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COVID 19 & Labour Laws: An Analysis

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ABSTRACT

The plight of millions of workers remained unaddressed when the governments tilted their heads to infuse growth into economy during the unprecedented crisis of COVID-19. This growth rendered injustice to many workers in both organised and unorganised sector. This article provides an analytical approach as to how labour laws were suspended during this crisis and how it effected the legal remedy available to the workers. The issues faced by migrant workers is also an articulated topic, but this article restricts itself to labourers and workers, not addressing the issues faced by migrant workers in detail. The labour welfare legislations were enacted with a view to secure socio-economic justice as envisaged under the Constitution of India. However, this crisis has wired the democracy and shaken up the spirit of the labourers and workers. The particulars of how bureaucrats snatched away the rights given to labourers at the cost of fulfilling the socialist objective, has left answers unattended that whether the sacrifice of one of the most important element of basic structure doctrine was worthy of such sacrifice. Millions were rendered homeless and jobless. The inhumane conditions in which these workers were living, deteriorated after the crisis. Instead of securing the plight of these workers, the states focused on declining GDP and economic growth. The activities were carried under legal right of “ordinance” which is used at the satisfaction of the governor in case of emergency. The outcome was legal to and extend, but was it just, is the question which took away haze of many activists.

I. INTRODUCTION

COVID-19 [*hereinafter referred as “the crisis”*], declared as global pandemic² has proved to be unprecedented crisis, that the world would not have called for. The consequence of such crisis is destructive and unavoidable, which affects not only the health of population concerned, but also the economy of the country. The economic repercussions are concluded as an effect because the employment and labour regulations have seen lot of anomalies among them, in response to both, organised and unorganized sector.

The International Labour Organisation [*hereinafter referred as ILO*], whose mandate is to

¹ Author is a student at AURO Univeristy, India.

² *Coronavirus: Is COVID-19 turning into an endemic in India? What does it mean?* TIMES OF INDIA (Sep 25, 2021, 05:51) [<https://timesofindia.indiatimes.com/life-style/health-fitness/health-news/coronavirus-is-covid-19-turning-into-an-endemic-in-india-what-does-it-mean/photostory/85678874.cms>].

provide social justice by adopting human centred approach to provide jobs to workers, stated that the crisis is equally affecting the economic and labour market. During its first monitoring session, it estimated unemployment rise between 5.3 million ('low' scenario) and 24.7 million ('high' scenario).³ During its simultaneous 5th session of monitoring, which was after lockdown was eased, working hour loss was calculated between 140 million full-time jobs and 340 million full-time job⁴. All these figures show us the gravity of this crisis disrupting the labour market and employment rate globally, as well in India.

Instances in India, which can trace this disruption is the fact that more than 90% of Indian workers engaged in precarious work lack adequate social security by all means.⁵ Immediate aftermath of complete lockdown by central government, via authority under Disaster Management Act 2005 (DMA)⁶, was migrant workers mass exodus from urban areas to their home town.

Surveys have shown that, 89% of more than 3000 construction workers lost livelihood during the crisis.⁷ Other such survey of stranded worker shows 50% of them having less than day's food grain and 89% of them not receiving wages to 3rd week of lockdown.⁸ The result of this crisis, which no one could have imagine is that, workers were forced into bonded debts.⁹ All these conditions and consequences, point out to umbrella step to be taken by legislature, that labour laws needs to be amended to accommodate the result hit by the crisis. This article focuses on how state governments have respectively armoured their states against the consequence of labour market crisis and how this policy change has changed the dynamics of constitutionality. However, this article does not include within its ambit the migrant workers and their plights.

³ International Labour Organisation, *COVID-19 and the world of work: Impact and policy responses*, 1st edn., (2020) [https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/briefingnote/wcms_738753.pdf].

⁴ International Labour Organisation, *COVID-19 and the world of work*, 5th edition, (2020) [https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/briefingnote/wcms_749399.pdf].

⁵ Amanat Khullar, *Remote work is not an option in India's huge informal economy*, QUARTZ INDIA, (17 March 2020), [<https://qz.com/india/1819957/coronavirus-prevention-measures-dont-reach-indias-huge-informal-economy/>].

⁶ Disaster Management Act, 2005, No. 53, Acts of Parliament, 2005 (India).

⁷ *42% of labourers don't have even a day's worth rations left: Survey*, THE HINDU, (6 April 2020, 20:36) [<https://www.thehindu.com/news/national/42-of-labourers-dont-have-even-a-days-worth-rations-left-survey/article31273252.ece>].

