

A Critical Analysis of the Impact of COVID-19 Pandemic on Labour Legislations in India

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Legislative Review

Abstract

The situation of the COVID-19 pandemic affected every sector of the Indian economy. The working class which is a soul of the economy is badly affected and many migrant workers died in various accidents while returning to their hometown. Many State governments have acted wisely in time to take them back and started transportation. However, meanwhile State of Uttar Pradesh and State of Madhya Pradesh mainly these two States started amending labour laws and thereafter followed by the Rajasthan, Punjab, Gujarat, Goa, Assam, Haryana, Himachal Pradesh has suspended major labour laws by an ordinance 2020 for the revival of economy and smooth functioning of industries, except for three legislation i.e. the Bonded Labour Act, certain sections of the Workmen Compensation Act, Women and Children Welfare Act and Building and Construction Workers Act, for three years. Although labour is subject of the concurrent list of the Seventh Schedule of the Constitution of India, the legislation, which they suspended is central and therefore seeking approval from the central government is indispensable. The Union Government has yet to respond to it and also the matter is pending before the Supreme Court of India as constitutional validity was challenged by some public-spirited persons and Some of the States withdrawn their amendments. However, this decision has been highly criticized by the various trade unions and debate is going on. Therefore, in this paper, author attempted to analyze the role of the welfare State and validity of the ordinance from the constitutional perspective. The methodology used for analyses of this paper is purely doctrinal based on both primary and secondary data.

Key Words: *Labour Laws, Constitutional Law, Social Security, COVID-19, Pandemic*

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1. Introduction

India is the largest democracy in the world. It is worth mentioning that India is one of the founding members of the International Labour Organization. After the establishment of ILO, many democratic countries enacted labour laws and India was one of them. Since 1919 India has enacted 43 Central legislations and around 150 State legislations. These legislations either made for the international obligations for the welfare of workers or implementation of directive principles of the state policy. Post-independence on 15th August 1947 and after the enforcement of the constitution of India from 26th Jan 1950 India becomes a welfare State. Therefore, large number of labour legislation enacted to give effect to the concept of the welfare state and for social security. The good health of workers and better conditions of works was one of those objectives of labour laws. But, in fact, even after 60 years of the “Constitution of India”, labour laws have a problem in implementations and the conditions of labour class are very pathetic. In India, poor becoming poorer, rich becoming richer due to poor implementation of labour laws and bad economic policies of the government. Despite this pathetic situation and entry of COVID-19 which affected working class drastically that some of the states discussed above suspended major labour legislations in the name of economy. The amendments done by these states whether good or bad for the economy that time will decide but can the state amends central legislations drastically that is the issue for the discussion. Therefore, some public spirited persons like Nandini Praveen law students from Kerala with the help of lawyers filed the “Public Interest Litigation” before the “Supreme Court of India” challenging these state amendments as unconstitutional.³ There are others who also filed a petition before the Supreme Court are by one Pankaj Kumar Yadav through Advocate Nirmal Kumar Ambastha for quashing these notifications issued by the States.⁴ Even some of the states have withdrawn their amendments after protest from the Trade Unions. But this incident questions the role of the State that in COVID-19 pandemic, the State Government has taken such a harsh decision against labour class and therefore to understand the importance of labour laws it is important to know about labour laws.

3 Krishnadas Rajagopala, “Plea in Supreme Court challenges changes in labour laws” *The Hindu*, May 19, 2020, available at: <https://www.thehindu.com/news/national/plea-in-supreme-court-challenges-changes-in-labour-laws/article31622334.ece> (Last visited on Jul. 14, 2020).

4 Battle against dilution of labour laws to culminate in Supreme Court?” May 21, 2020, available at: <https://sabrangindia.in/article/battle-against-dilution-labour-laws-culminate-supreme-court> (Last visited on Sept. 16, 2020).

2. Glimpse of Some Labour Legislation in India

There are various labour legislations and out of which most of the labour legislation which comes into existence after a long fight with the British government and some of them after republic India. All these labour legislations have its own importance and historical backgrounds for the enactments. The following discussion gives glimpse of some labour legislation in India.

