

LOCKDOWN AND ITS EFFECT ON LABOUR LAWS

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INTRODUCTION

COVID-19 has not only locked away people but also opportunities for the people. When the whole world is trying to find the vaccine of this virus, there is a certain class of people who are facing a lot of hardships other than that caused by the COVID-19. These people are those workers who are trapped in many parts of our country and their only desire is to reach their destination, their home. The government, as well as many people, are trying to help them. Amidst this pandemic, these workers are making efforts for their family members who are waiting for their beloved ones to return. These workers were not allowed to leave the city as the center ordered the states to seal their borders. As per the orders, the administration discontinued their bus and other transportation services. Thus, these migrant workers decided to use their feet instead. They started their endless journey by walking with their children. Often, they faced police wrath, but they did not stop walking. This is visible disturbing scenes. The reason behind this is the lack of resources for these workers in the urban areas as well as the lack of safe living space, which is the requirement for a virus that demands social distancing. Many of the workers have returned to their native places but some of them are still here owing to problems like financial problems, fear of losing work opportunities, and many other problems.

This paper aims to discuss the change in labor laws due to the current lockdown situation and its effects on the workers. Laborers are one of the important factors of our production cycle. Their unavailability will not only affect their workplace but also the production cycle of our country. It is not an unknown fact that this pandemic has weakened our economy. It will take more than government efforts and policies for lifting our economy back again. In situations like this, workers are treated as living resources and many industries are ignoring the fact that even a laborer is a human who will get adversely affected by this virus just like all of us. The general public is asked to stay at their houses for the sake of their safety, but the workers, on the other hand, are cajoled to return to their respective workplaces. Lockdown may have given certain relaxations to the industries, but a return to normalcy will be challenging due to the problem of inadequate manpower. The economy needs to be fixed but at the same time safety of the workers should be ensured. No economy is greater than the people of the country. Putting the lives of thousands of

workers on a stake will only worsen the situation. The state needs to inspire confidence in workers. Changing labor laws may lead to disagreements and hardships.

CHANGES MADE IN LABOUR LAWS

Since 2014 the central government is making changes in labor laws. These changes are made on the ground that the present laws impede the economic growth of our country. These changes are formally known as labor law reforms which include amendments of the existing laws, the codification of new laws, model bills, etc. COVID19 has given a push to this 'reform agenda'. Many states have made changes in the labor law as it is a concurrent subject. Changes like increasing work hours, lowering the minimum wage rates, reducing social security for workers, norms that are easy when it comes to firing the workers, etc. These changes are different in different states.

The government of **Punjab** has passed a notification that exempted all the factories from the certain provision of the factory act, 1948. The maximum hours for working were 10 hours earlier³¹⁷, but now it has changed to 13 hours. However, the Punjab government has provided relaxation to the workers by doubling the rate of the wages which is provided to the workers for working overtime.³¹⁸ The government of **Gujarat** has extended the working hours of the workers to 12 hours. Also, exemption from sections like section 51 and 54 is given to the industries. Earlier, no worker could work more than 5 hours before the worker have had his/her first interval.³¹⁹ But the Gujarat government allowed the employers to extend this. Now, the workers are allowed to have a half-hour break after 6 hours of working. The **Himanchal** government issued a notification which exempted the factories in the above-mentioned similar way, but the Himachal Pradesh government has increased the proportion of the minimum wages than stated under the Minimum wage act, 1948. The **Uttarakhand** has exempted the factories from the sections like section 56, 51 and 54. These sections deal with weekly hours of work, interval-time, etc. The factories are exempted from these sections with the condition that these factories will work for 11 hours every

³¹⁷ The Factories act, section 56 (1948)

³¹⁸ The Factories act, section 59 (1948)

³¹⁹ The factories act, section 55 (1948)

day with the gap of two intervals. Thus, the workers are paid for overtime of 3 hours and they can get the rest of 1 hour between two shifts.

Whereas the government of Madhya Pradesh issued an ordinance that stated the amendments in the Madhya Pradesh Industrial Establishment act, 1961. The MP government also made changes in many of their state acts like Madhya Pradesh amended Contract Labour (Regulation and Abolition) Madhya Pradesh Rules, 1973, The Madhya Pradesh Factories Rules, 1962, The Industrial Disputes Act, 1947, The Madhya Pradesh Industrial Relation Act, 1960, The Madhya Pradesh Shops and Establishment, Act 1958 in the state.³²⁰ The industries are exempted from all the provisions of the industrial dispute act, 1927 except the provisions of chapter V-B and some sections of chapter V-A for a thousand days. No inspection will take place in the industries with the employment of fewer than 50 workers. Similarly, no surprise inspection will take place.

