most feasible alternative.

ARUNA JAYSENA

The Sri Lankan economy is quite minuscule comparing to other big economies like India. The gig economy in my country is also quite small. What I observed through my study is that gig work is often not properly understood and gig work is considered as self-employment i.e. as some

small business done by the people on their own. In Sri Lanka, we have three categories of gig workers, viz. transport workers, professional services, and miscellaneous services provided at home. Of these, I looked into the transportation-based work, like food delivery services, and taxis. These workers constitute the lowest bottom of the gig workers.

Among other things, I was interested in understanding the self-perception of the gig workers – viz. how they perceive themselves, whether they consider themselves as workers, how they chose to do gig work, and so on. I also asked them about their views about the economy, the ongoing crisis, about their own specific work conditions, their future dreams etc. I conducted my study in the greater Colombo area.

Uber came to Sri Lanka in 2014-15 in our country, and the local taxi services got themselves converted into platform based services. How the experiences of the taxi driver changed – from working in a company to working as a gig worker? Most of my interviewees were young, and they were in their first jobs. They had many dreams about their future. I hardly found anyone older than 40 years of age, doing gig work.

One interesting finding of my study was that many of the gig workers working in food delivery services, had professional degrees, such as business management degrees, very much like the white collar workers! They perceived themselves as middle class professionals. And here lies the catch: many of the office going professionals, such as those into insurance sales etc. earn much less than cab drivers. So after earning their professional degree, many of them are moving into cab driving, as gig workers. What mattered was not the work but the income itself. It was about earning a few extra bucks. So in class terms, it may appear as climbing down, from middle class to working class, in monetary terms, it is actually an improvement. I also found that many of the workers do multiple work, some of them drive cabs after the end of their office hours, their office jobs, to earn a bit extra.

I also found that the attitude of people towards work, work hours, income etc. is changing fast. Multiple-jobs, working long hours, appear normal nowadays. When I asked my interviewees – why they drive cabs after the end of their office hours, they would answer me with an exclamation – “what else I can do till 9 pm”? Whole attitudes about work, leisure and rights are changing.

When Covid hit, huge numbers of workers lost their jobs. The Sri Lankan lockdowns were actually more rigid than their counterparts in the neighbouring countries. Many people lost their jobs and businesses. There were also some trying to build new businesses, or reviving old ones, in the midst and post the pandemic, such as food delivery. Many people found themselves doing gig work, and clear decline from their previous status and income. To this, their perception was that this is a temporary situation, and they would soon get into a new job. There were also conversations about perseverance, and building your businesses again, about the pandemic creating new

opportunities, even choices.

But behind this veneer of neoliberal catchwords, of free choices, opportunities, building-your-own-business and so on, was the reality of precarity and precarious work conditions. The realm of gig work in Sri Lanka is still limited to the big cities. It is true that with gig work, the neo-liberal discourse about starting and

Actually, in many ways, gig work resembles the pre-capitalist putting out system, where workers are paid on a piece rate basis, while assuming that they would contract work for themselves, from the companies.

doing new businesses, entrepreneurship, providing new and free choices to people etc. is gaining ground even among the workers, and oftentimes the workers do not see themselves as workers, nonetheless, the underlying reality cannot be denied. The gig workers are not middle classes, and in that sense, they are not a new class formation. They are very much part of the working class. While in Sri Lanka, we are yet to see steps towards unionisation of the gig workers, the first step towards it would be to accept the reality and expose the neo-liberal fakery about self-entrepreneurship in the name of gig work. While people may consider themselves as doing some sort of businesses with the aggregators, this doesn't take away the reality that they are actually precarious gig workers.

AKRITI BHATIA

Extreme power asymmetry, non-standard forms of employment, and mis-classification of the field itself, characterises platform work. Another new term we are confronting these days is digital-tailorism. We all know how in the name of 10-minute fast delivery, which is almost lethal, the workers are being exposed to new kinds of pressures and vulnerabilities. Many scholars have also argued how this gig work is actually akin to modern forms of slavery. There are also certain myths associated with platform workers, which require urgent unpacking.

One such myth is the idea of flexibility, supposedly allowed by platform based work. Actually, in many ways, gig work resembles the pre-capitalist putting out system, where workers are paid on a piece rate basis, while assuming that they would contract work for themselves, from the companies. Deceptive tactics and

appeal of micro-entrepreneurship and misleading ideas of partnership are being propagated in this context. As we all know, there is a huge politics of deception going, especially when it comes to the algorithms, which are extremely skewed in favour of the aggregators.

If we compare algorithms to traditional assembly line production, we can observe that algorithm based work is actually much harder to disrupt, and workers find it more difficult to organize there. There is also unlimited scope for surveillance and penalisation. There have been cases where workers who dared to protest, were all summarily fired. The most recent example of this is the demonstration organised by the workers of the Urban Company, who were protesting in front of the company headquarters. When it comes to hiring and firing, we all know how arbitrary ID blocking and deactivation has become a severe issue today. Such practices also make unionisation difficult. Across the world, many unions are actually building campaigns exclusively on this issue.

Another important issue is - the question of data. Valuable data is getting generated, a lot of data mining is taking place, but the data creators remain undervalued. Who are actually these workers and the customers? It is important that these questions of data mining, theft and misuse by digital/ platform capitalists are not seen from the lens of privacy alone. Rather, these should be looked at part of the surplus value generation process itself, based on which these companies formulate their valuations and capitalise on them. Companies like Zomato have built large valuations, and are getting themselves enlisted as IPOs in the stock market. These valuations are nothing but based on the labour contributed by the workers. If the workers are really the partners in these firms, then where are the workers shared certificates of profit sharing?

There are also questions of deception, and plain falsehood, resorted to by the aggregators. When the cab rider companies like Uber and Ola had entered the Indian market, they had actually distributed pamphlets in rural belts, promising Rs. 1.5 lakhs as the average monthly income. That's how they managed to get large pools of workers, and are building virtual monopolies in these fields. There are also questions of deliberate obfuscation of information. For instance, what is the percentage of commission that the company is deducting for each ride, and what percentage that the driver is receiving – is never put in a transparent, detailed manner to the driver.

Another aspect is the question of occupational safety. There have been many instances of cab drivers being attacked, looted and even murdered, while in duty. While customer safety has gained some attention in recent times, the question of workplace safety, and the responsibility of the employer in this regard, is hardly ever raised, in the case of platform workers. Similarly, constant backaches are now very common among the cab drivers. And yet, the issue has hardly

received any attention among the policy makers. There are numerous cases where food delivery workers have got into accidents, because they had to make the deliveries within a very short period of time.

There are many discussions about how the pressures of market uncertainties are transferred to the heads of workers. In cases of fuel price hikes, it is the cab driver who faces the first brunt. Many drivers have found themselves in huge debts (incurred while purchasing the car), as incomes have dwindled.

In countries of Global South, studies have shown that Uberization is a much riskier game. In a situation of poor and inadequate transit infrastructure, streets are getting clogged down with more taxis and rides. In the absence of sizeable public investments, and public transports, Uberisation is making the transportation system much worse than before.

On the question of employment generation, many of these aggregators are actually destroying many of the existing jobs. It was advertised that the food delivery platforms would promote small eateries and outlets. But now we have Swiggy bringing up their own cloud kitchens, which are replacing the small eateries.

Another issue is that of emotional labour. The platform workers are expected to smile

at the customer, no matter what. But it gets hard to smile, when the customer refuses to give change, or when they shout at the worker over smallest of matters.

Similarly, drivers are penalised for cancellation of the rides, whereas they should have the right to decide whether they want to work or not. There is also the question of arbitrary charges being imposed on the workers – such as the charge that the drivers are forced to pay for the panic button each year.

Nowadays, many people are taking about the idea of digital commons and open source softwares, cooperatively owned and worker run apps. But it should not be forgotten that the existing monopoly apps make it very hard for new players to enter the field.

That said, recently there has been some positive and innovative developments as well. For instance, we can talk about the recent strike of the cab drivers in Hyderabad, where they said that they wouldn't put on the AC, because of the fuel price hike. All these issues - campaign against fuel price hike, demand for transparency and accountability of the apps for the workers, legal efforts to provide recognition to the gig workers as proper workers – are interrelated. Seizing the means of production in the digital arena, redrawing the front lines of the labour struggles, reclaiming the digital platforms as a political arena – are some of the challenges we are facing today and much depends on our strategies to address these challenges. It is very important that the evasiveness by

the aggregators, and misclassification of gig work must come to an end. A lot of battles are taking place precisely on this question world-over, and the workers are learning from each other. Innovative techniques, such as getting together and organising through Whatsapp groups, mass logouts, creative use of social media etc. can be discerned in many of the recent struggles of the gig workers. It is also important that the customers should be taken into confidence in these struggles, as they too are important stakeholders.