⁸ Rajendran Narayanan, *What Migrant Workers Are Revealing In SOS Calls To Us*, NDTV, (12 April 2020, 7:57 PM) [<https://www.ndtv.com/opinion/what-migrant-workers-are-revealing-in-sos-calls-to-us-2209556>].

⁹ Shivam Vij, *More than 300 Indians have died of the coronavirus, and nearly 200 of the lockdown*, THE PRINT (13 April 2020, 3:38 PM) [<https://theprint.in/opinion/more-than-300-indians-have-died-of-the-coronavirus-and-nearly-200-of-the-lockdown/400714/>].

II. ANALYSIS OF CENTRE'S APPROACH WITH REGARDS TO EXISTING LABOUR LAWS

Labour is mentioned in List III of constitution¹⁰ which means that both centre and state can make laws regulating the same.¹¹

Ministry of labour and employment, soon after lockdown was declared, issued a direction to the extent that jobs of workers and employees were secured. The guideline¹² stated that no establishment shall terminate its employee including workers contractual or casual; employees would be deemed to be on duty even if establishment is non-operational and will receive wages without any deduction during the closure. However, the practicality of the situation as flourished in news is that, since lockdown caused employers ability to pay the wages¹³, workers, especially the contract workers were not paid¹⁴ even after the ordinance.

The Industrial Dispute Act¹⁵ [*hereinafter referred as IDA*] defines the term “lay-off” and “lockout”. The treatment of employees in both these cases are different as specified in the provisions. However, one thing similar in both these cases is that employers have right to terminate the services of their employee for a specific period or exempt from any liability arose out of failure to employ workers in case of natural calamity. The government, snatched away the right to lock-out of the employer by giving an order, thereby making such lockout illegal via section 24(ii). With regards to lay-off, employer is only liable to compensate the worker 50% of their basic wages, however the order provided by the government said that wages are to be provided without any deductions. The order is thereby affecting the rights of employers placed in them by the IDA.

Central government directed states to transfer cash, out of Welfare Fund set-up by the Building and Other Construction Workers Act, 1996 (BOCWA) to construction workers.¹⁶ The problem here was, survey rendered that 94% of such construction workers are not registered under the

¹⁰ INDIAN CONST.

¹¹ INDIAN CONST, Concurrent List, 7th Schedule Entry No. 22; 24; 36.

¹² Ministry of Labour and Employment, *DO No. M-11011/08/2020-Media*, (20 March 2020).

¹³ Harsha Raj Gatty, *B'luru lockdown: Garment workers face uncertainty, factory owners unwilling to pay wages*, CITIZEN MATTERS (3 April 2020, 7:39 PM) [<https://bengaluru.citizenmatters.in/bengaluru-garment-factory-workers-wages-coronavirus-lockdown-union-gatwu-43925>].

¹⁴ Vijayta Lalwani, *We are trapped': Hunger is on the rise in Haryana's industrial belt*, SCROLL.IN (12 April 2020, 9:00 AM) [<https://scroll.in/article/958838/we-are-trapped-hunger-is-on-the-rise-in-haryanas-industrial-belt>]; Niharika Sharma, *Coronavirus crisis triggers layoffs, pay cuts, and hiring freeze across Indian industries*, QUARTZ INDIA (17 April 2020) [<https://qz.com/india/1837566/coronavirus-triggers-layoffs-across-indian-it-startup-aviation/>, accessed 19 April, 2020].

¹⁵ Industrial Dispute Act, 1947, § 24, cl 2, No. 14, Acts of Parliament, 1947 (India).

¹⁶ Ministry of Labour and Employment, *Labour Ministry Issues Advisory to all States/UTs to use Cess fund for Welfare of Construction Workers*, PIB DELHI (24 March 2020, 3: 32 PM) [<https://pib.gov.in/PressReleasePage.aspx?PRID=1607911>].

Unorganised Workers Social Security Act 2008¹⁷. Only 6% of the informal workers are registered¹⁸, who are the only beneficiaries to the above cash from welfare board.

III. STATE'S SUSPENSION OF LABOUR LAWS: INJUSTICE TO WORKERS

As stated earlier, since making laws on labour, is a matter of right, vested in both, centre and state, states have suspended labour laws in their respective jurisdiction, to boost the production post first lockdown phase. States like Gujarat, Uttar Pradesh, Kerala, Madhya Pradesh, Punjab, Himachal Pradesh, Uttarakhand, Goa, and Assam have come up with relaxation of labour laws.