The Employees Compensation Act, 1923, under Section 3, which fixes the liability of the employer for payment of compensation in case any injury arises out of employment or in the course of employment. And the compensation paid is in the case of death, total and partial disablement. It is also required that the employer to maintain a register of injury and matters related to it.⁵ Another very important legislation is the Trade Union Act 1926, which came into the picture after a long battle of B.P. Wadia and his associates in Madras. It gives immunity from criminal conspiracy and civil and tortious liability of trade unions. The beauty of this legislation is to give rights to trade union workers to fight against injustice and to form union and registration thereof.⁶ The Factories Act, 1948 come into effect to protect the working conditions of workers, earlier there was the Factories Act, 1934.⁷ It provides hygiene, health care, medical facilities welfare of workers. The important provisions of drinking water, cleanliness, lighting ventilation, urinals,, disposal of waste, canteens, crèches, restrooms, wages during the leave period and working hours, Dr.B.R. Ambedkar enacted many labourer regulations when he was appointed as Labour Member of the Viceroy's Council since 20th July 1942.⁸ He also came up with the rule of 8 hours of work in the 7th session of the Indian Labour Conference in 1945 when he was chairman of labour conference.⁹ And later on, he became law minister during the 15th August 1947 to September 1952. During his tenure around 80 laws enacted and many amendments brought in during his tenure for the welfare of

⁵ The Employees Compensation Act, 1923 (Act 8 of 1923).

⁶ The Trade Union Act 1926, (Act 16 of 1926).

⁷ The Factories Act, 1948 (Act 63 of 1948).

⁸ TWJ Desk, "In India, May Day Celebrations Remember Dr. B. R. Ambedkar for his Working Class Reforms" *The Woke Journal* May 01, 2018, available at: <https://wokejournal.com/2018/05/01/in-india-may-day-cebrations-remember-dr-b-r-ambedkar-for-his-working-class-reforms/>. Last visited on Sept 10, 2020).

⁹ Dr. Ambedkar as the Member of Ex.Gov. Gen.Council QA, available at: <http://www.ambedkar.org/ambcd/44E4>. Dr. Ambedkar As The Member of Ex.Gov.Gen.Council QA.htm.(Last visited Jul. 14, 2020).

workers.¹⁰ The labourers were determined to win a war against the Nazis for liberty, equality, and fraternity.¹¹

The Payment of Bonus Act, 1965 for the bonus as a reward for their past services and their contribution to productive activities. It provides a minimum and maximum bonus for employees who have worked for the employer and bonus is not a gratuitous payment but the employer should provide a bonus.¹² The Payment of Gratuity Act, 1972, it is for continuous service of 5 years rendered by the employee to the establishment covered under the act. Now limit is up to Rs.20 lakhs by the Payment of Gratuity (Amendment) Act, 2018.¹³ Those who come under this category will get gratuity after the termination of service by death, retirement, or resignation. The Contract Labour (Regulation and Abolition) Act, 1970, which regulates the contract between employer and employee and fixes the liability of an employer for breach of contract and vice-versa., and it, provides registration and license to contractors.¹⁴ The employment of Contract Labour in certain establishments and provides for its abolition in certain circumstances The Beedi and Cigar Workers (Conditions Of Employment) Act, 1966 was enacted with objective for welfare of the bidi workers who rolls bidi at their respective houses and some of them in the factory. It overlooked the conditions of their work and provides provisions for the welfare of workers in “beedi and cigar establishments”.¹⁵ The Industrial Dispute Act, 1947 which is the only legislation that regulates the relationship between the employer and employees. It gives various mechanisms for the settlement of industrial disputes between employers and employees. It also regulates the right to strike and lockout to the persons concerned.¹⁶ But if this legislation will not work then there will be the complete lawless mechanism for labour class and the policy of hire and fire will come and there will be no negotiation and conciliation between employer and employees without any compensation. The policy of first coming last go and last come go will be of no use which Supreme Court has given after long discussion in various cases. The Minimum Wages Act of 1948 is an act which provides the fixing of minimum rates of wages in certain employments where it is convenient

¹⁰ Full Text of “Dr. Babasaheb Ambedkar Writings and Speeches [pdfs] Volume 10, available at: https://archive.org/stream/Dr.BabasahebAmbedkarWritingsAndSpeechespdfsAllVolumes/Volume_10_djvu.txt (Last visited Jul. 14, 2020).