Key Points from the Discussion

- 1 How are we looking at the role of technology itself, in the struggle of the gig workers? It is clear that technology is not neutral. Often it is extremely destructive. Often technology reduces the power and scope for negotiation of the workers and the small producers, vis-a-vis. the so called aggregator. While reflecting on strategies, rethinking on the question of technology also becomes important.
- 2 What gig economy is in fact doing is not creating new jobs, but replacing and concentrating systems that were earlier fragmented. The market risks are distributed among the workers, instead of the capital. There is also a big unjustifiable gap between what the customers pay and what the workers receive. It is also important that different kinds of gig work are classified properly, to better understand the underlying labour conditions, instead of putting everyone – from a corporate consultant to a cab driver under the singular rubric of gig worker.
- 3 It is important to look at who is designing and controlling the technology, and how these aggregators often leverage existing social injustices. For instance, often it is observed that at night, a woman trying to book a cab is shown a higher fare, than a man, because for the woman, booking the car is more important in terms of safety and security.
- 4 The gig workers are often sold misleading dreams by the aggregators, without any accountability. Often in place of decent wages, the gig workers end up getting less than the legal minimum wages. The way incentives are structured, often they are hazy, opaque and beyond the comprehension and control of the workers.

Challenges before the Labour Movement in South Asia

Speakers

Amirul Haque Amin

National Garment Workers' Federation, Bangladesh

Anton Marcus

Free Trade Zones and General Services Employees Union, Sri Lanka

Apoorva Kaiwar

IndustriALL Global Union, South Asia

Dithi Bhattacharya

Centre for Workers' Management, India

Premal Khanal

Confederation of Nepalese Professionals, Nepal

Working class organisations of different countries of South Asia, while placed in their own specific socio-economic milieu, are facing similar challenges. As these economies have been increasingly integrated into the global economy, the question of organising the workers, such as those employed in different nodes of the global supply chains, have become major concerns. The threat of capital flight is often deployed to discourage any significant move towards protecting the workers, especially those in the margins. Can pathways be found to confront such threats through coordinated action of labour organisations across the South Asian countries? The aim of this Labour Dialogue was to discuss about the challenges faced by the labour movement across South Asia, deliberate on potential collective actions, and explore the scope for cross-learning.

APOORVA KAIWAR

I would like to flag two-three issues that the trade union movement is facing in South Asia today. One is that the very constitution and functioning of trade unions is becoming very difficult these days. In Bangladesh, the proportion of organised workers through trade unions has got reduced from 30 percent to 20 percent. Increasingly, what we are having are establishment unions. The registration process of unions is still very cumbersome. Despite the ILO Road Map of Actions of 2019, to address issues concerning non-observance by Bangladesh of the Labour Inspection Convention, 1947 (No. 81), Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), not many things have changed in the ground. For registration of unions, you are still expected to give details of every worker, and so it becomes very easy for the employers to target workers who want to become union members, and not just the union activists or union leaders. In Nepal also, we have the problem of 25 percent threshold, making organising difficult. The number of formal registered establishments in any sector are actually not so many. In India and Pakistan, although we don't have to have a registered union at each workplace, that actually works like a double edged sword. Often, what does happen is that our unions are not able to build density in the workplaces, because the law doesn't require unions in India to do so. It becomes a challenge in itself because the unions may have membership in several establishments, but nowhere it actually amounts to the critical mass that is needed to file a Charter of Demands, to say to the Management that we can actually take direct action whatever that is needed.

The other challenge is more internal. Despite there being large numbers of non-regular precarious women and young workers, we still haven't been to move beyond a male centric trade union movement. For example, in the garment sector of Bangladesh, we have many unions affiliated with IndustriALL. We see that at the plant level, there is fairly decent number of women workers. But when it comes to the leadership, it is still dominated by

This is not to call for an apolitical trade union movement or to say that we should keep all our politics aside. But I think that somewhere we have to find some amount of commonality, we have to find a way of coming together in a sustained manner... this, I think, is our biggest challenge.

men. This factor contributes towards further alienating the young workers from the union. The impression gets created that the unions are separate from the workers, and this is also an idea perpetrated by the management! Now if we fail to integrate the young and active workers in the leadership, if we fail to have a strong second line of leadership, then we will face very serious problems.

The third problem is related to unity. We often find it difficult to come together, due to small political differences, which drive wedges between our organisations. Our joint actions are not really carried out the way that they should be. Now it is true that in India, we have all the central trade unions coming together and having joint strikes for one day each year, but that hasn't come to mean much. What happens is - the permanent workers strike for one day, saying that they will actually make up by working for it on some other day! That's the reality today.

This is not to call for an apolitical trade union movement or to say that we should keep all our politics aside. But I think that somewhere we have to find some amount of commonality, we have to find a way of coming together in a sustained manner, to be able to fight the way that capital is attacking unions and this, I think, is our biggest challenge.

We have several forums that bring people together but they have so far failed to achieve long term sustainability. One interesting development that happened last year in Pakistan was that a lot of unions except one, across the political spectrum came together to plan to form a new federation. But that was just a one-off thing and nothing has actually moved after that. We need something more sustainable.

This is not to call for a one nation one union demand! I am merely pointing out that we really need to find out a way out to work together in a sustainable manner and our small political differences should not stop us from taking joint actions.

AMIRUL HAQUE AMIN

In Bangladesh the total size of the workforce is nearly 6 crores. The major portion of the workforce is unorganized and they are located in the rural areas, engaged in agriculture. Unfortunately, the agriculture workers do not have any trade union rights in our country and they are not covered by the labour laws. This is a big challenge for the traditional movement because the largest chunk of the work force lies outside legal protection.

Another challenge in Bangladesh is that each factory requires registration of a separate union, and the registration process is very complex and hard. Enforcing the right to bargain is also very difficult and it seldom happens. As far as the right to strike is concerned, this right is absent in Bangladesh. The legal process makes holding of a legal strike very difficult. In case of an illegal strike, the workers may even be sent to the prison, apart from being fired from their jobs.

To organise a strike, first you are required to submit a Charter of Demands, and then there will be bi-lateral discussion between the union and the management. This stage takes more than two months. This is then followed by the second stage, when there is tripartite discussion between the management, the government and the union. This stage takes another two months. So taken together, this process takes at least four months. This period can be further extended. After the failure of the negotiations, the Labour Department is supposed to provide a failure certificate, but it is seldom provided. After all this process, if the union still tries to organise the strike, then before calling the strike you are required to organise a referendum, where you are required to collect at least two-third of votes in favour of the strike. This cumbersome process makes legal strikes virtually impossible.

As far as Labour Laws are concerned, in the name of reforming and modernising them, they are being made more and more anti-labour. Another problem is Outsourcing, which is growing each year. Privatisation is also picking up very fast, creating another problem for the organised labour. Another problem is the Free Trade Zones. Bangladesh has currently nine Free Trade Zones, where by law, workers organisation is not allowed! Formation of 100 Special Economic Zones are on the pipeline, where labour laws will not be applicable.

As far as the garments are concerned, this is the main industry in Bangladesh today. Now whenever efforts are made to organise the garment workers, the brands threaten that they may withdraw their orders from Bangladesh and will go to another country.

There are some of the very difficult problems being faced by the trade union movement in Bangladesh today. Many of these difficulties are actually common to other South Asian countries as well. Therefore, it is only through cross-national solidarity action that we can move forward, and build a strong trade union movement.

PREMAL KHANAL

The working class communities are facing grave difficulties today, throughout the world. The situation of workers in South Asia is more vulnerable, due to the practices of hiring-and-firing and temporary contracts. There is no guaranteed job security for the workers. Millions of workers have lost their jobs due to the pandemic and the lives of the workers have become more difficult due to the increased cost of living. Poverty and unemployment are rising due to the lack of appropriate economic policies to tackle the current challenges. Decent work has not been ensured. Wars and blockades in the world are making human lives more miserable.

Trade Unions are facing similar challenges in the South Asian countries, and therefore, we need joint actions across the South Asian region. We need to develop effective joint platforms for united action. What we need today are programs for massive

investment in the productive sectors and expansion of employment opportunities, to overcome the vicious cycle of poverty and unemployment gripping our countries. We would also need extensive implementation of social security programmes, and conversion of the informal economy into formal economy. It is essential that ILO conventions are ratified and for effective implementation campaigns should be conducted, with special programs on monitoring in each country. We need serious commitments from all the social partners, viz. governments, employers, trade unions and other stakeholders to address this issue with effective social dialogue, solidarity and support for each other.

In Bangladesh, the proportion of organised workers through trade unions has got reduced from 30 percent to 20 percent. Increasingly, what we are having are establishment unions.

DITHI BHATTACHARYA

One of the challenges that trade union movement is facing today is about the capacity of the leadership to adjust to changes, as noted by Apoorva. In this context, it is perhaps also relevant to point towards the changing structures of the industry in the region. Take for instance, the garment industry. With the pandemic, we are now very clearly witnessing very large concentration of capital, with smaller garment factories being eaten up by the larger factories. Mechanisation and digitisation are also happening, and these developments are all leading to a certain kind of a workplace, where the number of workers is reducing. Across the region, we are also witnessing a certain amount of change in the nature of work in the garment industry. Earlier, it was largely peopled by women workers, working in long assembly lines. But now with mechanization, women are being also replaced by men.

