

CRITICAL ANALYSIS OF SUSPENSION OF LABOUR LAWS IN INDIA

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ABSTRACT

On 22nd September 2020, three new labour bills- The Industrial Relations Code Bill,2020; Code on Social Security Bill,2020; Health and Working Conditions Code Bill,2020¹ was passed by the Lok Sabha. The government’s reasoning behind passing these three bills is to simplify the labour legislation and to ease the doing of business mainly for private entities. Due to the COVID-19 outbreak last year, the lockdown was imposed which led to job loss and migrant labourers being exploited by the states to work for more hours because of the scarcity of money and food. They expanded the edge numbers for the use of the Factories Act and the Contract Labour (Regulation and Abolition) Act. A couple of States went further and found a way ways to exclude specific production lines from the use of work laws through and through.

On May 08, 2020, the UP Government proclaimed the Ordinance which suspends a larger part of the key labour laws and rules thereunder in the State for all industrial facilities and foundations occupied with the assembling system, for a time of three (3) years.

The researcher aims to analyse critically the suspension of labour laws and their effect before and after enactment.

Keywords: Labour laws, COVID-19, Workers, Constitutional Rights.

INTRODUCTION

Everything we are doing to kill the virus has additionally been killing the economy. Apart from the deaths caused due to Coronavirus and lockdown imposed by the Government to overcome the pandemic, the virus is also responsible for taking away the livelihood of many. One such affected community includes the labourers who were already suffering before the pandemic but after the COVID- 19, their situation has aggravated.² The migrant workers were badly affected

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¹ The Industrial Relations Code, 2020 (Act 35 of 2020); The Code on Social Security, 2020 (Act 36 Of 2020); The Occupational Safety, Health and Working Conditions Code, 2020 (Act 37 of 2020).

² 'COVID-19: Protecting People And Societies' (OECD, 2020) <<https://www.oecd.org/coronavirus/policy-responses/covid-19-protecting-people-and-societies-e5c9de1a/#section-d1e1611>> accessed 8 December 2021.

and some even died while returning to their hometown due to unemployment and lack of shelter, food and other necessities needed for their survival. On top of it, the State of Uttar Pradesh has enacted ordinances that will do away with the bunch of Labour laws for a time of three years to kickstart the economy. This was followed by other states like Gujarat, Madhya Pradesh, Rajasthan, and Punjab which are also walking in the same footsteps. Such ordinances exempt Companies from complying with the labour laws. These measures were taken by the Government in the purview of the economic crisis befallen on the industries and businesses as an impact of the Novel Coronavirus and the economic losses incurred by them. It is further foreseen as an opportunity to attract more business during this cataclysm and boost the economy. Before the implementation of the first lockdown on 24th March 2020, the unemployment rate was at 6.7% according to the data of the Centre for Monitoring Indian Economy (CMIE) which surged to 26% which is the highest till now³. According to the estimate of the International Labour Organisation (ILO), around 400 million individuals working in the Informal Sector in India are in danger of being tossed further into poverty⁴. The ordinances passed by the Indian States to suspend the labour laws have been criticised by various Trade Unions, furthermore, its constitutional legitimacy has additionally been challenged under the steady gaze of the Supreme Court of India. The matter is still pending before the Court. The move of the Government is barbarous, and it imposes slavery-like conditions on the workforce. With such measures, the pandemic will leave a lasting impact on the labourers, and it will also affect their health and safety.

Covid-19 being called a pandemic cannot be simply ignored as an infectious disease. It tends to have both serious mental and physical health implications. The impact of the Covid-19 scenario combined with occupational distress leads not only to ill psychological effects on the occupational community but also to community transmission of the virus. The conflicts arising between the employer and employee are natural and tend to happen thus, the ultimate objective of this labour legislation is to make sure that these kinds of hindrances do not affect the work in progress and a mutual settlement is achieved between the employers and the employees. Not only does the labour law provide a mechanism for dispute settlement but it also ensures that the basic rights of the workers are being protected. Going by the word of several State Governments of India this

³ Mahesh Vyas, 'Unemployment' (*Unemploymentinindia.cmie.com*, 2021) <<https://unemploymentinindia.cmie.com/kommon/bin/sr.php?kall=wtabnav&tab=4080> > accessed 8 December 2021.

⁴ 'ILO Monitor: COVID-19 And The World Of Work' (*Ilo.org*, 2020) <https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/briefingnote/wcms_740877.pdf > accessed 8 December 2021.

move of theirs might just give a boost to the economy. But deep under this arises a need to analyse that at what cost the economic boost is being achieved? The Labour community, who are already facing physical and mental health implications during the Covid times, stay quite possibly the most ignored and weak groups of people.