¹¹ *Id.* at. 36-37.

¹² The Payment of Bonus Act, 1965 (Act 21 of 1965).

¹³ The Payment of Gratuity Act, 1972 (Act 39 of 1972)

¹⁴ The Contract Labour (Regulation and Abolition) Act, 1970 (Act 37 of 1970).

¹⁵ Beedi And Cigar Workers (Conditions of Employment) Act, 1966 (Act 37 of 1966).

¹⁶ The Industrial Dispute Act, 1947 (Act 14 of 1947).

to do so in certain employments.¹⁷ The Payment of Wages Act, 1936 is an act which provides for the payment of wages to certain classes of employed people.¹⁸ It is for timely payment of wages and delay in payment of wages will be fined and punishable under the act. The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 is an act with various schemes for employees like a pension scheme, deposited link insurance scheme, provident scheme.¹⁹ The Employees State Insurance Act, 1948 was enacted to provide some advantages to workers in difficulties of their life like employment injury, maternity, sickness.²⁰

The Unorganized Workers' Social Security Act, 2008 was enacted for the unorganized worker because in India more than 90% labor force is working in unorganized sector.²¹ The Cine-Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981 was enacted to regulate wages of workers in film industry.²² The Building and Construction Worker Act, 1996 was enacted to provide wages and good working conditions and wages on time. The Working Journalists (Fixation of Rates of Wages) Act, 1958 was enacted for the fixation of rates of wages of working journalist and other matters related to the journalist.²³

3. The State Governments premise on suspension of labour legislations

According to the Ministry of labour, Uttar Pradesh Government said the Covid-19 pandemic had brought economic and industrial activity to a standstill. "To bring economic activities back on track, new industrial investment opportunities will have to be created," he said.

It was the contention of the UP government that to bring the economy certain steps are required and therefore this step has been taken that by suspending 35 labor laws out of 38 which are regulating labour sector.²⁴ As per the U.P Government spokesperson, "the economic activities

¹⁷ The Minimum Wages Act, 1948 (Act 11 of 1948).

¹⁸ The Payment of Wages Act, 1936 (Act 4 of 1936).

¹⁹ The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (Act 19 of 1952).

²⁰ The Employees' State Insurance Act, 1948 (Act 34 of 1948).

²¹ The Unorganised Workers' Social Security Act, 2008 (Act 33 of 2008).

²² The Cine- Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981 (Act 50 of 1981).

²³ The Working Journalists (Fixation of Rates of Wages) Act, 1958 (Act 29 of 1958).

²⁴ Prashant Srivastava, "Key labour laws scrapped in UP for 3 yrs as Yogi govt brings major reform to restart economy" *The Print* May 8, 2020, available at: <https://theprint.in/economy/key-labour-laws-scrapped-in-up-for-3-yrs-as-yogi-govt-brings-major-reform-to-restart-economy/416925/> (Last visited on May 12, 2020).

has been severely affected and slowed down due to the outbreak of Covid-19 since businesses and economic activities came to a screeching halt due to the national lockdown.”²⁵

There was notification of UP government for diluting the Factories Act 1948 to increase timings by providing certain exemptions to factories. The said notification regarding working hours was withdrawn by the UP government but the “Uttar Pradesh Temporary Exemption from Certain Labour Laws Ordinance, 2020”²⁶ which exempts all the factories and establishments from the purview of all labour laws except the Building and Construction Workers Act, Bonded Labour Act, Women and Children Welfare Act and a few provisions of the Workmen Compensation Act. It was approved by Cabinet and the notification is different from the Ordinance which is suspending 30 labour laws including state and central laws. It was for 1,000 days (three years) and the laws of most of the laws were put on hold which is very harmful for the employees.