State of UP, through its ordinance¹⁹ exempted factories and manufacturing establishments from all labour laws except Employee Compensation Act, 1923²⁰; Bonded labour prohibition Act, 1976²¹; Child labour prohibition Act, 1986²². All conditions in every other act need not necessarily be followed for a period of 3 years. The ordinance also increased the working hours and maximum daily hours from 48 hours a week to 72 hours a week and 9 hours to 12 hours respectively. State of MP passed an ordinance²³ exempting factories from various provisions of IDA, on industrial dispute resolution, welfare facilities and working conditions for periods. They allowed overtime of 72 hours and maximum daily work to 12 hours. Other states have promulgated similar ordinance favouring the establishments and industries and taking away the rights rested in workers. Rajasthan increased number to workers to be retrenched to 300.

(A) Constitutionality of the Ordinance

Ordinance making power, as provided under article 213²⁴ of constitution, should be used judiciously and only when governor is satisfied that immediate action is required²⁵. The ordinance also violates DPSP since certain articles talk about welfare of labourers and worker. However, under garb of increase in production, the states have coloured the principles laid down by apex court.²⁶ The provision in IDA and other labour legislations concerning safety measures, minimum wages, health and sanitation, were provided to restore fundamental right

¹⁷ Seema Chishti, *Survey shows 42% have no ration left for the day, let alone duration of lockdown in India* THE INDIAN EXPRESS (6 April 2020, 6:38 PM) [<https://indianexpress.com/article/coronavirus/survey-shows-42-have-no-ration-left-for-the-day-covid-19-india-updates-6335558/>].

¹⁸ Kathyayini Chamaraj, *Will the SS Code ensure universal social security?* INDIA TOGETHER (9 September 2019) [<http://www.indiatogether.org/universal-ss-human-rights>].

¹⁹ Uttar Pradesh Temporary Exemption from Certain Labour Laws Ordinance, 2020 (May 6, 2020).

²⁰ Employee Compensation Act, 1923, No. 8, Acts of Parliament, 1923 (India).

²¹ Bonded labour prohibition Act, 1976, No. 19, Acts of Parliament, 1976 (India).

²² Child labour prohibition Act, 1986, No. 61, Acts of Parliament, 1986 (India).

²³ Madhya Pradesh Labour Laws (Amendment) Ordinance, 2020.

²⁴ INDIAN CONST, art.213.

²⁵ Krishna Kumar Singh v. State of Bihar, 2017 (2) SCJ 136.

²⁶ Aman Kumar Yadav, *The Conundrum Surrounding the Labour Laws in Uttar Pradesh*, 2, HNLU SBJ (2020).

under Article 21²⁷ in workers. The ordinance, not only takes away this right, thereby infringing the fundamental right but also hampers socio-economic justice to be provided to labours in form of increased exploitation. One of the ordinances also exempts provisions of Equal remuneration Act²⁸ to be followed which will result into discrimination for equal pay thereby violating Article 14²⁹ of the constitution. One needs to understand that judiciary has always leaned on beneficial construction while taking up issues such as bonded labour³⁰, contract labours³¹, collective bargaining and other similar labour rights. Hence, it will be only correct to say that judiciary is against the ordinance so issued by the states.

(B) Key Issues to Consider

The primary reason to induce such change, as stated by states, were promotion of economy and attract investment. The issue, as soon as factories started functioning post crisis, was that workers were short in number. The states thereby increased working hours for existing workers to compensate the production growth. Some states used sections 5 and 65 of Factories Act³² to effect such change, wherein they have power to exempt any establishment from the provisions of the act. But the issue to consider here is that India is a signatory to Hours of Work (Industry) Convention, 1919 that clearly specifies the maximum working hours to not go above the maximum limit of 9 hours a day and 48 hours a week.³³

Section 51 and 54 of the Factories Act³⁴, provides that, in case of overtime from more than 9 hours/day and 48 hours/week, the wages need to be doubled than the ordinary wage rate. The notification however states that, wages need to be paid proportionately for the amount of overtime worked, which is in clear violation of the Act.

In specific events of state of Madhya Pradesh, the notification has exempted new factories from all the provision of IDA except few. This exemption takes away the right of collective bargaining in the hands of workers. ILO has also recognised right to collective bargaining as fundamental right under 998 Declaration on Fundamental Principles and Rights at Work³⁵. It also exempts from provisions of Factories Act including sanitation, water facility and dangerous operations. This is clearly in violation of what was said by apex court that right to

²⁷ INDIAN CONST, art.21.