REGULATION OF LABOUR LAWS IN INDIA

“India is one of the biggest labour-intensive countries in the world and is also the founding member of the International Labour Organisation (ILO).⁵ As far as the labour law is concerned, in India, it is a subject of the Concurrent List of the Seventh Schedule of the Constitution of India.” This implies that both the Parliament as well as the State Legislature has control over the regulation of the same. Though these ordinances have been passed by the State Government, the Central Government has not yet validated them. “The State regulates labour law either by passing their labour laws or by amending the central labour laws as per the requirement of the State and where the State laws are incompatible, Central laws will prevail.”

At present, there have been 100 State Laws and 40 Central Laws and to ease its compliances and bring uniformity in its application the Indian Government has decided to codify labour laws into four codes out of which The Code on Wages, 2019⁶ has been already instituted in the year 2019. The remaining three includes: -

- *“Industrial Relations Code, 2020*
- *Code on Social Security, 2020*
- *Occupational Safety, Health and Working Condition Code, 2020”*

Though they appear more like a consolidation of laws under separate heads rather than reform, this will make it easy for employers to understand and interpret the laws and implement them.

LABOUR LAWS SUSPENDED BY DIFFERENT STATES

“The State Government of Uttar Pradesh has diluted all labour laws for three years except the Bonded labour Act 1976, Employee Compensation Act 1923, The Building and Other Construction Workers Welfare Cess Act 1996, as well as provisions related to women and children in Maternity Act, Child Labour Act, Equal Remuneration Act, 1976 and Section 5 of the Payment of Wages Act.⁷ Whereas, the laws related to Trade Unions, contract workers, Industrial

⁵ *Ibid.*

⁶ The Code on Wages, 2019 (Act 29 of 2019).

⁷ The Payment of Wages Act, 1936 (Act 04 of 1936).

Disputes and Occupational Safety, health and working conditions of the workers have been withheld though only for a considerable period.” The Uttar Pradesh Government also vide their ordinance introduced a controversial order saying that the usual working hours of 8-hour per day shall be increased to 12 hours per day. However, this ordinance was withdrawn after a notice from the Allahabad High Court⁸. This came in light of the PIL which had been filed in the Allahabad High Court.

The State of Madhya Pradesh has taken a more subtle approach as far as the labour laws are concerned. By the way of Madhya Pradesh Labour Laws (Amendment) Ordinance, 2020 has amended two of its state laws. The Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961⁹ which regulates the condition of workers has also seen changes. Earlier, the act applied to industries with more than 50 workers; however, it has now been increased to at least 100 workers. In this way, the Act will presently don't matter to foundations with under 100 workers. Thus, the employer would be exempted from taking care of the condition of the workers in an establishment where the number of workers is less than 100.

The very first ILO convention of 1990, fixed the maximum working time for workers in an industry as 8 hours per day and 48 hours per week. However, the Convention clearly defines certain exceptions to this rule. India falls under the exceptions where the maximum working time in the industry has been fixed at 60 hours per week to a maximum i.e.,9 hours per day. On the contrary, the Gujarat Government has increased the work hour shift from 9 hours shift to 12 hours shift per day which means 72 hours per week. This is a violation of the ILO Convention to which India is a signatory for more than 100 years. The other States such as Rajasthan, Haryana, Punjab etc have passed similar ordinances for suspending the labour laws to reduce the protection of labour rights to induce the employers to carry out their business operations and attract more business/ investment to their States.

IMPACT OF SUSPENSION OF LABOUR LAWS

The condition of labours and workers have already deteriorated and when the labour laws are suspended it leaves a greater gap for exploitation. Laws are meant to protect the weak and poor but when such anti-labour ordinances are issued to suspend the labour laws, it reduces the protection provided for labour rights. It will neither help the employer nor the workers. “If the labour rights and dispute resolution channels are compromised, how can workers and employers

⁸ Somesh Jha, 'UP Govt Withdraws Order Increasing Daily Working Hours To 12 From 8' (*The Wire*, 2020) < <https://thewire.in/government/up-govt-withdraws-order-increasing-daily-working-hours-to-12-from-8> > accessed 8 December 2021.

⁹ The Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961(Act 26 of 1961).

imagine a resolution of an industrial dispute? On one hand, labour rights are at risk and on the other hand, employer dissatisfaction may not be effectively addressed as all these routes may probably be shut with the suspension. So, this will not only affect labour productivity and economic efficiency, but it will also lead to undesirable practices in the labour market which will have adverse consequences. It is simple logic that a content workforce will be more productive.”