The challenge that we are facing in the garment industry is that it's not like other industries and the garment sector unions are not like unions in other industries. How organising strikes in the garment industry is virtually impossible today - has already been pointed out by the previous speakers. First of all, it is very difficult to organise the union. Once the union is established, the next challenge is to collectively bargain in the factory. The workers face huge amount of backlashes for their organising efforts. The fear of losing jobs, buyers

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moving to other countries is always there. This makes unions weak and they are not able to assert themselves. In a sense, the unions are fighting a battle with their hands and feet tied behind their backs, and so as a result they're weak. And because the unions are weak, there are a large number of players who have come into the industry, in various forms, with different ideologies and principles. There are monitoring organisations, consumer groups, multi-stakeholder initiatives etc. Sometimes their interests align with the unions, but often their interests align more with their own bases. As a result, there is a certain kind of imposition of what they want on the unions of the Global South. It becomes a huge challenge for the unions on the ground because somewhere their agency is lost and they are not able to negotiate for themselves. There's somebody out there negotiating for them, rather than the unions taking the main role. What is achieved out of it is not necessarily a lose-lose game, and sometimes through the mediation of external agencies specific violations in a factory may even get addressed, but the fact remains that such a framework doesn't allow questioning the basic structural imbalances between the power of labour and capital, that leads to violation of rights in the first place.

There is also a related issue with the global federation of unions. A federation is a larger organisation than the union-on-the-ground, and it fights for its affiliates, rather than being an external agency. Nonetheless, the question of organisational structure is relevant here too. For instance, when we talk about the Global Framework Agreements that have been signed by the IndustriALL for the metal workers unions or the chemical workers unions, we can say that it has a much greater ability to defend the metal and chemical workers through those agreements. But in the case of the garment workers, a Global Framework Agreement for garment workers is only reflective of the unions on the ground. That means, they are not able to put up as many Labour Standards or adhere to as many Standards, as it is possible for a metal workers union. A global framework agreement for a global union is also as strong as its affiliate and hence there is an issue over there too that needs to be addressed. Obviously you cannot change a union overnight, but there comes the question of solidarity.

Understanding a union and its structure is about understanding how the Global South operates and how the South is dealing with the questions of trade, trade imbalances, and global division of labour. These questions are often not talked about by unions of the Global North. As part of Indian diamond workers unions, I have been associated with a global network of unions for many years now. Our experience in this context has been quite interesting. When we first went to Germany, and met the retail workers unions there, who had workers working for companies like H&M, Zara etc., these union guys told us – “how can we help you” – as if somehow the Northern workers are superior than the Southern workers, and they are doing a favour to us. This is not a relationship of equality. But we worked together over the years, and exchanged with each other and learnt from each other and finally we managed to break that barrier. Since then we have

consistently been able to build bridges, and we've been able to negotiate across the supply chain using this network. This is a positive example that we have before us, which we've been trying to use in other sectors as well.

Today we are living in such an ideological environment, where the very identity of being a worker is considered as inferior, and lowly. Accordingly to prevalent right wing ideologies, being a worker is not something that you should aspire to be. We learn from our elder comrades that in the 1960s and 1970s, everybody was trying to be recognised as a worker. But today, the young workers do not want to be recognised as workers. They would rather be called as executives, partners etc. That's because such categories give them a sense of dignity. The word "worker" no longer the concept of dignity attached to it. We have no other option, but to fight this degradation of a category once loved and accepted by the many.

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Today we are also faced with a new labour law, which will greatly curb industrial strikes. According to this new law, known as the Labour Codes, if a strike at any point of time is declared illegal, then the government can ban or deregister the trade union itself. This was not the case earlier. Earlier, the laws on registration of trade unions, strikes and industrial disputes were separate. But now these laws are being clubbed together, and hence if you do something which the authorities deem to be an illegal activity, then they can actually ban or de-register your trade union. It basically means that the working class is being disrobed of its most potent weapon. Effectively, the working class itself is being criminalised. This is the situation we are faced with today.

ANTON MARCUS

The previous speakers have already pointed out the similarity of experience of labour organisations across South Asia. As things stand today, what the big corporates and institutions like IMF and World Bank are trying to do is to make our countries totally dependent on them. We have the same story being played out in Sri Lanka, Pakistan, Nepal and Bangladesh. Under the pretext of attracting investments, labour laws are being reformed, and turned more and more anti-worker. For instance, as per the existing labour laws of Sri Lanka, they allow employers to impose up to 60 hours of overtime per month on female employees. This number is now being increased up till 75 hours per month. This is nothing but encouragement to forced labour. Overtime, by definition, is supposed to be a voluntary decision of both the parties, but the new proposed law says otherwise!

Similarly, as per the existing laws, women workers can be employed in night work (post 10 pm) for only 10 days in a month. But now they want to increase it to 15 days. They also want to abolish the Termination of Employment Act, the piece of legislation that provides some modicum of security to the workers facing termination. Public enterprises are being privatised and sold, under the pretext of being loss making enterprises. When foreign media interviewed our President and asked him if the trade unions would agree to such privatisation, his reply was – "who cares about trade unions"! Such attitudes hardly sit well with the spirit of social dialogues.

What we need today is to study and learn from experiences of each other. We need to strengthen regional solidarity across South Asia, and forge innovative ways to fight back. After all, we are neighbours and we share so much with each other.

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Key Points from the Discussion

- 1** More than ninety percent of the workers are in the informal sector. So when we speak about unions getting together, unless we are able to relate to the issues that the informal sector workers are facing, this whole challenge of addressing the changing structure of the economy and work relations cannot be addressed meaningfully.
- 2** Taking up social questions, such as oppression along the axis of caste, community, and gender is important for building working class unity and solidarity. These questions can no longer be avoided, by invoking the conservative nature of the social outlook of the working class. Real unity cannot be built by ignoring questions of oppression. In the short run, there may be difficulties, including reduction in trade union membership, when questions of sexual harassment, or caste based discrimination are raised within the trade union. However, long term trade union unity can be built only by recognising and addressing the social questions.
- 3** The segmentation of the working class into permanent-vs-temporary, formal vs. informal – is very real. These divisions cannot be wished away, and put under the rug. Addressing these divisions requires paying specific attention to the needs of each segment of the working class. Sometimes their interests may appear as contradictory to each other. This however doesn't negate the importance and need of building working class solidarity, across sectors and regions.

Labour Dialogue III 7th November 2022

South Asian Migrant Labour in the Gulf Status, Issues and the Way Forward

Speakers

CS Akhil

Researcher, Centre for Indian Migrant Studies, and International Institute of Migration and Development

Priya Deshingkar

Professor of Migration and Development, University of Sussex

Smritee Lama

Secretary, Foreign Affairs, General Federation of Nepalese Trade Unions

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Justice Project, Pakistan

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The South Asian countries provide the vast majority of migrant workforce to the Gulf countries. While the occasion of the World Football Cup in Qatar (FIFA 2022) has brought to the fore the issue of extreme labour abuse of migrant workers in the wider public arena, the issue actually has been a long standing one. Each year, a worrisome proportion of young migrant workers die in the Gulf, faced with work related extreme fatigue, heat, tension related to non-payment of dues, forfeiting of travel documents, and other forms of exploitative labour practices. This Labour Dialogue seeks to understand the vulnerabilities that the migrant labour face in the Gulf countries, the significance and impact of the oppressive regimes such as the Kafala (sponsorship) system, the experiences and the coping mechanisms of the workers and the way labour organisations, civil society initiatives and authorities can contribute towards ensuring basic human dignity and better work conditions for the migrant workers in the Gulf countries.

PRIYA DESHINGKAR

I am a professor of migration and development at the University of Sussex. So my job is to look at the link between migration and development and poverty. Labour migration has been very much the focus of my research. For quite a few years now I have looked at migration in India, as well as the neighbouring countries, with a lot of detail. I have been fortunate to work with some very good partners in all of these places. Just briefly I'm going to outline some of the main issues that I feel are important to consider in this discussion.

First of all, we all know that there have been large numbers of migrants going from various South Asian countries to the Gulf. So the Gulf has been a magnet for labour migrants for a long time now, because it offers relatively higher wages, and also because they don't have the labour power capacity to provide the services that their country needs. So in fact in many of the Gulf countries the proportion of migrant labour to the actual original population (which is defined by bloodlines) is much higher. These migrant workers work through work permits, which are temporary. And they work there under the infamous Kafala system, which has now become the subject of much discussion because of all the labour rights abuses that occur under it. When a labour migrant enters any of the Gulf countries operating the Kafala system, he or she is allowed to work only for a defined sponsor. They are in fact trapped in that employment. They cannot change the job without permission from the sponsor. They cannot leave the country without permission from the sponsor. So this becomes a very restrictive situation for workers. Quite often these labour migrants take lots of loans to migrate, to pay for all the expenses of the travel, permits paperwork etc. There are middlemen and brokers, who place them in the jobs. By the time the workers reach their destination, they are already under debt. And they have to pay that money off through work. So they become trapped because they must pay the money back. That's what makes that kind of

Before the pandemic, the workers were making decent money, and even remitting back home. ... But with the arrival of Covid-19, the false security that the undocumented workers had, was gone. Officially, they were not there! They couldn't access any help from either of the governments – their source and the destination states.

arrangement really exploitative.

The Kafala system has been reformed recently. So now in theory I think in some countries you are allowed to change your jobs without the permission of the sponsor. But I don't know to what extent this is actually helping in practice because there is a cultural aspect to all of this, the way that workers are employed in the country. And I don't think that legislation can solve all the problems. There's certainly a lot of irregularities in practice.

The number one irregularity is that there are a lot of undocumented migrants in the country because they don't want to be trapped in that situation. And these workers are not counted. They don't exist officially. They may start off as legal migrants but then become undocumented because their work permits have expired, or their legal papers to stay in the country have expired. For some workers, this actually had worked out very well before COVID. Through "Azad Visa" (which was not really a legal visa, but a means to come to the country) they had the freedom to move around, from job to job. They indeed remained documented, but they also had the freedom to change employers, according to their own choice.