²⁸ The Equal Remuneration Act, 1976, No. 25, Acts of Parliament, 1976 (India).

²⁹ INDIAN CONST, art. 14.

³⁰ *Bandhua Mukti Morcha v. Union of India* AIR 1984 SC 802.

³¹ *People's Union for Democratic Rights v. Union of India* AIR 1982 SC 1473.

³² Factories Act, 1948, §§ 5 & 65, No. 63, Acts of Parliament, 1948 (India).

³³ International Labour Organisation, Hours of Work (Industry) Convention, 1919.

³⁴ Factories Act, 1948, §§ 51 & 54, No. 63, Acts of Parliament, 1948 (India).

³⁵ International Labour Organisation, *ILO Declaration on Fundamental Principles and Rights at Work*, (June 1998)

health and medical care is right enriched under Article 21.³⁶

The rationale of investment, for such exemption can be debated on the fact that labour regulation is only one of the reasons for inadequate growth opportunities.³⁷ Other factors such as lack of infrastructure, transport facility, flow of credits etc also pave the way to failure.³⁸

IV. EFFECT OF SUCH POLICY CHANGE

The legal challenges faced by the states were that ordinance of UP was challenged in HC³⁹, which resulted into notification being revoked.

Different acts had different objective to fulfil after its enactment. Suspension of all these acts will render some of the objectives unfulfilled effecting changes respectively. Suspending provisions of Trade Union Act⁴⁰, will take away the right of worker to form union or demand collectively. Since collective bargain was essential to hear the voices of workers⁴¹, with the suspension, it is now gone. The most important labour legislation, i.e., the IDA, governs termination of employees and their employment conditions. Suspension of this act has place employer at an advantage to hire or fire the worker at their own whims and fancies.

It is imperative to note the duality of the ordinance, wherein on one hand states have ordered to abide by bonded labour act but exempted minimum wages act to be followed on other. This will result in wages which is not just and leaving workers with no remedy of court of law.⁴²

V. CONCLUSION

It was long before in 2002 that that the Second National Commission pointed out the need of consolidated labour law to ensure uniformity.⁴³ Infact, the parliament has overhaul pending of such consolidated legislations namely Industrial Relations Code, the Code on Wages, the Code on Social Security and the Occupational Safety, Health and Working Conditions Code. If the parliament was vigilant enough to enact these statues, the concerns post COVID would have cause less injustice to the workers due to clarity and uniformity at all levels. We can conclude that this approach of providing benefits out of labour welfare failed to protect needs of vast sections of the labour force.⁴⁴

³⁶ Consumer Education and Research Centre vs Union of India, 1995 SCC (3) 42.

³⁷ Ministry of Finance, *Economic Survey 2018-19*, 1 Ministry of Finance (July 2019)

³⁸ Ministry of Labour and Employment, *Report of the Second National Commission on Labour (2002)*

³⁹ U.P. Worker Front v. Union of India, 2020 SCC OnLine All 804.

⁴⁰ The Trade Union Act, 1947, No. 81, Acts of Parliament, 1947 (India).

⁴¹ Mridula Mishra and Pallavi Shankar, *Reworking Labour Laws Amid COVID-19 Crisis - A Need or A Reckless Strategy?* 9 CNLU LJ [2020].

⁴² Aman Kumar Yadav, *The Conundrum Surrounding the Labour Laws in Uttar Pradesh*, 2 HNLU SBJ (2020).

⁴³ Ministry of Labour and Employment, *Report of the Second National Commission on Labour (2002)*.

⁴⁴ Saurabh Bhattacharjee, *Covid-19 and Labour Law. A Global Review Section: National Reports*, 13, ITALIAN LABOUR LAW E-JOURNAL (2020).

We know that nation-wide lockdown forced centre and steps to take the measures, however we fail to address whether these steps were necessity or mere gamble. Once, Canadian activist Naomi Klein in her work on “shock doctrine” mentioned that in times of crisis, the government take steps and effect policy changes which they would not in a democratic setup.⁴⁵

⁴⁵ Naomi Klein, *How Big tech plans to profit from coronavirus pandemic*, THE GUARDIAN (May 13, 2020) [<https://www.theguardian.com/news/2020/may/13/naomi-klein-how-big-tech-plans-to-profit-from-coronavirus-pandemic>].