The UP government on the other hand passed an ordinance that stated that all the factories and industries shall be exempted from all the labor laws for the time of three years. However, certain acts like the workmen compensation act bonded labor act and some part of the Building and Other Construction Workers Act.³²¹ This ordinance is yet to receive assent from the president. The ordinance will exempt all the factories and industries if only the conditions of the ordinance are fulfilled. Some of the obligations are ensuring the safety of workers under the Regulation of Employment and Conditions of Service act, 1961. In the case of death and disability due to the accident during the work, norms of compensation remain the same as stated in the Employee's compensation act, 1963. The laws for the employment of women and children remains the same. Minimum wages as per the limit given in the Minimum wages act, 1936 remain the same. Details of the workers shall be recorded electronically.³²² Thus, this ordinance aims on suspending 35 out of 38 labor laws. These labor laws regulate trade unions, industrial disputes, and contract workers.³²³

³²⁰ Dr. Abhishek Atrey, Dilution of labour laws: Is this the package?, Indian legal (June 6, 2020, 12:33AM), <https://www.indialegallive.com/special/dilution-of-labour-laws-is-this-the-package-99292>

³²¹ Vatsala Gaur, Uttar Pradesh brings ordinance to suspend most labour laws for 3 years, The economic times (June 6, 2020, 2:05 PM), <https://economictimes.indiatimes.com/news/economy/policy/uttar-pradesh-brings-ordinance-to-suspend-most-labour-laws-for-3-years/articleshow/75609934.cms?from=mdr>

³²² Dr. Abhishek Atrey (Supra)

³²³ Leonie Barrie, Indian states slammed for diluting labour laws, Just-style (June 6, 2020, 5:55PM), https://www.just-style.com/news/indian-states-slammed-for-diluting-labour-laws_id138780.aspx

These changes are controversial because there are many international obligations that a country shall follow. As per ILO, 48 hours per week is the maximum time limit for working. India has ratified this convention in the year 1921. All the states have made these changes for the revival of the economy and for the development of the industrial units that got severely affected due to the nationwide lockdown. Changes are necessary, but these changes shall not affect the social security of the workers.

DEFICIENCY IN THESE CHANGES

As stated above, the changes in labor laws are different in different states. While Rajasthan and Punjab are going to pay the overtime wages to the workers as per section 59 of the Factories act, 1961. The notification released by the government of Gujarat, states that the wages will be paid in proportion to the existing wages. So, if the rate of existing wages is Rs. 8 for eight hours than for twelve hours it will be Rs. 12. Thus, the order passed by the Gujarat government reflects the deficiency in the implementation of the rules given in the Factories act, 1961 (Section 59). Further, the state governments are given the power to exempt the factories or the group of factories from all or some provisions of the Factories act, 1961. The state government can only exercise this power under circumstances like the 'public emergency'.³²⁴ The government of Gujarat has exercised its power of exempting the factories from all the labor laws, under section 5. This is questionable because the explanation of the term 'public emergency' as given in section 5 is: public emergency means a grave emergency whereby the security of India or any part of the territory is threatened by war or any external aggression. The current pandemic is not a part of either of the above-mentioned situations. It is a crisis that is related to the biological health hazard and it is not covered even under the term 'internal disturbance' given in section 5 of the factories act.

The state government is also empowered to amend sections 51, 52, 54, and 56.³²⁵ These amendments are subject to certain conditions like³²⁶:

- a. The total number of working hours shall not exceed the time limit of 12 hours.
- b. The total number of working hours cannot be more than 13 hours including the interval time taken by the workers.

³²⁴ The Factories act, section 5 (1961)

³²⁵ The Factories act, section 65(2) (1961)

³²⁶ The Factories act, section 65(3) (1961)

- c. The total number of weekly hours, including the overtime hours, shall not be more than 60 hours.

Only Punjab has exercised the powers under section 65 correctly. Notifications of the states like Gujarat, UP, MP, etc. have exceeded the weekly hour limit up to 72 hours which is questionable³²⁷ Other practical deficiencies that may arise from these reforms are the fatigue and low productivity that takes place due to an increase in work hours. The main problem with this 12-hour shift is that it may affect women's employment. As per experts, there will be a decline in the female labor workforce due to this 12 -hour rule because women have multiple tasks at the workplace as well as at their household. If the rate of wages come down in the name of economic revival, women will face difficulty in getting decent jobs. ³²⁸Many states have planned for night shifts for women if they are ready to do so. Also, the safety of women will be the most important aspect of factories and industries. The states are ensuring safety of women when it comes to transportation, but the gender implication will play a major role when it comes to changes in labor laws.