Everything changed with Covid-19. Before the pandemic, the workers were making decent money, and even remitting back home. The remittances from the Gulf countries are enormous and highly significant in terms of transforming people's lives, as well as the community they come from. We all know the impact of Gulf migrants in places like Kerala, and how the money is spent on building big houses and so on. But with the arrival of Covid-19, the false security that the undocumented workers had, was gone. Officially, they were not there! They couldn't access any help from either of the governments – their source and the destination states. For example, the Bangladesh migrants in Qatar were suddenly left in the lurch. They had no support and they were literally hiding, because they didn't want to be discovered and deported. And they couldn't access anything for a while, because assistance was available only for those who were legally there or counted as migrants. These people were invisible. Later on there was an amnesty announced, but it took time. So they just kept there hiding, by getting whatever little help they could get from other fellow migrants, who could support them and who were there legally. This phenomenon illustrates very well the vulnerability of migrants in the Gulf countries. And this was not just about the Bangladeshis only, but also many other nationalities, who suffered similar vulnerabilities.

To address these vulnerabilities, we cannot just simply say that let's formalise everything. It doesn't work that way! If you look at the sort of systems that have been put in place to protect migrants, the official systems like immigration clearance or going through the e-migrant portal, these haven't been easy processes. Many workers find it difficult to go through them. Many scholars have done some really good work on highlighting the problems that these systems have and how they may just create other kinds of vulnerabilities as well. So what is needed here is a kind of collective work between NGOs, state organisations, trade

unions etc. However, it is also true that in the Middle East, trade unionism is generally not allowed, and you can't even say 'labour rights' and 'trade unions' in the same sentence there! In a lot of industries there's a kind of unspoken agreement that the worker will not become part of a trade union.

There needs to be a consistent effort between civil society organisations, NGOs etc., educating migrants about their rights, strengthening Labour Attaches of the embassies of the source countries etc. Many countries have Labour Attaches attached to their embassies in the Middle East. These attaches are meant to listen to the migrant workers concerns, but they're often under-resourced and are pulled into all kinds of directions and are made to do other kinds of work.

For the migrants, the incentives to go to the Middle East are very high. Migrants look at other migrants and look at what they've achieved in their life. So they want to go there, even though they know that the working conditions can be horrible. So intervention in this field is not very easy. This means that long term, patient collective work is necessary, between civil society organisations, NGOs, state institutions and other bodies.

SANA FARRUKH

It is really nice to see attendance from so many different places, and I am very excited to engage more with you. Let me begin with our introduction. Justice Project Pakistan is a legal NGO and I am the head of policy and advocacy at the Justice Project. We work mostly with the death penalty prisoners and prison reform. But migration and migrant workers has been one of the areas that we had to branch into. Because when we started looking at a lot of prisoners overseas, we found that they were all migrant workers, who due to lack of legal protections, and the failures of the Government of Pakistan, ended up on death-row or imprisoned situations. They remain without any help from the Government Pakistan, despite there being clear legal obligations that the government has towards migrant Pakistanis living across the world. So over time we've developed some research expertise on interviewing migrants who have returned, as well as the families of the migrants who have been executed, particularly in the Gulf States. Based on this, we always try to bring in the aspect of people, who are in conflict with the law as migrants.

There are approximately 9 million migrant workers from Pakistan living around the world and the majority are in Gulf countries. The attitude towards the migrant worker has shifted a lot in recent times and now they are even seen as an asset to the country. Just in the year 2021, from Saudi Arabia alone, we had about 655 million in remittances in just one quarter. And in general, we're gaining a huge percentage of our GDP from these migrant workers. But while there has been a shift in the way we see them, we're not seeing changes in the policies or the implementation of policies to protect these migrant workers. So really there's a gap between what the government likes to

portray about how much they appreciate the migrant worker, and then what they're willing to actually do for them. In our research, one of the areas that we've identified as a problem is that the Government of Pakistan is not adequately creating a diaspora policy system, and when they do not make these policies, different departments within the government tend to shift the blame onto each other, and are not able to take accountability for what they are responsible for. So we have the Minister of Foreign Affairs, and the Minister of Interior, both deal with different parts of migration! Our immigration ordinance is from 1979! So we know that the laws are a little bit behind what the current situation is. These two ministries often overlap based on security concerns, and then they do not provide a clear demarcation about which department or the ministry that the people should approach to, with their problems. More recently, we also have the Ministry of Overseas Pakistanis and Human Resources Development. The Welfare Attaches, or the Embassies, or the people responsible for helping the migrant worker, deal with any issues, including legal issues. But when we try to break apart these laws, it is not clear who is responsible for what policy item. As a result of that, a lot of migrant workers get left behind. So we're seeing just failures, and not clarity.

We have a duty within our Constitution to provide care from the government, regardless of the physical presence or location of the Pakistani citizen. So the right to life, and any other rights that are enshrined in the Pakistani constitution, are applied to Pakistanis, regardless of where they are. The language in our Constitution is very clear on this. So even if a migrant worker is not going through a regular migration channel, it does not preclude them from the protection of the Pakistani Government. Nobody should be deprived of life or liberty, except in accordance with the law. Even the social and economic well-being of the people is a right that will apply to these migrant workers. We often assume that because the migrant worker has not followed certain laws and rules along the way of migration, they can be left behind by the system. But that's simply not the case. So we as an organisation, but also in conversation with other organisations, want to be able to hold the government accountable.

We have already talked a bit about the Azad Visas, and recruitment regimes in general. One concrete failure that needs to be addressed at the outset is pre-departure briefings, and how we talk to these migrants before they make the travel. We need to ensure that the source state start enforcing home state obligations. We can move forward by talking to our own governments, lobbying people to show them the impact and value of the migrant worker, and then showing them the failures in how we take care of these people.

I want to talk just a little bit about the legal obligations of the home state again. In our research we found that all of the international instruments that are ratified by a country,

To address these vulnerabilities, we cannot just simply say that let's formalise everything. It doesn't work that way! ... official systems like immigration clearance or going through the e-migrant portal, these haven't been easy processes. Many workers find it difficult to go through them. ... they may just create other kinds of vulnerabilities as well.

they never exclude protection based on where the person is located. So we should relook at the International Covenant on torture, International Covenant on Civil and Political Rights etc., and call upon the state bodies to enforce their obligations. From these, we can draw links for how our governments can be held responsible to provide those rights even to migrant workers abroad.

Migrants and conflict-with-the-law is what we specialise on at Justice Project. When we started initially, doing some litigation for people on death row in the kingdom of Saudi Arabia, we found that all of them had the exact same profile. These were people from extremely poor backgrounds and had left the country in a lot of desperation. We had ten petitioners in the case, but more cases came out in the process, where we found a pattern where you have unregulated overseas employment promoters luring these people, forcing them to traffic drugs, sometimes very violently. And then these people get imprisoned abroad. The Pakistani government refused to help these people on death row, by saying that their crimes are too severe. But then, the drug offense for which these five Pakistanis will be executed abroad, actually do not call for an execution as per Pakistani law! So it actually shows systematic failures of the state in protecting its people. There are thousands of migration workers waiting for repatriation, waiting for some sort of legal aid or relief in these foreign jails. The racism that is rampant in these jails is even worse. It is important to make sure that when we speak to our governments, when we speak to other organisations, we do not forget this subgroup that is often left out by a lot of people, who are otherwise trying to help.

I will stop here for now.

SMRITI LAMA

We at the General Federation of Nepalese Trade Unions (GEFONT) are the largest trade union in Nepal. We have been working with the migrant workers for the last 33 years. Our people have been migrating to different destination states and we have been working towards ensuring their rights, as workers. In many of these destination states, there are no trade union rights. In those places, we work as support groups for the Nepali workers.

There are different categories of migrants moving abroad from our country. In the first category, we have the highly skilled professionals, like Doctors and Engineers, moving to the US or the European countries. Then there are migrants who move to the East Asian countries like Japan and Korea, where they make a little less than the first category of migrants. And then there is the third category of migrant workers, going to the Gulf and Malaysia, who are the most vulnerable and for whom we put up the most effort. We have our support group activities in Qatar, UAE, Saudi Arabia, Bahrain, Malaysia etc. We also have support groups in South Korea, Hong Kong etc. Beside India, we have 3.5 million Nepali migrant workers working abroad.

We opt for different strategies, based upon the situation in the country. For instance, in the destination states, if there are trade union rights, we sign MoUs with the trade unions existing in the destination countries. This is trade union to trade union conversation and understanding. We have done this in Bahrain and Kuwait. In the countries, where there are no trade union rights, such as Saudi Arabia and Qatar, we operate through support groups, in collaboration with human rights groups and assistance of Embassies. We address all the different stages of the migration cycle. Those who have come back, to them we provide space through the GEFONT Migrant Desk. We also work towards policy intervention, to protect the interests and rights of migrant workers. Around 28 percent of the GDP of Nepal come from the remittances sent by the migrant workers from abroad. This is a huge contribution. We have also been working towards social security contribution of the workers. We already have this provision for the migrant workers in Malaysia, and therefore we have been trying to extend it to the Gulf migrants as well. Since 2011 we have been working with Nepali migrant workers in Qatar, when the World Cup was declared. Now the labour laws have been reformed there somewhat, and we want them to be extended to other Gulf countries as well. We have also been working closely with the ILO, the international trade union movement, and CSOs. Just recently, we had the 8th National Congress of our trade union. There we passed a resolution that migration will continue to be one of our core focus points.

