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Empty-handed and Demoralized: New Evidences of Wage Theft among Indian Return Migrants during COVID-19

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1. BACKGROUND

The mobility restriction and massive job losses during the covid19 pandemic demanded the countries of origin to bring back their citizens, especially temporary labour migrants from destination countries. India, the home for 17 million cross-border temporary labour migrants, carried out the largest repatriation exercise from May 7, 2020, to bring back the stranded migrants. Considering the persistent requests from the Indian diaspora and workers stranded overseas, the Indian government executed the repatriation of Indians using the national carrier and navy vessels. It brought back the migrants in 10 phases under a mission titled 'Vande Bharat Mission¹.' The rapid increase in the number of Indians affected in the Gulf countries, and the loss of jobs and poor access to health services in the labour camps made the Indian workers increasingly vulnerable. Even though the Indian government addressed the immediate requirement in repatriation, the government failed to understand and recognise their post-arrival grievances.

Historically, India's response to the grievances of migrant workers is poor compared to other origin countries, especially regarding the grievances on labour disputes. The number of unresolved cases in the past years (2019 and 2020) is 6988. This figure only includes Gulf countries except for the United Arab Emirates (UAE)². Amidst the establishment of grievance mechanisms such as MADAD³ and helplines in Pravasi Bharatiya Sahayatakendra (PBSK)⁴, the unresolved grievances remain high. The grievances raised by on Indian workers include non-payment of wages and end of service benefits, contract violations, labour right violations and harassment at the work place and confiscation of documents.

The number of grievances from the Indian workers had multiplied due to the economic crisis and panic precipitated by the spread of the infectious disease among migrant communities, especially on non-payment of wages and other benefits⁵. Among the workers who had lost their jobs, some were terminated and repatriated forcefully, some were given false promises about the payment of wages and dues, and only a handful of the workers received all benefits and dues before repatriation (MFA, 2021b). The issue of 'wage theft' became a widespread issue across all major migration corridors. Wage theft was poorly addressed across various migration corridors due to the lack of access to justice mechanisms and labour protection systems at the country of origin and destination. In the India- Gulf Co-operation Council (GCC) migration corridor, neither India nor the GCC countries are signatories to the ILO Minimum Wage Fixing Convention 1970 (no.131) (Foley and Piper, 2021).

¹<https://www.thehindu.com/news/national/vande-bharat-becomes-one-of-top-civilian-evacuations/article34361996.ece>

²Kuwait - 3078, Saudi Arabia - 2618, Oman - 741, Qatar - 451, Bahrain - 100

³https://www.mea.gov.in/lok-sabha.htm?dtl/33459/QUESTION_NO420_UNRESOLVED_LABOUR_CASES

⁴<https://madad.gov.in/AppConsular/welcomelink>

⁵<https://pbsk.cgidubai.gov.in/>

⁶<https://adnchronicles.org/2021/07/10/wage-theft-plagues-indias-migrant-workers/>

WAGE THEFT

Wage theft consists of the total or partial non-payment of a worker's remuneration, earned through the provision of labor services, as stipulated in a written or non-written employment contract. It also includes the payment of salaries below the minimum wage, non-payment of overtime, non-payment of contractually owed benefits, the non-negotiated reduction of salaries as well as the retention of dues upon one's contract termination (MFA, 2021)

Wage theft occurs when an employer pays less than what is legally owed to the employee and is prevalent in almost every industry. It consists of the total or partial non-payment of a worker's remuneration, earned through the provision of labour services, as stipulated in a written or non-written employment contract. It also includes the payment of salaries below the minimum wage, non-payment of overtime, non-payment of contractually owed benefits, the non-negotiated reduction of salaries as well as the retention of dues upon one's contract termination. However, in crises such as covid19 that demands emergency repatriation and witness the large-scale loss of employment, migrant workers may need support from the stakeholders to exercise their rights by recovering remaining wages and dues in the post-repatriation phase (Mawby and Martin, 2016). The most vulnerable workers such as low-skilled workers, women domestic workers, undocumented workers are the principal victims of wage theft during the pandemic.

As per the Migrant Forum in Asia (MFA)⁶, majority of the wage theft cases reported by Indians were group cases committed by medium to large firms involved in construction, hospitality, manufacturing, and transportation. It indicates that low-medium and high-skilled migrants are uniformly affected by the non-payment of wages followed by loss of jobs. The data further indicates that Indian workers filed the majority of group cases. Indian filed 11 group cases of wage theft, comprising of 741 workers. In addition, both UAE and Saudi Arabia received the highest number of grievances on wage theft from Indian Workers (324 and 124 respectively). The size of the repatriation exercise and the number of 'wage theft' cases filed by the Indian workers portrays the extent of the problem among the Indian migrants, especially among the repatriated workers. They do not have access to legal services in the destination countries. The evidence and characteristics of wage theft against Indian workers can be captured through personal interactions with the returnee migrants. An evidence-gathering using a primary survey can support the reported stories of massive wage theft during the pandemic.