India’s Labour legislation can be followed back to the foundation of ILO, which had been the year 1919. ILO is an assembly where the public authority, labourers and employers meet up from various nations, to promote social justice, human and labour rights. During that time, trade unions started growing throughout the country thus, it led to the formation of the Indian Trade Union Congress in the year 1920. This period also saw the emergence of two of the modern labour legislation which is still being followed in India: The Trade Union Act of 1926 and The Trade Dispute Act of 1929¹⁰. The Trade Union Act gave legal status to trade unions and offered protection to them against criminal liability. The Trade Dispute Act, 1929 governs the relationship between an employer and their workmen. It also put forward the right to strike as a Fundamental Right. However, after the ordinances are passed by the State Government both the legislations are suspended.

Another labour legislation, the Factories Act, 1948¹¹ aims to regulate the functioning conditions in factories. It incorporates working hours of not more than 48 hours a week with a weekly holiday, the safety of the workmen and other labour welfare provisions. Suspension of this Act will not only empower the employers to increase the functioning hours cruelly as long as 12 hours every day. This measure will not only take a toll on the employees but also reduce their resting time, which will ultimately affect the health of the working community. Suspension of the Equal Remuneration Act, 1976¹² which aims that no discrimination happens among people as far as the work being done or equivalent compensation for equivalent work, will now enable the employers to pay fewer wages to women workers.

Doing away with these Acts, even for a temporary period will not only reverse the wheel for the working class who have fought for these rights after a revolutionary struggle that will compromise their welfare, health, and safety.

EMPLOYER’S PERSPECTIVE

Survival is equivalent to growth. During this unfortunate time where the Pandemic has taken the

¹⁰ The Trade Dispute Act of 1929 (17 and 18 Geo V c 22).

¹¹ The Factories Act, 1948 (Act 63 of 1948).

¹² The Equal Remuneration Act, 1976 (Act 25 of 1976).

lives of more than 3.5 lakh people⁶ in India and the lockdown imposed by the Government as mitigation measures, it is evident that the economy of the country is in a tailspin. The businesses and industries are going downhill, and their survival is looking difficult. Employers today require a break to prepare their minds to return to the economic exercises and their survival is necessary because if there are no employers then there will be no employees. The performance and adherence by the formal or organised sector have significantly improved over the years and if the workforce is more organised then the labour rights can be protected to a greater extent. Sadly, the formal sector forms only 8% of the entire labour force. The attempt to exploit the labour has gone down but it is hard to say the same for the unorganised sector. Finally, an employer can either exploit the labourers or prosper their businesses. Though it must not be completely neglected that measures are required towards the revival of business activities so that employers can get back to their occupations and make more positions. It is a mutually advantageous arrangement for everybody.

Ultimately, reasonable employers do not want to do away with labour rights. They are as important as the fundamental right provided to every citizen of the country by the Constitution. However, a solitary labour code, which is straightforward to decipher and consent to by the employers is the need of the hour.

VIOLATION OF ILO CONVENTION

India, even after being one of the founding members of the ILO conventions now with this anti-labour ordinance, has not acted following the commitment. This will affect India as it will take a big step backwards from the development of the labour standards which has already deteriorated. With the ILO interfering in the matter many experts from the ILO have suggested in a joint statement that these suspensions of labour laws are a gross violation of the Right to Freedom of Association (ILO Convention 87), Right to Collective Bargaining (ILO Convention 98) and the C144 - Tripartite Consultation (International Labour Standards) Convention, 1976 which ultimately aims towards bringing together governments, employers, and employees. The ILO Director-General has also appealed to the Indian Prime Minister regarding the amendments by the States and expressed his concern to ask the State Governments to withdraw the same. This move of the Director-General came in because of the complaints lodged by various trade unions regarding the violation of their rights by the State Government.

VALIDITY OF THE SUSPENSION OF LABOUR LAWS AS PER CONSTITUTION

Apart from the Violation of the International framework of labour laws, the Ordinance passed by the several Indian States to suspend labour laws is violating the Fundamental Rights of the workers and exposing them to sheer abuse as far as their wellbeing, security, working hours, compensation etc. During these circumstances where more than half of the Indian population is grieving, the need of the hour is not to make the situation worse but a little compassion from the Government of India. The ordinance passed by the State is violative of the principal privileges of the workers/labourers under Articles 14, 15,19, 21 and 23 of the Constitution of India. It is unjust, illegal, arbitrary and in violation of the Central Legislation.