Women's migration is another big area where we need to work more. Nepal recently banned the migration of women under 30 to the Gulf, who go there and work as domestic workers. But then women are one of the most vulnerable segments of the working class of Nepal. It is women who are found in the majority in the informal sector, where the reach of social security and social protection systems are hardly there. So there is already a strong incentive for young women to migrate, and seek job opportunities abroad. The ban has not really helped the young Nepali female workers. These young women are leaving the country through other and irregular ways, and that is making them only more vulnerable.

Overall, we currently are operating in nine destination countries, where our support groups are working. We have been working towards promoting decent work conditions for these workers. Ultimately, we will have to go beyond borders, and recognise all the workers of the world as one. We will have to work together, and we have been working together, to protect the rights of the workers.

CS AKHIL

I would like to begin with one aspect that Prof. Deshingkar flagged initially. With the World Cup, the issue of migrant workers came to the highlight, although the issue itself, including the case of frequent death of migrant workers, is reported regularly in the media. The issue of Gulf migration is often talked about

particularly because of the sheer number of migrants at the destination countries and also because of the peculiar system called Kafala or the sponsorship system. The Kafala system of course violates the rights of migrant workers and it gives all the power to the employer, including the right of the migrant to leave or re-enter the country. The employer could decide whether the employee wants to change his or her job or not!

The vulnerabilities and violations due to the Kafala system fulfils all the indicators of forced labour. It always restricts the mobility of people, the employers often confiscate the documents of the worker and it leads to labour bondage in several cases. There are also visa trading, and at the end of the day, the employer can push a worker to irregular status, if they want to. It is on all sense an exploitative system. On the other hand, there now conversations across the Gulf about reforming the Kafala system, there are conversations about giving the jobs hitherto reserved for the foreign migrant workers to their own native nationals. Many of the Gulf countries are trying to reduce the percentage of migrant population living in their country.

From 2009 onwards, Bahrain introduced the flexi visa permit system. Later on several Gulf countries claimed that they too are reforming the Kafala system. One of the major aspect of the reform is the abolishment of exit permit, that actually prevents the migrant worker to leave or re-enter the country. Almost all GCC countries have abolished that system for now. But then there are hidden clauses! The other issue is the right to change the employers. That was a problem for a very long time and generally the current employer never allows the workers to leave their employment. But now these countries have decided to let the workers change the jobs without the permission of the employer. But again, there are hidden clauses! Most of the countries have kept the clause their workers should at least complete one year with the employer. Only then they can change the employer. Another issue is related to the protection of absconding workers. Whenever the worker tries to abscond, the employer tries to put them in the irregular category. Now we are being told that in Saudi Arabia, UAE, Bahrain etc. some significant changes are happening in this system as well, but many scholars and civil society activists contest it, who have been working on the ground.

Some of the countries like Qatar, and Baharin now claim that they have provided legal protection for the domestic workers, who were earlier outside the labour laws. Qatar also claims that it has recently come to provide a mechanism/ platform for dispute settlements between the employers and the workers. However, the problem with all these reforms is that they remain un-implemented in the field. The employers, for instance, are not ready to do away with Kafala. The power relations between the employers and the employees remain very asymmetrical. It is difficult to break down the existing power relations, especially in view of the fact that the

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workers enjoy hardly any legal and social protection.

I said in the beginning that there is a sheer contradiction between the Kafala reforms and the nationalisation policies being attempted in the GCC. It remains to be seen, how things turn up eventually. The Covid-19 pandemic also disrupted the momentum of many of the reform attempts. Many countries are rethinking now – whether they should implement the reform policies.

What is the way forward? From our experience, we can say that the way out lies in the socialisation of reform. We should think about ways to bring the employer, the state and the worker together and setup a tripartite form of engagement. There will also have to be mechanisms of localised monitoring and evaluation tools, to assess the progress of the reforms. There are also bilateral agreements and MoUs, signed between the GCC countries, and source state countries, like those of South Asia. But there are hardly any social protection clauses in these agreements that are enforceable. We in the context of India, have many social security and social protection agreements with the European and East Asian countries, but in the case of GCC countries, we don't have them. Platforms like Abu Dhabi Dialogue and Colombo process should be used to push for bilateral agreements with social protection agreements. Finally, we should think seriously about the inclusion of non-state actors, especially the CSOs, diaspora organisations and trade unions in the policy discourses. We see very little of that currently. In the case of India, we still have the Emigration Act pending in the Parliament, and we still do not know whether we should facilitate, or restrict migration flows! We will also need policies that facilitate the successful re-integration of migrant returnees from the GCC countries, and this burden cannot be pushed to the state governments alone. Upskilling and reskilling to match the job requirements at the GCC countries will also have to be done. We will also need policies that strengthen the grievance redressal mechanisms. The current systems hardly work.

VANI SARASWATHI

The civil society space in the Gulf is highly restricted and threatened as well. So we work in the grey spaces in the region. Let me begin with a theme that the previous speaker mentioned, i.e. about the socialisation of reforms. That's actually the only way to ensure that the reforms are not only effective, but also that migrants have a voice, and they are recognised. However, in the current circumstances, given the way the Gulf governments approach trade unions, civil society, and the low income migrant workers, socialisation is going to be a challenge.

The low income migrant workers are all foreign workers. Interestingly, all migrant workers across skills and income classes are governed by the same set of laws. So the Kafala system applies for everyone. It is just that the social capital of the high income migrants ensures a different set of engagement and behaviour for them, as opposed to the low income migrant

groups, who are really treated in a terrible manner.

We must reiterate that the dependency on migrant labour is critical for the Gulf countries. They will not survive a single day, without having this labour force there. Because migrant labour builds, operates, provide services not just in the private sector, but also services within the household. So, every single aspect of living in the Gulf is dependent on migrant labour. Yet, that is not being capitalised upon.

The responsibility of the country of origin is often discussed, in conversations about the recruitment process, the debt -burden of the migrant workers, pre-departure training, consular access etc. But these are secondary issues. What is more important is that the responsibility should always remain with the country that is dependent on this labour, bringing in the workers through regular channels, and housing them there. That responsibility should lie very squarely on Gulf governments.

It is important to note here that a bulk of the money that workers are paying to the recruitment agents in their home states is actually going back to the Gulf as kickbacks and as bribes, to their procurement officers, sometimes even government officials. So there is a line of corruption. But in the destination states, there aren't laws or regulations, that look at these forms of corruption. For instance, who is making money when a job order is processed? Who is making money when they go to the Origin countries to recruit workers?

Regarding terms of employment - there are certain moves being made to reduce contract substitution. But they are not effective, simply because the redressal mechanisms are not strong enough, very few resources are being for them. Yet, they are supposed to address the issues of around 1.5 million low income workers. So the mechanisms are nowhere close to meeting that capacity. And somehow that isn't questioned!

There is also the question of whether these grievance redressal mechanisms are gender sensitive. Have they been designed keeping in mind those outside of the private sector? Are they designed keeping in mind the language hurdles that migrant workers face? Most of them don't speak Arabic. Many of them don't speak English. Then what are the services provided for them to still access those systems?

Even the reforms are very half hearted, when they are implemented. There is absolute lack of accountability when it comes to businesses. The local businesses are run by a handful of very powerful families, be it in the UAE or Qatar or Bahrain. These families are represented not just in the Chambers of Commerce, but also in the Sura Councils, in political offices. So, it's very difficult to hold them accountable. They rather place the blame on some low level subcontracting company or a recruitment company at the home state. Same goes with domestic workers and their employers. Why aren't we seeing more cases against employers who have a history of bad practices, exploitation, and abuse? We've had about three or four very interesting cases in Kuwait, where employers have been

taken to the Court and there have been judgements under the torture and trafficking regulations in the country. But outside of those few examples, we don't see it happening in the Gulf. So the justice mechanism is not really responding.

Regarding trainings: pre-departure training tends to be around safe migration. It tends to be around control. And it's limited because most workers who are going for the first time do not understand the context of where they are going and how they are going to apply the pre-departure training they receive. It is important but it will be effective only if it's coupled with a post-arrival training and an ongoing education of workers on the reforms and rights. That can happen only when there is an active civil society on the ground, when trade unions are allowed. None of this exists today. Qatar has over the years open itself up for some level of engagement with both trade unions and civil society, but all of them from the Global North and from the West only. Unfortunately, often these organisations don't really have ears on the ground. So you have this hypocritical system, where you enable this discourse, enable negotiations, without really bringing to the table the people who are most impacted by these reforms or by these laws.

We also spoke about reforming Kafala and the absconding laws. In fact, the absconding laws harp back to the times of slavery. All of these countries have labour laws that are related to workers who are missing from work. But instead, it is the immigration and administrative departments, who address this question of migrant workers missing from work. So workers get criminalised for not turning up to work, or for missing from the households, without looking at the reasons why this may happen. This may happen because the workers wanted to escaping abuse, or they haven't been paid for a long time. But instead, workers are criminalised, without really allowing them to represent themselves and articulate their reasons.