2. EVIDENCE OF WAGE THEFT AGAINST INDIAN RETURNEES: EXCERPTS FROM A PRIMARY SURVEY

The survey was conducted among the returnees from Kerala, and Tamil Nadu who returned via repatriation mission. The lack of availability of reliable data prevented a full-fledged scientific sample survey across Indian states. However, Kerala and Tamil Nadu accounted for the significant share of repatriated migrant workers⁷. The study relied on the personal details of the returnees provided by both the Kerala and Tamil Nadu governments, and stratified random sampling was conducted on this dataset. The survey was conducted among 2252 migrant workers who had returned during May 2020 and December 2020. Among the respondents, 49.1% had returned from UAE and Saudi Arabia. It underlines the large-scale return of workers from the GCC countries. Among the respondents, 32.2% were employed in the industrial sector, while workers from the construction and hospitality

⁶<https://justiceforwagetheft.org/en/page/fn5yqy10evw>

⁷<https://www.thehindu.com/news/national/kerala/state-sees-largest-reverse-migration/article34163811.ece>

sectors constitute 15.1% and 12.3%. Considering the impact of covid-19 on the economy of the Gulf region, this trend is predictable. As per the data, only 0.79 percent of the total returnees are government employees. The low share of government returnees indicates that the private and informal sector in Gulf suffered the most, a trend was seen in other regions of the world (Rajan and Akhil 2021).

2.1. Who lost jobs among the returnees?

Among the returnees, 45.5% of the workers chose repatriation due to job loss, and 28.4% returned due to fear about the virus. If we consider other reasons that indirectly led to job loss, such as expiry of the contract and compulsory repatriation, the figure would be more than 55% of the total returnees. These figures are in proportion with the data provided by the Government of Kerala.⁸ The data indicates that 60 percent of the repatriated workers to Kerala had lost their jobs. Among the 44.5% of the people who lost the job and returned to India since May 2020, 30.7% of the workers returned from Saudi Arabia. Even though UAE has the most prominent Indian diaspora population, more workers from Saudi Arabia lost their jobs compared to UAE (22.3%). Qatar contributes 7.1% of the total workers who lost job.

The industrial workers (33.5%) followed by the workers in the Construction (17.6%) and hospitality sector (14.4%) are the primary victims of job loss during the pandemic. The government employees (0.6%) hardly lost their job. Among the workers, 15% of the domestic sector, including drivers, faced job loss. As the predictions indicate service sector is responsible for around 60% of the job loss during the pandemic, followed by the industrial sector.

It is essential to understand the nature of job loss, how they lost their jobs and employers' responses. Among the people who lost jobs, most of the workers (30.18%) were asked to resign. Notably, 18.7% of the workers were advised to travel back home without paying their salaries, and a few workers (2.6%) were threatened with termination. Among these workers, only 12.79% of the workers received a favorable option of returning to home country with the wages and dues. However, the workers in the industrial sector (17.8) had a more pleasant experience from the employers due to the labour protection system in the industrial sector in GCC. Among the industrial workers, 27% were offered a termination option, and 22% were asked to travel back with salary. Apart from the medical and government sector workers, industrial workers are the only group of workers who experienced a dignified return from the destination country. The data reflect the loss of jobs in the sectors where Indian workers dominate in the Gulf, such as the Construction, service, and hospitality sector, industry, and domestic services.

2.2. From Joblessness to victims of wage theft

39.1% of the workers among the people who lost job have reported that they have faced non-payment of wages or dues and reduced wages. Among the migrants who managed to work during the initial months of the pandemic also faced non-payment of wages. 8.8% of the workers who had lost jobs worked during the pandemic without any wages, and 18.2% of the workers had witnessed a reduction in wages.

⁸<https://norkaroots.org/covid-services>

DURATION OF STAY AND WAGE THEFT

Another surprising characteristic of the return migrants who lost a job during the pandemic is their period of stay in the destination country. There is a general feeling among the public and policymakers that the freshers struggled to keep their jobs at the destination country. However, the data indicate that 65.5% of the respondents who lost job had spent more than two years in Gulf countries. Among the returnees, 30.3% who lost their jobs had work experience of more than ten years in the Gulf.