ILO has also made a statement for the changes in labor laws, that are made by many states in India. As per the statement, the state governments should make changes only after keeping in mind the obligations of the ILO. ³²⁹All the changes shall be made after consulting the government, workers, and employers. India has ratified 47 ILO conventions which are related to working hours, compensation, labor inspection, etc. India is also one of the founding members of ILO which came into existence in 1919. ILO's main aim is to protect the worker and the employer's interest. It has framed many policies for the same. One of them is the Fundamental principles and rights at work (1998), which works for the elimination of forced labor, the abolition of child labor, freedom of association, right to collective bargaining, and elimination of discrimination when it comes to employment. All the member states are required

³²⁷ K .R. Shyam Sundar, Factory Workers Can Now Legally Be Asked to Work 12-Hour Shifts. How Will this Change Things?, The Wire (June 6, 2020, 10:00PM), <https://thewire.in/labour/factory-workers-12-hour-shifts>

³²⁸ Vasudha Venugopal, Women to bear burnt of new labour laws: Experts, The economic times (June 7,2020, 4:02PM), <https://economictimes.indiatimes.com/news/politics-and-nation/women-to-bear-brunt-of-new-labour-laws-experts/articleshow/75794353.cms>

³²⁹ Somesh Jha, Labour law changes in India shall adhere to global standards, says ILO, Business Standard (June 7, 2020, 4:37PM), https://www.business-standard.com/article/economy-policy/labour-law-changes-in-india-should-adhere-to-global-standards-ilo-120051301663_1.html

to promote these aspects in their policies for the labor. The current changes shall be in the pursuance of the above-mentioned aspects, says the ILO.

These changes have indeed caused distress amongst the workers. Owing to this, ten central trade unions have considered complaining with ILO. ³³⁰They have shown their distress by stating these changes as ‘anti-worker’ moves. Many trade unions have termed these reforms as an inhuman crime. ILO convention 87, 98, and 144 are being violated as per the central trade unions.

Thus, the labor law changes have made an atmosphere of distress amongst the workers and trade unions. Many constitutional questions have also arisen for these reforms. One thing is clear that both the economy and social welfare of the workers are in question. The state needs to balance both elements. From the viewpoint of international human standards, these changes are draconian. The central government shall keep in mind international obligations like the conventions of ILO.

These changes are opposed because employers are given more power. The obligation to pay wages as per the work hours is now non-mandatory, employers must pay minimum wage rates now. Also, the fear of losing the job has increased as the employer can easily fire the workers now. This exemption may cause a fear of social security. Many unions are planning a nationwide action soon.

This is the time where every person in this country is waiting for the pandemic to get over so that, normal life can come back to the streets. Amidst this pandemic, the interests of laborers and workers are on stake. The issue of migrant workers depicted the mismanagement of the system for protecting its most vulnerable group i.e. the workers. While we can witness the continuance in the misery faced by the workers, the attitude of the employers towards the working class is questionable.

Indeed, it is true that the revival of industrial segments is necessary after the forced lockdown that was imposed on the country since March, it is immoral on the part of such employers who are demanding the workforce to come back and work for more than 8 hours. It is to be noted

³³⁰ Special Correspondent, Trade unions may move to ILO against the labour law changes, The Hindu (June 7,2020, 6:11PM), <https://www.thehindu.com/news/national/trade-unions-may-move-ilo-against-labour-law-changes/article31556244.ece>

that although the government has issued guidelines for social distancing at the workplace, the question of worker's health is still debatable. Suspending the labor laws for some time will indeed serve the employer's interest, but the social security of workers may be overlooked.

CONCLUSION

The preamble of the Indian constitution declares India as a socialist country. George Fernandes, former union leader and a democratic socialist leader of our country, was a pioneer of the revolution for the nationalized industries of India. He had a vision that was followed by the idea of socialist India.³³¹ In the current situation when the plight of migrant workers is disturbing for all of us, the efforts of Mr. George Fernandes are indeed missing. This pandemic has exposed a quite different sight of the Indian Government. The reforms are indeed required at this moment, but are we going in the wrong direction? In our country employers are given the power to make profits at any cost, whereas in countries like Canada, New Zealand, South Africa, etc. workers are given the benefit of wage-subsidies. Thus, many countries are trying to minimize layoffs in the period of the current pandemic. The government must bring a steady rate of the economy back in the country, but this is not a reason to infringe on the fundamental rights as well as the human rights of the workers.

The main reason behind the protest is that there is little evidence that these reforms will help to boost the economy by attracting investments, but this is not a proper ground for violating the international conventions that India has ratified for the protection of labor rights in the country. The reason behind this sudden move is the shortage of labor as many of the migrant workers are returning to their native places. These reforms will help the state governments in directing the industries about their freedom to make decisions and expand their industrial work.³³² The question is about the mental as well as the physical health of the workers. Furthermore, the constitution of India provides basic human rights and a directive policy for the states. The changes that are made currently will keep the rights of the workers in question

³³¹ Meghnad Desai, The plight of migrant would not have gone unchampioned had George Fernandes been around, The Indian Express (June 7, 2020, 9:51PM), <https://indianexpress.com/article/opinion/columns/george-fernandes-indira-gandhi-socialist-meghnad-desai-6446413/>

³³² Web desk, As states nullify the labour laws to kickstart the economy, political battle lines are drawn, The Week (June 8, 2020, 10:56PM), <https://www.theweek.in/news/india/2020/05/10/as-states-nullify-labour-laws-to-kickstart-economy-political-battle-lines-are-drawn.html>

and will also put a controversial question on the constitutional principles of our country. Thus, rather than making reforms in the labor laws, the state shall plan something to balance the livelihoods of the workers.



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