Regarding Kafala: it isn't one law, and it isn't just the sponsorship system. Kafala is a network of both laws and practices. For these practices to break down, the Gulf countries need to see the migrants as an integral part of their society. That will happen when you include them in social cultural spaces, in economic spaces. But none of this has happened.

We do hear about nationalisation efforts these days, but nationalisation doesn't apply to the majority of sectors where migrant labour is seen. You are not going to see a Qatari national working in construction, or domestic work, or in hospitality sector. It doesn't apply to them. It doesn't apply to the Emiratis. So the dependency on the low income migrant workers will continue. The individual is temporary, but the dependency and the system of migration is permanent. We need to highlight that and insist that governments address the issue not as a temporary one, but as a permanent one, and allow the workers a sense of belonging.

These are not really bilateral issues, but multilateral issues. It's about the relationship between several origin countries with several destination countries. Then there are other actors, like the MNCs. So it can't just be a discussion between two governments alone. Having said that, what is the role of a government then? Let's talk about India, as an example. India is the largest sending country for the Gulf, and yet it does not have Labour Attaches. It has Labour Officers or Welfare Officers. But if you look at the Philippines, you will find that it has the maximum number of Labour Attaches, of any sending country. India refuses to make that kind of an investment. The reason is - there is a difference between having a Welfare Officer under the Diplomatic Mission reporting to the Ministry of Foreign Affairs, which is only concerned about the diplomatic relationship, versus having a Labour Attache, who looks at it from a labour perspective, who engages with the Labour Department and the Labour Ministry in the origin country.

Regarding domestic workers their access to justice: a significant number of workers particularly in places like Saudi Arabia are not covered by labour laws, who are engaged in domestic work, agriculture, fishing etc. There are domestic worker laws in four of the Gulf countries, and they are nothing but kind of glorified contracts. We really need to see those domestic work laws reaching on par with labour laws, or the domestic workers being included completely in the labour laws of the country. We don't know when that's going to happen because it hasn't happened in most of the origin countries itself.

Key Points from the Discussion

- 1 What is needed are long-term interventions, rather than short term technical quick-fixes. The migrants cannot be excluded forever from the social life of the Gulf countries, and they must be integrated.
- 2 For effective implementation of reformed laws, there must be adequate monitoring tools and evaluation systems.
- 3 The spirit of tripartism, including the employers, employees and the state institutions will have to be established for effective intervention. The extreme asymmetry of power between the employers and the employees is not conducive for any reform efforts.

Labour Dialogue IV 11th December 2022

Fair Wage, Social Protection and Workspace Safety for Informal Workers

Speakers

Lokesh

Executive Director,
Centre for Education and Communication (CEC)

Vidyasagar Giri

National Secretary, All India Trade Union Congress (AITUC)

Aditi Gautam

All India Democratic Women's Association (AIDWA)

Anil Yadav (Pappal)

Ex-Councillor, Kapashera

LOKESH

I am very happy to see so many women here. You already know from your experience the challenges that the working class communities are facing today. Apart from low wages, irregular payment, and absence of social security, women workers also face the added burden of gender discrimination and sexual harassment at the workplace. You also know how the informal workers – who constitute the majority of the working class – are excluded from most of the social security schemes and provisions.

As things stand today, even the formal sector workers are no longer secure. Increasing informalisation is happening inside the organised sector itself. There is also the problem of lack of proper documentation, absence of explicit and written job contracts, non-payment of social security dues by the employers, and non-recognition of the employer-employee relationship. We only know too well how pregnant women are often fired from their jobs in factory, so that the employer doesn't have to pay for her maternity leave.

It is very crucial that the workers come together, and fight for their rights. Trade unions, in this context, play a very important role. Let me tell you a story about how domestic workers improved their work situation in Pune, through a collective strike.

In February 1980 there was a domestic workers' strike in the city of Pune, most of whom were women. The agitation started with the demand for sick leave and a pay raise, and led to the formation of the Pune Sahar Molkarni Sanghatana. What followed were prolonged negotiations with employers that resulted in a significant victory for this union in the city and personalized work relations were transformed into professional, contractual ones. This was probably the first time that domestic workers had struck anywhere in the country or formed a city-wide union.

It all began with a domestic worker named Khandarebai, who worked in a house on Karve Road in central Pune, fell sick and went on leave. When she came back to work, she discovered that she had been thrown out of her job. The former employers told her that she had asked for four days off, but in fact had not come for six days and, as a result, they had replaced her with another domestic worker. Khandarebai shared this information with other paid domestic workers. Khandarebai's predicament enraged the other domestic workers because her experience echoed theirs.

The workers decided take out a procession in protest, and they were joined by few others. The workers also confronted Khandarebai's former employer and had appealed to them to give her job back. When the appeal was refused, the workers left the workplace and narrated the incident to various maids they met on the way, adding that they were on strike. Within an hour, about 150 women from Karve Road spontaneously struck work. This was a spontaneous strike against the dismissal.

The workers came together almost spontaneously, also because wages had not increased in years despite rising inflation and workers had no right to any paid leave. They felt they were treated in deeply degrading terms. Though these women who had no prior experience of political organisation they identified themselves as workers and chose to strike. Pune had already witnessed industrial and employee unrest for some time and the women knew that striking was a possibility and could lead to wages hikes. But they had no idea about how to go about it. They did know that not only factory workers but even doctors, nurses, officers and others were striking for their demands. Their procession was moving aimlessly when they met Mr. Kerkar, a union activist active

In February 1980 there was a domestic workers' strike in the city of Pune, most of whom were women. The agitation started with the demand for sick leave and a pay raise, and led to the formation of the Pune Sahar Molkarni Sanghatana. What followed were prolonged negotiations with employers that resulted in a significant victory for this union in the city and personalized work relations were transformed into professional, contractual ones.

in Maharashtra. He asked them what happened. The workers told him about the incident. He said them not to worry and not to go back to the work. From there the group left and started regular protests and procession every day. The striking domestic workers felt a need for an organisation. They also decided to put forward some demands.

The strike happened because Khandarebai was thrown out of work, wages were very low: all this is enough reason to meet. But the question was how to reach the employers. So the workers realised that they must meet and discuss regularly to

decide what are their demands. If they met regularly, this would mean they were an organisation. With the involvement of the union activists, meetings with five to six hundred paid domestic workers in attendance were organised every night for a few days at the house of a local elected administrator. They began sharing their experiences of the strain of physical work, inadequate wages which were never raised, harassment caused by pending and unpaid wages, troubles arising out of the increasing cost of living, household difficulties, etc.

The demands put forward by the workers were: an immediate raise in pay, a bonus equivalent to a month's salary to be paid at Diwali, a monthly contribution of a minimum of 15 per cent of the salary towards a Provident Fund, paid sick leave, two paid holidays a month, and if the employer left town temporarily, pay should neither be cut nor the period be considered as leave. This was printed out and circulated among employers. While employers agreed to the new rates, they demanded increased workloads in return, but the workers stood by their demand for extra pay for extra work.

Ultimately, the workers won in the struggle. Paid weekly days off was an important victory. Wage revisions in the region are enforced even today, through a rate card that sets minimum wages for various items of work such as cleaning utensils, sweeping the floor, washing laundry, etc., depending on the number of family members and the square footage of the area to be swept. These rates are revised every four years. Other benefits such as an annual bonus, retirement gratuities, and so on are also set and a "provident fund" is collected in local banks. Paid domestic workers in Pune are now entitled to take two paid holidays per month, a privilege that remains unheard of in other parts of India. Employers are expected to pay substitute workers separately.

We all must take lessons from this and other histories of struggles of workers. Through struggles, workers can hope to transition from informality to formality. However, such changes happen only when there are pressures, and this in turn can only happen when the workers are organised and fight for their rights. There cannot be individualised pathways towards liberation. Rather, the pathway towards a better future can emerge only by coming together, through collective struggles and solidarity action of the workers.

VIDYASAGAR GIRI

As I can see, so many of you are young female workers, and I am very happy to talk to you today. Let me begin by saying – in our old traditions, women are recognised as Shakti- as source of power. But women are also discriminated against, a lot. So the task today is to recognise the power that lies within yourself, and exercise it. The only way to channelise that power is to get united with your fellow sisters, with your fellow workers, and fight for your rights.

The key to getting organised is getting education, and building awareness. This process again, can only be done effectively, when we get together. Many of you are factory workers, and you are already aware of how the bosses try to control you, how they put surveillance over you through CCTV cameras etc. When you enter the workplace, the work-rhythm and speed no longer belongs to you. The factory owner tries to get as much work from you, as possible. These efforts to extract the maximum labour efforts from the workers are however, not matched by simultaneous increase in labour remuneration.

The community also faces the problem of drug abuse. In this context, women in the community play a very pro-active role, by keeping an eye on their children, and spread awareness among them. Women in the community are already taking some steps in building awareness about women's safety, and basic amenities in the area. These are important steps.

What constitutes your wages? What are the factors that determine the value of the labour power? To begin with, a worker must eat, a worker must take rest, there is a need of a place to live, the worker needs to reproduce himself/herself and the family. There are also requirements of medical care, child care etc. At the very least, wages must cover these expenses. This is how minimum wages came into existence.