Duration of the stay has a direct relationship with non-payment of wages and dues. More than 60 percentages (61.1%) of the workers who did not receive their wages and benefits had work experience in Gulf for more than five years. It indicates that workers who are eligible for higher amounts of dues and benefits were denied the payment. On the other hand, most of the newly joined or workers with fewer years of service received the benefits and wages before leaving the country of work. Many elder and experienced workers rushed back home without even negotiating with the employers on the unpaid benefits since they were more prone to the virus.

Breakdown of dues and other benefits shows that 5 percent of the workers who lost jobs were denied all benefits such as gratuity, severance pay, air ticket, and other benefits. During the survey, most respondents were reluctant to criticize the employers and supported them by citing the financial crisis. In this case, the workers were not aware of their labour rights, and they made no attempts to claim their financial rights during the pandemic.

2.3. Types of Wage theft

The common types of wage theft experienced by the repatriated Indian workers during the pandemic:

- False promises on payment and dues - Verbal agreements on payment of dues within a stipulated period after which the workers cannot make claims as per the domestic laws
- Forceful agreements - Employers forced the workers to sign an agreement that states the receipt of all dues and payments. Such agreements were signed a few days before the repatriation by threatening the workers to release personal documents such as passports and certificates.
- Over time employment - The workers did not receive extra working hours, especially during the pandemic. Instead, many of them worked extra hours with a reduced salary.
- Absence of regular payment of wages - The standard type of wage theft occurs, especially in the informal sector and domestic services. During the pandemic, workers in the formal sector also faced the absence of timely payment of wages.
- Unnecessary deductions from the benefits and dues - The workers experienced deductions in the name of payments for medical check-ups, wages, health services, including quarantine facilities, covid insurance, and other facilities offered at the workplace.
- Establish false charges/cases against the workers. If the workers demand wages or attempt to exercise their rights, the employers either threaten the workers or file false complaints such as theft, malpractices, attempts to change the employers, or declare them absconding.

2.4. Occupation-wise evidence of wage theft

The workers in occupations such as the hospitality sector, industry, and domestic jobs are disproportionately affected during the pandemic and recorded higher job loss. As mentioned above, workers in the industry sector experienced relatively dignified returns. However, around 19.5% of the workers were advised to travel back without salary. They have not received any assurance from the employers about paying their wages at any stages of repatriation. The workers from Construction (19.7%), hospitality sector (15.8%), and domestic workers (7.6%) suffered most because of the unwillingness of the employers to pay wages and dues. However, only 3% of the workers who lost the job were threatened with termination from the job. Apart from the 7% respondents in the construction sector, workers in all other sectors did not encounter any threat from the employer during the pandemic. The workers in the other service sectors such as medical services, banking, and financial services, education did not face the issue of wage theft or forceful repatriation without paying their dues. The workers in the affected sectors during the pandemic were more prone to 'wage theft.'

The restaurant and hospitality industry consists of low-skilled and skilled workers. Nevertheless, their protection is often minimal since most of them, especially Keralites, travel on visit visas and find employment after the job search. So, most of these workers are out of the protection system offered, at least by the Indian government. There is a reproduction of vulnerabilities when they are thrown out of a job by the employer. There are hardly any means to claim the dues since most of them are terminated. If the reason is too harsh, a legal approach may harm the employee.

2.4.1. Beyond the class question

The high-skilled workers in the formal sector, often come under the wage protection systems in the Gulf countries, and they have the financial capacity to fight the cases legally in case of 'wage theft. However, several employers and firms have closed down their operations, and many highly skilled workers either face a reduction in wages or non-payment of wages. Many of them were asked to resign without receiving dues and other benefits. Unlike the pre-pandemic period, access to legal services is limited due to the restrictions, even if they are willing to file legal complaints. Moreover, most of them preferred to rush back home due to the fear of the virus (the covid cases in major destination countries were much higher than India in the initial wave). It shows that the 'wage theft' impacted migrants regardless of their class and skill set possessed.

However, the class question will be relevant in the future because the high-skilled and well-paid migrants had awareness about the issue, and most of them had submitted a power of attorney to legal representatives at the destination countries to approach the legal mechanism. Since it put a huge financial burden on the migrants regarding legal fees, only affluent migrants could afford such routes.

2.5. Impact on remittances

The occupation-wise wage theft results indicate that wage theft must directly impact on the flow of remittances to the country. Most of the low and medium-skilled workers from India do not invest or save the earnings at the destination countries. They instead prefer to transfer their wages to commercial bank accounts or transfer via money transfer platforms. So, the loss of jobs, non-payment of regular wages, and reduction in the wages may harm the remittance flow in the long run. In the short run, an increase in remittance may be visible due to two reasons. a) The preference for formal channels since the informal options are limited during the pandemic b) Many small-scale entrepreneurs and high-skilled workers who either lost jobs or resigned from a job had transferred all their assets to Indian accounts during the pandemic⁹. However, any trend toward the increase in remittance will be a short-run phenomenon, and it would show a declining trend in the long run.