The labour law is matter of both the union and state government and concurrent list and has power to amend laws. Therefore, the crucial point is to discuss that the withdrawal of said notification is nothing but a farce since similar provisions are there in ordinance with is pending before the President of India for approval.²⁷ The Minimum Wages Act, Trade Unions Act, Industrial Employment (Standing Orders) Act, Equal Remuneration Act, Contract Labour Act, Industrial Disputes Act, Factories Act, Unorganized Workers’ Social Security Act, Employees’ Provident Funds and Miscellaneous Provisions Act, Inter-State Migrant Workmen Act and the Employees’ State Insurance Act will remain suspended.

The Chief Minister of Madhya Pradesh on May 07, 2020 proposed to amend the Factories Act, Industrial Disputes Act, 1947 in line of UP government to for three years due to the pandemic COVID-19. Not only the MP but other states like Himachal Pradesh, Gujarat, Rajasthan, Haryana, Punjab has also extended the daily working hours from eight to twelve hours without amending the Factories Act²⁸. Further, this matter was brought before the Allahabad High

²⁵ Namita Bajpai, “UP suspends major labour laws for 3 years to attract investors”, *The New Indian Express* May 8, 2020, available at: <https://www.newindianexpress.com/nation/2020/may/08/up-suspends-major-labour-laws-for-3-years-to-attract-investors-2140784.html> (Last visited on May 12, 2020).

²⁶ The Uttar Pradesh Temporary Exemption from Certain Labor Laws Ordinance, 2020, Available at: https://www.livelaw.in/pdf_upload/pdf_upload-374550.pdf%20 (Last visited on Jul. 28, 2020).

²⁷ *Supra* note 4.

²⁸ “Coronavirus pandemic: After UP, Gujarat eases labour laws to attract investments” *The Economic Times* May 8, 2020, available at: <https://economictimes.indiatimes.com/news/politics-and-nation/coronavirus-pandemic->

Court by UP Workers front through PIL, the notice was issued by the Hon'ble High Court to the UP Government and the State has also withdrawn the order of twelve-hour shift in an industrial establishment against eight hours shift in day²⁹. Whereas, till date there is no clear demarcation or any judicial development regarding the constitutionality of labour law suspension is present, though, number of Public Interest Litigations has been filled in both High Courts & Supreme Court of India. Further, the President has also not given his assent on Ordinance 2020 till date.

3.1 The concept of Social Welfare and the New Direction of the Government

During Covid19 pandemic the hard-earned rights of workers were put at stake. "During the lockdown, workers were not offered protection. The Prime Minister gave false assurances. In reality, most workers have not received any salary for two months or more. Those who work away from home could not pay rentals; they have not been getting food to eat as rations are over, hardly anyone has got promised rations, and workers are not being helped to return home. Now under lockdown, rights are being attacked and the stage is set to reduce workers to slaves," said a statement released by International Federation of Trade Union.³⁰

Trade Union Act, 1926 which came into the existence after a long battle of B.P. Wadia and others from Madras, Bombay and Kolkata. It gives immunity from criminal conspiracy and civil and tortious liability of trade unions. The aims and objective of this legislation is to provide registration to trade unions and to fight collectively against the injustice. In India trade union has only least effect on government policies because trade unions are steer through communist parties, the CPI(M) linked Centre of Indian Trade Unions (CITU) criticized the blanket exemption to employers provided by labour laws describing it as a "barbarous move to impose conditions of slavery on the working people who are actually creating wealth for the country, simultaneously suffering from brutal exploitation and loot by the capitalists and big-business". CPI(M) head Sitaram Yechury tweeted "Wealth is nothing but the monetization of

after-up-gujarat-eases-labour-laws-to-attract-investments/videoshow/75635693.cms?from=mdr (Last Accessed on July 28, 2020).