But unfortunately, many factories and industries do not provide even this basic minimum wage. This is nothing but a form of theft. But you can act effectively against such theft only by getting organised, by raising voices collectively. In this context, it is also important to know that for the workers welfare, there are more than 44 labour laws in the country, covering aspects such as social security, minimum wages, work conditions etc. It is true that these laws are often not implemented. But the very fact that these laws exist, create the possibility that the workers can achieve their rights through struggles. However, nowadays these laws are being reformed and reconstituted, and unfortunately, the working class communities are not being properly consulted in these reformation processes. We are fighting against it, and

you too should become part of this struggle.

Things like minimum wage, maternity benefits etc. are not charity, but rights that the workers have achieved for themselves through decades of struggles. Workers build not only the present, but they also constitute the future of the country. The children of workers are also the future of the country. Therefore, provisioning decent care of the children, allowing the worker-mother to take care of her child, are also matters of national interest.

Today the workers are in a weak position in the society. That's because too many workers are unemployed. If one worker raises her voice, then she is quickly fired, and an unemployed worker is kept in her place. In other words, the bosses take advantage of the misery of the workers. However, instead of individual workers, if the workers raise their voice collectively, then it becomes difficult for the boss to ignore the workers, leading to important victories for the workers. But to do that, you will need to get united, and learn the skills of unionising.

Women workers face the additional problem of gender based violence, at workspaces, neighbourhoods and homes. Struggle against such violence is necessary in all these spaces. Again, unions can help you in these matters. The employers are required to provide a violence-free and discrimination-free workspace to all the workers. But only through awareness building, and united struggles, these objectives can be achieved in reality.

These days many women workers work from their homes, and contractors supply them with raw materials and work contracts. Often these women are not remunerated adequately. All workers deserve decent pay, decent work conditions. Forming collectives of women workers in this context can be useful to enhance the bargaining capacity of these small producers.

There can be different strategies, to deal with different types of challenges faced by workers. The underlying point is – solidarity building across the workers.

ADITI GAUTAM

Our Indian economy is the 5th largest country of the world. It is the people like us, the working people, who have built this economy. But the vast majority of the workers are deprived of the most basic necessities. Most of us work in the unorganised sector, without any recognition, protection, or social security. Unorganised sector basically means a sector where the workers are not organised, or where workers do not have organisation. It is this lack, that poses difficulties for the workers in the pursuit of their rights.

It is often said that it is the employers, who provide us jobs and wages. But it is only half-true. Without the workers, the industries cannot run. It is the workers who create the wealth.

That means, workers are most essential for running the economy, rather than the employers.

At the same time, it is very important that the workers acquire skills, and awareness about technologies, labour laws etc. and their impact on their lives. For instance, many of the workers are nowadays working through apps like Zomato, Urban Company etc. It is very essential that the workers learn how their remunerations are being calculated, how much effort they are putting and how much savings they have been able to do. This is applicable for the traditional industries as well. Many of our garment workers do not know how to calculate their over-time, and check if there has been wage-theft. Therefore the workers need to have basic financial literacy, and awareness about their rights and entitlements. Such skills and awareness are also important, so that the workers can take informed decision about their lives.

ANIL YADAV (PAPPAL)

One of the prime challenges faced by workers in our area is the lack of remunerative jobs. What is need is appropriate programmes of skill building, and linking them up with employment generation. As things stand today, we have none. Most of our community members, especially women work in low paying, irregular, and insecure jobs.

Another challenge that the community face is the lack of adequate documents, to avail the various welfare schemes. Many are migrant workers, who have left their documents back in their source states

The community also faces the problem of drug abuse. In this context, women in the community play a very pro-active role, by keeping an eye on their children, and spread awareness among them. Women in the community are already taking some steps in building awareness about women's safety, and basic amenities in the area. These are important steps.

Many children in the community remain uneducated. One of the big problems faced by the community is that often they do not have adequate documents to get their children admitted in the schools. But often this happens because of lack of awareness as well. Children as a rule are not deprived of their education merely because of lack of one document or two. In this context, the public representatives can be of help. Those parents who have school going children can come to me, and I will help them in getting admitted to the schools.

What we need is – coming together of different stakeholders, the civil society activists, the local community, the departments and the authorities, for the welfare of the community.

Key Points from the Discussion

- 1 Access to fair wages, and social protection depends on the sector where the worker works. In the informal sector, workers are paid less, and they hardly enjoy any social protection.
- 2 Through unionising efforts and group formations, one can move from informality to formality. Forming groups of home based workers, and negotiating collectively with the contractor can improve remuneration, improve work conditions, and provide better access to institutions, such as banking, loans and finance.
- 3 Awareness building is the base on which solidarity and unity can be built. Workers cannot hope to fight effectively individually, but through collectives and groups. Solidarity is the key word for building working class unity and cohesion.

Labour Dialogue V 19th December 2022

Promoting the Rights of Migrant Workers

Challenges and Prospects

Speakers

Neha Wadhawan

National Project Coordinator, Work in Freedom Programme, International Labour Organisation (ILO)

Sudhir Katiyar

Director, Centre for Labour Research and Action (CLRA)

Usman Jawed

Activist and Researcher, Fair Square Projects

The estimated number of international migrants has increased over the past five decades. Currently approximately 281 million people are international migrants living in a country other than their country of birth. Every year, people around the world face the devastating impacts of conflicts, diseases, disasters, and climate change that force them to migrate. At the end of 2021, a staggering 59.1 million people were internally displaced. 53.2 million were due to conflict and violence while 5.9 million were due to disasters. While some regions are affected more than others, no nation is spared the risks of displacement. Very recently, the Qatar World Cup brought to the limelight the massive violation of human rights faced by the migrant workers. More than any other time, orderly and humane management of the migrant question is the need of the hour.

Unfortunately, policies around this question are far from clear, including the labour laws of our country. The Occupational Safety Code for instance, has broadened the definition of “interstate migrant workers” beyond those employed by employers and contractors, to include any worker who migrates on her own to another state, including self-employed workers. At the same time, the Code increases the legal threshold of establishments to those with ten workers (from five as per ISMWA, 1979), thereby leaving out a vast number of migrant workers employed in micro units

The aim of this Labour Dialogue was to discuss the challenges and prospects in ensuring human and labour rights of the migrant workers, both domestic as well as international. The key questions for the Labour Dialogue were - how the existing and emerging policy initiatives can be leveraged to ensure decent working and living conditions for the migrant workers; what are the basic elements necessary to ensure minimum legal and social protection for all the migrant workers; and what role that the trade unions, workers organisations and CSO can play in achieving those elements?

SUDHIR KATIYAR

It's been more than two years, since the beginning of the Covid-19 pandemic. And yet, we still do not have adequate data regarding the migrant workers. One of the reasons for the neglect of the migrant workers is that they are part of the informal workers. Therefore, the challenges that the migrant workers are essentially same as those of the other informal workers. In legal terms, there is only one exception, related to the Inter State Migrant Workmen Act, 1979. But that too is essentially an extension of the Contract Labour Act.

As far as organising the migrant workers is concerned, the challenges are now fairly well-known. As such, migration should be considered a normal process, of people moving from one place to another. It is important however to also note that often times the employers choose to employ migrant workers, even when local labour is already available, to take advantage of the vulnerabilities of the migrant workers. The most classic

As such, migration should be considered a normal process, of people moving from one place to another. It is important however to also note that often times the employers choose to employ migrant workers, even when local labour is already available, to take advantage of the vulnerabilities of the migrant workers. The most classic example of this is the brick kiln workers.

example is that of the brick kiln workers. Every year, lots of migrant workers from Uttar Pradesh move to Rajasthan, to work in the brick kilns there. Interestingly, Uttar Pradesh itself has a lot of brick kilns, and there too, we have migrant workers, coming from yet other states- such as Bihar and Chhattisgarh.

The migrant workers lack the very basis, on whose foundation they can be organised. Often times, the places where they live while working are provided by the employers themselves. These spaces are akin to prisons. This makes entry to these spaces next to impossible and the workers live under total dependence of the employers. This makes organising them very difficult.

Another factor is the lack of contact between the migrant workers and the local communities. So in moments of conflict, the migrant workers cannot hope to have local support vis.a.vis the employers. The very recruitment process also hampers the organising efforts of migrant workers. For instance, in brick kilns, workers are mobilised by paying them advances, which creates obligation on the workers to perform labour for a whole season. Bondage like labour conditions also emerge from such contexts.

The mainstream trade unions have historically ignored the informal workers. One of the reasons for such negligence also lies in the way contradictions are posited between the formal and informal workers, permanent and temporary workers. It is now clear that to organise the migrant and informal workers, innovative strategies are required. At the very least, documentation is required i.e. having data about where the workers are coming from, where they are going. What we are also doing is to take the labour contractors - who often come from the same community and neighbourhood as the workers themselves - into confidence. We are also reaching out to the workers in the source areas, as accessing them there itself is relatively easier. Most importantly, the migrant workers would need support in the destination area, if they are to be organised. We have been trying to do this for some time now, and while it is difficult, it is not impossible. We are also working closely with Dalit organisations, as substantial number of migrant workers come from the Dalit communities. The Bonded Labour System (Abolition) Act, 1976 can also be used innovatively, when it comes to working with the migrant brick kiln workers.

USMAN JAWED

In the countries of the Gulf Cooperation Council - Saudi Arabia, Kuwait, the United Arab Emirates, Qatar, Bahrain, and Oman, anywhere from 50 to 90 percent of their workers are migrants and most of them are from South Asia, Southeast Asia and East Africa. This selection of countries is a matter of political choice, and not random. It was consciously decided not to employ people from similar ethnic and cultural backgrounds in low paying jobs, and reserve them for foreign migrant workers instead. This decision created a segmented labour market, much discussed in the context of the Qatar World Cup today.