⁹<https://www.worldbank.org/en/news/press-release/2021/05/12/defying-predictions-remittance-flows-remain-strong-during-covid-19-crisis>

2.6. Gender

The number of female workers among the repatriated workers was minimal. However, most female workers who lost a job were employed in service sectors, especially in hospitality and domestic work. Among the domestic workers, 58.3% were asked to leave during the pandemic. In typical exploitation cases reported, the employers do not allow the domestic worker to leave the job before the contract period. The workers were only able to leave after paying the recruitment cost or fee paid by the employer. The domestic workers were facing the issue of non-payment of wages even before the pandemic. However, many employers could not afford the domestic workers since the pandemic affected their ability to pay wages. So, the employers prefer to send back the workers. A few respondents who had severe health conditions sought permission to return due to the panic created about the pandemic. In such cases, the employers denied wages and demanded the cost of recruitment from the workers. The women workers in the hospitality sector, such as hotel staff and 'beauty workers' face 'wage theft' and extra hours of work during the pandemic. It was evident that the job loss accompanied by wage theft during the pandemic added to the existing vulnerabilities of Indian women migrants.

2.7. Sustainable reintegration and facilitation of remigration

Among the victims of wage theft, people of working age prefer to emigrate for work. The others plan to reintegrate back to the domestic labour market or become self-employed. However, the most vulnerable returnees, such as low-skilled workers who crossed the working age, and women domestic workers, prefer assistance from the stakeholders for reintegration. The workers who prefer to remigrate are concerned about retaliation from an employer if they file a legal complaint against wage theft. Apart from them, the victims agree to any attempt to access justice mechanisms at the destination countries. In the Indian context, the reintegration of migrants is limited to economic reintegration. The massive cases of wage theft and other grievances among the repatriated workers indicate that addressing and solving the grievances of migrant workers need to be the part of the long-run, sustainable reintegration strategies. Regarding remigration, the stakeholders, including the government, shall find avenues of co-operation with the destination countries to ensure the safety and well-being of the workers who fight legal battles with the employers.

2.8. Access to grievance mechanisms and legal services

Among the 1004 respondents who lost job since March 2020, only 3.3% were received advice about addressing the non-payment of wages. Social workers or friends advised lawyers and legal advocates, and less than one percent of the workers received verbal advice regarding grievance redressal. Unsurprisingly, the respondents were reluctant to respond to the workplace concerns and the employers' behaviour. Even though there are grievance redressal and complaint mechanisms available in countries of origin and destination by Indian missions and state government agencies, the workers have shown hesitancy in accessing these services to share the grievances on wage theft.

The workers who faced non-payment of any type were confused about whether to file a complaint at the destination or give preference to the emergency repatriation. Most of them preferred the latter and traveled without any agreement or power of attorney submitted to the authorities or employer. The workers, especially low-skilled workers in the informal sector and undocumented workers, were unaware of the services offered by the government. The panic and lack of support to fight the case at the destination country also contributed to the poor access to grievance redressal mechanisms.

Among the victims of wage theft, only 26% of the workers were aware of the MADAD platform, and 6% of the workers availed the helpline facilities by Indian missions, national and state governments to file grievances on wage theft. Unsurprisingly, none of the workers managed to file a legal complaint at the destination countries.

Two workers, both were HR professionals, narrated that the courts were closed for a long time and legal firms were not ready to take up cases during the first phase of covid. However, they started having financial constraints later, which prevented them from filing cases when the courts have begun their operations. A set of respondents were afraid to ask for pending wages while some of them have already been mentally preparing themselves to meet any uncertain situation. Thus, the repatriated workers are demoralized in every sense about accessing legal services and claiming their dues and benefits.

3. HOW DID STAKEHOLDERS RESPOND?

Apart from data gathering at the ports for ensuring the quarantine facilities of the repatriated workers, the government of India did not carry out any proactive steps to address the grievances of migrants. The government believes that the existing grievance redressal mechanism is enough to address the concerns. This approach was also emphasized in both houses of parliament in response to the questions of members. However, the government had introduced a data bank of skilled returnees in the recent past. The platform helps the migrant workers to reintegrate themselves into the domestic labour market by sharing the information with the employers. The new emigration draft bill, 2021, also does not address the right of migrant workers to access the justice mechanism both at the country of origin and destination.