²⁹ Akshita Saxena, "As UP Govt Withdraws Dilution of Labour Laws, Allahabad HC Disposes PIL As 'Infructuous'" *LiveLaw* May 19, 2020, available at: <https://www.livelaw.in/news-updates/allahabad-hc-disposes-plea-challenging-relaxation-of-labour-laws-on-working-hours-overtime-etc-157014?infinitescroll=1> (Last visited on Jul. 13, 2020).

³⁰ Madhya Pradesh, Uttar Pradesh stay labour laws for 3 years in the name of COVID-19 pandemic" *National Herald* May 8, 2020, available at: <https://www.nationalheraldindia.com/india/madhya-pradesh-uttar-pradesh-stay-labour-laws-for-3-years-in-the-name-of-covid-19-pandemic> (Last visited on May 12, 2020).

value. Destroying labour means destroying economic growth, BJP's diabolical agenda must be resisted and defeated to save India that is Bharat" in May, 2020³¹ The reforms which government wants to do, that working hours raised from 8 hours to 12 hours without enhancing monetary benefits. Worker's from shops and establishments has been raised to 18 hours. These reforms of enhancing working hours are violated ILO convention on working hour, which is binding on us. In this way the government is going to finish all trade unions and their rights.

In meantime government has declared exemption to capitalist through loan exemptions and many more schemes for capitalist people and the majority of workers are from underprivileged and lower class of society, such as, building construction worker, factory worker daily wage labourer and all workers from unorganized sectors are the victims of the corona pandemic which caused widespread hunger and the homelessness among the majority. The government has finished all labour laws also exploited their rights in the crucial phase of pandemic.

4. The Constitutional perspective and suspension of labour laws

Three types of emergency has been mentioned in the Constitution of India under Part XVIII from Art-352 to Art-360 of which Article 352 defines National emergency, Article 356 defines State emergency and Article 360 defines Financial emergency. However, this COVID-19 pandemic is neither one of them, and if it is so the government has to declare categorically. The Central government has used the power provided under Sec-10(2)(1) of the "Disaster Management Act, 2005" (DMA) to declare lockdown and for providing necessities to the people.³² The Constitution of India provides three kinds of emergency but the Government of India has not declared any kind of emergency and instead the central government has used the power provided under Sec-10(2)(1) of the DMA, 2005 to declare lockdown and to handle matter relating to it.³³ Section 2 and 2A of the Epidemic Diseases Act, 1897 empowers the Central and State governments to take necessary actions in epidemic situation to control its outbreak, even if the steps are not provided under any law practice or theory in the country.³⁴ The lockdown was invoked by Sec-6 of the DMA through an official notification published by the Ministry of Home Affairs and by virtue of the powers conferred under Sec-

³¹ Aanchal Magazine, "COVID-19 Effect: Relaxation in labour laws, exemptions to cos in various states draw trade union ire" *The Indian Express*, May. 8, 2020.

³² The Disaster Management Act, 2005.

³³ COVID-19: The Law of the Lockdown, available at: <https://www.jurist.org/commentary/2020/04/tanay-goyal-india-lockdown/> (Last Assessed on July 20, 2020).

³⁴ The Epidemic Diseases Act, 1897 (Act 3 of 1897).

10 of the Act, guidelines for lockdown were issued by the the Home Secretary being the Chairman of the National Executive Committee constituted under Sec-8 of the Act.

The Central government has not declared an emergency so far but most of the labour laws were amended by some of the state governments. But in fact, these states suspended those legislations which are central legislations. Although labour law comes under the concurrent list of the seventh schedule of the Constitution of India, both the Centre and State government has the power to make laws. But States cannot abolish State laws without the permission of the Centre because of federal features of the Constitution of India, where Centre is always strong whenever there is the conflict between Centre and State. Therefore, States sent the proposal for permission of the Central government for the suspension of labour laws for three years. However, legally State governments cannot amend these labour laws. The Constitution of India is the supreme law of the land and article 21 of the constitution cannot be suspended during the emergency as laid by the supreme court in *ADM Jabalpur v. Shivkant Shukla*,³⁵ the apex Court ruled in favor of the Government and observed that “right to personal life and liberty are human rights and also Article 4 of the International Covenant on Civil and Political Rights recognizes the right to life and personal liberty to be a non-derogatory right even during times of emergency.” Therefore it is questionable that even if there is no such emergency declaration in India and the State government is doing these to boost the economy is seems too unjust and unfair in part of labour class. There are many laws that give the right to the workers to work only 8 hours like factory act 1948 and which have been increased to 12 hours without overtime wages.