Much has already been talked about the Kafala system. Essentially, this is a system which combines very rigid immigration laws, and very lax labor regulations. According to this system, to work in a Gulf country, you would need a citizen from there to sponsor your visa, and then the sponsor becomes responsible for your performance, rights etc. So in effect what happens is that your employer gets inordinate control over you. In case of dispute, you would not only lose your job, but also your residency rights, access to health care, and you may even be deported, if your sponsor reports you as absconding.

Currently we are working on a project that looks at unexplained migrant worker deaths in the Gulf. What we found is that there is a very high incidence in unexplained migrant worker deaths. As per the official estimates, around 10,000 migrant workers die in the Gulf each year, and out of these, 5,000 workers die under unexplained conditions. Very often medically sounding terms - such as cardiac arrest, circulatory system failure, natural death - are mentioned in the death certificates, but they actually explain nothing. For instance, cardiac arrest simply means that your heart stopped, but it explains nothing about the conditions under which your heart stopped working! A secondary reason is supposed to be provided, and for that there are certain protocols. There are protocols in case of work related deaths that should be followed, autopsy to be done. But these may invite compensation claims and therefore there appears to be vested interests that are not interested in showing work related deaths.

The migrant workers make up about 50 percent of the population in these Gulf countries and up to about 75 percent of all jobs in the private sector are occupied by the migrant workers. One out of every three migrant worker in this region is an Indian. The question is: why so many Indians go the Gulf? The reality is - the median income of a regular worker in our country is Rs. 10,000 and let us not forget that the majority of our workforce are not regular workers, i.e. they earn less than Rs.

Many women also migrate to escape from domestic violence. Unfortunately, these social dimensions are often not properly reflected in the policies. For instance, it is often assumed that women are automatically safe inside their homes and it is through migration to the outside that they get into danger.

10,000. In the case of casual workers, the amount is Rs. 6,500 per month. We often do not appreciate the gravity of this problem of lack of remunerative jobs in India! It is because of this lack of remunerative jobs that so many Indians move to the Gulf countries, despite knowing all the risks involved. It is a sad commentary on the state of affairs in our country today.

The Gulf is also a specific node in the global circuit of accumulation of capitalism. It is worth exploring how the lack of remunerative jobs here is linked up with the process of wealth creation and super exploitation of workers in the Gulf. This then brings us to the question of policies: the Indian state facilitates the migration to the Gulf countries. It regulates and sets the terms for the migration of workers. As such, there are contracts that you are required to sign, before moving there as a worker and the state is supposed to keep checks that certain conditions are met and there are even model contracts. But this process remains lax, you will hardly find any contract that approximate the model contract and the state hardly enforces the required conditions. Why the state is so lax in such matters? That requires another discussion!

NEHA WADHAWAN

It is important to see the commonalities between the national and international migrations, before going into their differences. The International Migrants Day is a good moment to think about this question.

In 1990, the United Nations had adopted an International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Since then, we have been observing the International Migrants Day. After the 1990 Convention, we also had a number of additional Conventions related to this subject.

Usman brought out the question of lack of remunerative jobs. The amounts that he cited are actually less than the minimum wages. In other words, a large number of workers receive wages that are less than the legally fixed amount. It is fairly obvious why workers migrate, in search of jobs and livelihood. There are identifiable states and districts in our country, from where large numbers of workers migrate each year, both nationally and internationally.

There is a caste and community aspect to the pattern of migration question. There is also a gender dimension to it. For instance, many single women from Andhra Pradesh and Kerala migrate internationally as domestic workers. Many women also migrate to escape from domestic violence. Unfortunately, these social dimensions are often not properly reflected in the policies. For instance, it is often assumed that women are automatically safe inside their homes and it is through migration to the outside that they get into danger. So, the policy thinking goes, it is better if women remain

inside their homes! The contrast with the approach to the male migrant workers is very clear here.

To a certain extent, I would say that even in terms of the focus of trade union movement, and the civil society organisations, the focus is often on the male migration only. The picture of migrant workers in the wake of Covid-19, and the desperation they faced, was also predominantly male. We need to complicate this picture, and make it more inclusive.

Most of the International Conventions and Standards created so far were based on the assumption that when the workers migrate beyond the borders of a country, their vulnerability goes up, as the sovereign country that they belong to, cannot then exercise as much control on their working conditions and the destination, as they can do internally. The assumption was also that internal migration issues would be addressed adequately, based on the constitutional and citizenship rights of the workers, and the states will be able to address them adequately. But now we are increasingly seeing that this is also an issue that needs to be raised at the international level and the linkages between internal and international migration patterns must be recognised as such. It is true that when workers are stuck in the destination abroad, it is much more difficult for the Indian authorities to negotiate and help repatriate these workers, whereas inside the country, within India, it should ideally be easier. But often we see the opposite case happening, as often the Embassies in the destination countries actually respond to a lot of these requests in a timely manner.

Regarding Kafala: it is of course true that under this system, the employers control the workers in a very substantial way and we've been trying to look at Kafala reforms in some of the Gulf countries. But questions still remain about the responsibility of the employer. What was perhaps good about Kafala was that the employer was responsible for the worker! It's important that we still do hold employers responsible for the welfare of the workers.

One of the issues we raise with regard to fair migration by the ILO is that recruitment costs should not be borne by the workers. There's a large amount of extortion that happens with the recruitment stage itself, when you are paying up the recruitment agents for your travel arrangements to the destination state. According to International Standards, this is absolutely a No-No, in the sense that employers must bear all costs related to recruitment. But the reality is of course is very different and even in cases of internal migration, we have trapping of workers, through the mechanism of advance payment, via labour contractors.

It is almost always the recruitment agent who is blamed,

for all the unscrupulous practices. But the point is that unless the work conditions are better, recruitment practices cannot be expected to be fair. There is a need to trick you only when the work conditions that you are going to face in the destination state is going to be bad! Also, a lot of the times the workers actually know what the destination holds. So the element of distress whether it is international migration or internal migration is something that exists and actually needs to be addressed on an immediate basis.

There are a lot of ILO Standards and Conventions related to collective bargaining and freedom of association, and these are indeed very important to ensure decent work. But these are important not only in the destination, but also in the source state. Often it is through the source states, where the workers can be accessed properly and so having systems and practices of collective bargaining and freedom of association in the source itself is also very important.

The question of language is also very important. Often the workers do not have the adequate language skills, even to demand the wages to the employer in the destination state. Here, there can be an important role to be played by the recruitment agent, in the relationship. So while we need worker education levels to reach a point where employer-employee relationships can be regulated by law, which is of course absent and lacking on many counts, it is also important to factor in the recruiter's relationship with both (the employer and the employee) and the importance of working on this relationship as well.

We often see that many of the welfare schemes are linked with domiciles, and thus it becomes hard for the migrant workers, who are very mobile, to access them. We now have the idea of one nation, one ration, but the question is – how to operationalise it? That remains to be seen.

A lot of international migrant workers are expected to go through a pre-departure training. But then, there is no way of the workers being able to change their decision right when they're about to make the journey, when they already have invested their resources! So what we need is pre-decision trainings, where the workers can learn about the risks and benefits of migration.

We now have the E-Shram Portal. But for which sectors it will be relevant? What benefits will be accrued? We have lots of unions, having excellent experiences of working with different Welfare Boards. They know what works, what didn't work. So can we actually put that together and think of an exhaustive social protection package for the workers?

Regarding skill building, this question should be linked up with wage enhancement. Can we include within skill building such skills – such as negotiation skills, collective bargaining skills etc.? The idea is that we look at skilling a bit more holistically and we talk about rights and entitlements of workers within these processes.

This year, the International Migrants Day is focusing on

integrating migrant workers into primary health care. In the wake of the Covid-19, this is really an important theme to focus on. In this context, it is also relevant to point out the health impact and exhaustion, which results from poor working conditions. So the employer can't wash their hands off after the end of the contract, because the health impact of the work that the worker performed continues, even after the expiry of the contract. So this is something we should consider, viz. is it possible to get employers to contribute to Social Security of migrant workers. This is applicable both for internal, as well as international migrants. There are so many migrant workers who are actually not being able to work anymore, because of the kind of working experience they've had earlier.

There are a lot of international conventions and guidelines, which are helpful in setting a Standard that we need to aspire for. But there's a long way to go and I think the contradiction that we see right here is - if we are demanding rights for workers internationally, it is also important to guarantee rights to them locally.

Key Points from the Discussion

- 1 It is important to link up the conversations about internal migrants rights with those of the international migrant rights. While each has its specificity, both are too intimately linked, to be delinked from each other, and seen in silos.
- 2 The patriarchal restrictions imposed on the international migration of women workers of certain age groups, and certain occupations, find their parallel in the invisibilisation of internal women migrants in many sectors – such as the brick kiln sector. Often our migration related discussion are male-centric and they erase the specific role, contributions and issues of female migrants.

It is of course true that under this (Kafala) system, the employers control the workers in a very substantial way and we've been trying to look at Kafala reforms in some of the Gulf countries. But questions still remain about the responsibility of the employer. What was perhaps good about Kafala was that the employer was responsible for the worker! It's important that we still do hold employers responsible for the welfare of the workers.