The issue of wage theft among returnees was widely discussed in India after initiating the wage theft campaign by the MFA and its partners. MFA, in association with several civil society and trade union collectives, call upon countries of origin and destination to urgently put in place a transitional justice mechanism with the objectives of setting up an urgent justice mechanism to address grievances, claims, and labour disputes of repatriated workers who have lost their jobs as a result of the pandemic¹⁰. By establishing a Justice for Wage theft campaign website, MFA document the wage theft case with support from its partners. The CSOs such as the Centre for Indian Migrant Studies (CIMS) in Kerala, Emigrant Welfare Forum (EWF) in Telangana, National Domestic Workers Movement (NDWM) in Tamilnadu, etc. have established helplines and online complaint fora in India to document and understand the extent of the problem. The CSO's efforts for ensuring access to justice mechanisms for the victims of wage theft underlines the right-centric approach of non-government stakeholders. The coalition of CSOs among origin and destination countries offers opportunities for bilateral and multilateral advocacy.

Even though the state government's role is limited in ensuring access to justice, a few state governments in India responded pro-actively to the crisis. Notably, the Kerala government's Norka department set up a toll-free number and complaint forms to report wage theft cases. They have received around 600 cases so far and have provided the information to the Indian missions in the Gulf countries (Rajan and Akhil 2021). The inadequate responses made the Norka-roots involve the lawyer's panel and handed over the cases to the Norka lawyers at the destination countries. However, these efforts did not make many successful results in the past year. The governments of Andhra via Andhra Pradesh Non-Resident Telugu (APNRT) society and Overseas Manpower Corporation (OMCAP) documented the information of return migrants. The data will be used to reintegrate the workers into the domestic labour market and enhance remigration by sharing the data with foreign employers. Such efforts might help the victims of wage theft in the state. However, the state and national governments are still reluctant to cooperate with the non-state stakeholders to address the grievances of the migrant workers, especially the issue of wage theft against the repatriated workers.

¹⁰<https://justiceforwagetheft.org/>

4. THE WAY FORWARD AND RECOMMENDATIONS

In a nutshell, the victims of wage theft among the repatriated workers to India are yet to access the justice mechanisms. Apart from a few group cases reported that were resolved after negotiations between employers and workers' collectives, the majority of the workers are still searching in the darkness. The financial constraints, the reluctance of legal firms to accept the requests from workers, and the restrictions during the pandemic reduce the chances of individual's attempts to retrieve unpaid wages and dues. One of the significant barriers to handling wage theft cases is the systematic collection of information at the ports before and after the journey. A visible absence of co-operation between the state and non-state stakeholders prevents any possibilities of data sharing on wage theft. The governments at the national and state levels are reluctant to use the grassroots level stakeholder's information for evidence-based policymaking in the country.

In this context, the following recommendations are the need of the hour to assist the Indian victims of 'wage theft' during the pandemic:

- Initiate a coalition among significant countries of origin to advocate for the rights of victims of wage theft
- Documentation of grievances at ports of arrival - The grievances of the returnees should be collected at ports of arrival and departure. At the port of departure, the Indian missions should gather information from the workers.
- Sign bilateral agreements with major destination countries to address the issues of unpaid wages and other benefits.
- Information dissemination - Both national and state governments shall use the available platforms to disseminate information on the available mechanisms to claim the worker's rights and register their grievances.
- Facilitate power of attorney procedure for the repatriated/returning workers at the Indian missions. A co-operation with Indian diaspora organizations would help to identify the needy.
- Establish a fund at the missions or at the ministerial level to provide accessible or affordable legal aid
- Ensure minimum wage protection in compliance with the international labour standards for Indian migrants
- Establish a 'joint liability clause' for employers and recruiters in the eMigrate contract if workers face exploitation, especially 'wage theft.'
- Monitor wages and ensure regular payment by setting up a payment registry in the eMigrate platform. The employer should add the payment details regularly.
- Set up a panel of lawyers to ensure free/affordable legal services for Indian workers.
- Encourage workers who found jobs through the 'visit visa route' to register with Indian missions. The registration with missions helps the workers to file grievances.
- Need for a standard employment contract for all migrants
- The pre-departure orientation manual shall include a module on accessing the legal service at the destination countries and upon return.
- Recruitment agents should conduct a periodic review of the activities of the employers to reduce the avenues of exploitation.
- CSOs should advocate for better co-operation with the governments to address the issue of 'wage theft.'
- Set up a platform for government and non-government stakeholders to coordinate the grievance redressal of repatriated workers and returnees.
- CSOs in India should advocate for evidence-based policymaking by sharing the data of 'wage theft' periodically with the governments.

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