In the “Pavement Dwellers Case” or *Olga Tellis v. Bombay Municipal Corporation*,³⁶ 5-judge bench of the Supreme Court of India construed that “the right to livelihood is a part of the right to life under Article 21 of the Indian Constitution as livelihood being a means of earning is necessary to live.” The Court also held that Art-21 was also very prominent in the Indian movement for the “Bandhua-Mazdoor Community” in which people were bought at minimal throwaway prices and were treated in inhumane and degrading ways. So, in another formulation of the theme of life with dignity is to be found in “Bhandhua-Mukti-Morcha”³⁷ interpreting Article 21 of the Indian Constitution as the heart of the fundamental rights. An expansive interpretation was given by the Court i.e “to live with human dignity, free from

³⁵ (1976) 2 SCC 521.

³⁶ (1985) 3 SCC 545.

³⁷ (1984) 3 SCC 161.

exploitation.” The rights of men, women, workers, children of tender age, opportunities, facilities for children to develop healthily, protecting against abuse, etc. In the case of *Chameli v State of Uttar Pradesh*,³⁸ the Court further included the right to water, food and a decent environment. The court also observed that right to live as a human being is met by a series of factors regarding an organized society and cannot be ensured by only meeting the animal needs of a man.

The Minimum Wages Act, 1936 provides the minimum wages that must be given and overtime for wages as well. Minimum wages are for just survival and fair wages are for health and survival and living wages for health, education and at least entertainment of family members so that they can live a minimum standard of life. Article 39(a) provides that “the citizens shall have the right to an adequate means of livelihood. Thus, is indicative of the fact that the constitution-makers were aware of such a requirement and were ready to provide citizens with basic livelihood necessities.” Furthermore, Article 39(e) provides that “the health and strength of workers and the tender age of children must not be abused.”

5. Conclusion

Already there are provisions in all labour laws to exempt any establishment and employer from the application from this Act. Then why these amendments brought by the State governments in the name of revival of economy as there is no other means to revive industries. It is also said that if workers do not return to work, they will be terminated. It seems to be arbitrary and injustice to labour class. It is going to open new way for age old system of bonded labour which has been abolished by the Bonded Labour Act, 1976. The legality of State ordinance to Central legislations is another question of legality despite having power to State Governments as they cannot go against the letter and spirit of Labour Legislations. The Indian obligations to ILO and other international conventions are going to be violated. Although the amendments to labour legislations prima facie seems to be against the spirit of the Constitution of India but it is the role of the Supreme Court to interpret it. The right to dignity is the fundamental right under Article 21 of the constitution of India and which cannot be suspended even in emergency. Apart from the concept of social security and social welfare in the Constitution of India and despite having egalitarian constitution it questions the role of the various State Governments.

³⁸ (1996) 2 SCC 549.

The Uttar Pradesh Government has withdrawn its earlier controversial order regarding twelve hours shift a day against eight hours shifts for workers in industrial establishment after a notice by the Hon'ble Allahabad High Court. The UP government appeared before the court and withdrawn the said notification and Allahabad High Court disposed off the petition by saying it to be in fructuous. However, the PIL is pending before the Supreme Court challenging the dilution of labour laws by UP, MP and Gujrat Governments.³⁹ Since the petition in UP was disposed off but it does not affect the entire PIL and still it in operation. The matter is currently pending before the Supreme Court of India regarding unconstitutionality of the amendments although some of the states have withdrawn their amendments after protest from the Trade Unions. All the fights of workers who fought for their rights going to be useless if they don't get help from the government in the COVID-19 situation therefore to protect the rights of workers the Governments should think judiciously in the interest of Justice.

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³⁹ *Supra* Note 29.

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