



The Pandemic, Migrants and the Constitution

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- Invited for the theme of 'Reimagining the Post-Covid-19 City'

In the Post-World War II era, Sir Winston Churchill had characterized the Soviet Union as an 'enigma wrapped in mystery'. The pandemic of Covid-19 can be described only in such creative phraseology. It is today an insuperable challenge and indecipherable threat to humanity. The Chief of WHO has recently spelt out its daunting dimensions. He has pointed out that it was only six months ago that WHO came to know about the existence of a new virus, and in the last six months, it has infected 10 million persons and caused deaths of 5 lakh persons worldwide. While the best minds in science and technology are struggling to deal with the challenge, the present article has a modest objective of dealing with the multiple questions raised by Covid-19 in the context of the urban development paradigm.

Urban development is a complex process, and there have been errors of judgement in the earlier pattern, which are now manifestly clear. There was a tacit assumption that 'infrastructure for the poor will be poor'. This was an inherent anti-poor bias that can't be allowed to continue. It is necessary to rethink several features of the earlier model.

The question as we look at the future is, should we resurrect Mumbai as it was before Covid-19? Is our earlier model of urban development worthy of re-creation? In bare essence, it amounted to pouring investment in urban areas in the form of modern modes of transport, multi-storeyed towers and malls, while attracting a huge number of skilled and unskilled labourers from

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across the country who are then left to live in a most congested manner without basic civic infrastructure or health facilities on a suitable scale. The reverse rush of migrant labour to their villages has exposed the hollowness of the ‘model’. We were unconcerned about their health and the sub-human conditions in which they lived, as long as it did not impinge on us. The urban elite did not care for the dehumanizing condition of labourers, packed like sardines in unhygienic conditions. Policymakers and the ruling class paid no attention to plug loopholes in health infrastructure as long as its consequences were concealed deeply in the underbelly of slums. We woke up to the dichotomy of demography when Dharavi and similar areas started throwing up hundreds of covid patients daily.

There are reports that with the relaxation of restrictions, builders in cities are planning to bring back carpenters from the north. These are knee-jerk reactions without long-term thinking. Instead of repeating the earlier pattern of calling in migrants and forcing them to live in very poor conditions, can we not think of creating a body of local skilled labour? For reducing traffic congestion and energy consumption, it is necessary to give greater priority to bus transport and bicycles. Secondly, people from far-flung suburbs may be required to work from home instead of crowding the transport network. We have an opportunity to rework the growth model of the city and do away with the anti-poor bias and fascination for expensive construction, swanky cars and glamorous living.

There is a demand from places like Nashik and Pune for restarting long-distance trains so that, as before, people can travel to Mumbai for their job and return to their homes in Pune / Nashik after the job is over. Is it not possible to implement ‘work from home’, which will reduce the burden on the transport corridors? Similarly, persons residing in Navi Mumbai and distant areas who

work in Mumbai could also be asked to work from home. There are reports that lakhs of labourers who had returned to their native villages have come back to Mumbai, and more are on their way. Where will they live and work? Naturally, these labourers will try and return to their erstwhile dwellings, creating new foci for Covid-19 and other problems associated with congested localities. What is going to be our policy response to this situation?

At this stage, it will be worthwhile to review the relevant constitutional provisions. In the preamble to the Constitution, the people of India have resolved to secure to all its citizens, justice; social, economic and political; equality of status and opportunity. Under Article 19, citizens have the right to move freely throughout the territory of India and to reside and settle in any part (this is subject to reasonable restrictions in the interest of the general public). Then there is Article 21, which has conferred the right to life and liberty, including the right to livelihood. Taking these provisions together, it appears that the receiving state or city cannot constitutionally prohibit or curtail the incoming and outgoing movement of labourers. Does it mean that the receiving state or city should be just a witness to the massive movement of labourers and face the consequences in terms of expenditure required to discharge the constitutional obligations? The expenditure on providing modest housing, sanitary environment, water supply and drainage, rudimentary health facilities to the incoming labour can be quite substantial. It appears that constitutionally no responsibility is placed on the state from which the labourers are coming into the state or the city. If one may make a suggestion, the two states/cities, that is, the originating state and the receiving state, can enter into some formal or informal understanding by which the originating state will agree to share a part of the burden cast unilaterally on the receiving state/city. After all, India is a union of states, and the character of the Constitution

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is federal. The preamble gives substantial importance to the principle of fraternity. Therefore, it would be in conformity with the spirit of the Constitution that the two states share the burden in an agreed manner.

Constitutionally, every state is required to provide basic facilities to its population. Public health and sanitation, hospitals and dispensaries are specifically included in the State List. This is a delicate and sensitive question, and it will not be correct to ignore or neglect the constitutional obligations in respect of the labourers coming from outside.

To see that decision on sharing of expenditure is not prolonged like other inter-state disputes, it can be referred to as an Inter-State Council to be constituted by the President under Article 263. It might be argued that some states are poor, and that is why they are unable to provide adequate employment and livelihood to their population, resulting in the migration of the labourers to so called 'rich' states or cities. However, it is worth noting that the Finance Commission is expected to bring about a degree of comparability among the states and for this purpose, it may recommend adequate provisions by way of deficit adjustment grants, specific grants, etc. to see that the requirement of expenditure in the next five years is met by the receipt of revenues and such grants. Therefore, there is no injustice in expecting the originating state to bear a part of the burden, as mentioned above. Of course, this is a question of policy at the higher political level, and this is only a suggestion for their consideration.

Alternatively, the subject of determining the relative shares of states may be entrusted to the Finance Commission. Now that the Planning Commission is dissolved, no other central or national body has detailed information about the resources and expenditures of states. Secondly, the states can make their

presentation before the Finance Commission, and the subject will not get dragged on since the finding of the Commission will have to be part of its overall recommendation for which there is a statutory deadline. Further, a recommendation will get reviewed by the next Finance Commission, and there will be no need to create any separate structure for review/appeal etc.

In dealing with the issue of migrant labour in the light of constitutional obligations, it must be remembered that in his concluding address to the Constituent Assembly, Dr Ambedkar, the architect of the Constitution had observed, 'on 26th January 1950, we are going to enter into a life of contradictions. In politics, we will have equality, and in social and economic life, we will have inequality. How long shall we continue to live this life of contradictions? How long shall we continue to deny equality in our social and economic life? If we continue to deny it for long, we will do so only by putting our political democracy in peril.'

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Shri S G Kale (IAS Retd.) was in the 1963 batch of the Maharashtra Cadre. He has served in various capacities both in the Government of Maharashtra and the Government of India. He retired as Chairman, Mumbai Port Trust and was Municipal Commissioner, Mumbai, Special Assistant to Deputy Prime Minister and Union Home Minister Secretary to Chief Minister and held other important posts through his career. Currently, he is the General Secretary of Yashwantrao Chavan Pratishthan, Mumbai, President of The Asiatic Society of Mumbai and Chairman of the 3-Member Committee set up by the Government of Maharashtra in March 2017 for recommending measures to bring about transparency, accountability and efficiency in the functioning of Urban Local Bodies, including the Municipal Corporation.