While considering the delegation of power as far as the topic of labour has adhered, certain powers have been delegated to the state governments. However, the states cannot go on making exemptions on their own. Considering the extraordinary situation of covid the ordinance passed by the state government can be considered to have a similar impact as a law passed by the governing body. However, according to Article 254(2), any bill which is a subject matter of concurrent list needs Presidential assent after being cleared by the Centre.

The States have suspended the Factories Act 1948, Trade Union Act 1926, The Industrial Dispute Act 1947, and various other Acts which ensure that workers are not exploited. It also ensures an adequate mechanism for resolving the disputes influencing the freedoms of the labourers. With the suspension of Labour Laws, it is more like abandoning the workers at the mercy of the employers.

By suspending the laws concerned with the welfare, wellbeing and security of the workers and increasing the working hours may lead to forced labour which violates Article 23 and Article 21 concerning Article 39(e), 42 and 43. Article 39(e) says that the strength of the workers isn't manhandled, and residents are not constrained by the economic need to enter diversions inadmissible to their age or strength.

“Article 42 requires the State to make provision for securing just and humane conditions of work and maternity relief. Article 43 requires the State to secure a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities.¹³ The suspension is in clear violation of the above-mentioned Articles.”

¹³ Somesh Jha, 'UP Govt Withdraws Order Increasing Daily Working Hours To 12 From 8' (*The Wire*, 2020) < <https://thewire.in/government/up-govt-withdraws-order-increasing-daily-working-hours-to-12-from-8> > accessed 8 December 2021.

“The Industrial Dispute Act, 1947 is suspended by invoking powers under Section 36B¹⁴. This is ultra-vires as this Section does not permit the State Government to exempt any industrial establishment or undertaking from the provisions of the Act unless there is an adequate mechanism for investigation and settlement of disputes.” This Section does not give the power to the State to suspend the entire Act.

Section 5 of the Factories Act, 1948 says that the State Government are enabled to exclude any industrial facility or class of manufacturing plants from any or every one of the provisions of the Factories Act for a period not surpassing 3 months all at once just in the event of public emergency. The “public emergency” as defined by this Section means “a grave emergency whereby the security of India or any part of the territory thereof, is threatened, whether by war or external aggression or internal disturbance”. The pandemic isn't viewed as a public crisis. So, the State Government does not have any competence to issue notification for the suspension of the Factories Act under the pretext of the pandemic. Such actions are illegal and arbitrary.

With the Code of wages being suspended and the Payment of Wages being revoked, it leaves no legal obligations on the employers to give timely wages to the workers. This is leaving a huge gap for exploiting the worker and undermining their Fundamental Rights.

CONCLUSION

The second wave of COVID-19 was more catastrophic than the first wave. Many people have either died or have lost their loved ones. Coronavirus is responsible for taking the lives of millions. Right now, the move of the Indian Government is to work for the government assistance of individuals and not against it. The ordinance passed by the State Government is not only anti-labour but during this harsh time, it is a barbarous move. Already the condition of the Indian labour market has deteriorated where even after having the statutory Acts and labour legislation, the same is not being implemented to that extent, especially in the informal sector.

The suspension of labour laws by the State Government is Unconstitutional. To date, it has not even received Presidential assent and apart from that, it violates various Fundamental Rights. It is also in violation of the ILO convention to which India is a signatory. The dilution of the labour laws will not only lead to the exploitation of workers, but it will eventually affect the entire economy. How can we imagine a smooth employer and employee relationship where forced labour is encouraged, where all dispute resolution channels are shut, where the workers have no right to stand up for their rights, where the laws which are made for their empowerment are

¹⁴ The Industrial Dispute Act, 1947 (Act 14 of 1947).

suspended? Ultimately, what is the point of having labours laws in the first place when the Indian Government is taking the drastic step to suspend them? What is the point of having those revolutionary struggles which led to the existence of trade unions and the enactment of the Trade Union Act, 1926 when the Government with one stroke is taking the step to suspend the Act for 3 years without even realising the adverse consequences it may have on the people and the economy?

The Government has taken this drastic measure to suspend the labour laws to attract business from China without even realising that China flourishes with dictatorship on the labour market with a tad of social security which is not the same scenario in India.¹⁵ This might not be a successful move by India to boost its economy. It is absurd to link economic growth with the suspension of labour laws. Further, there is no or little evidence that it is benefiting the economy.

¹⁵ Ivan Franceschini and Nicholas Loubere, 'Gilded Age' [2017] PL 72-111.