

PAPER ON LABOUR LAW

IMPACT OF SUSPENSION OF LABOUR LAWS IN THE MIDST OF COVID-19



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INTRODUCTION:

The labour market is regulated with a view to guard the interests of labourers is mostly taken to be an exogenous interference with the workings of the market mechanism, which results in a spread of distortions and inefficiencies, including higher unemployment. Thus, because the World Bank's Ease of Doing Business report¹ has put it, 'laws created to safeguard workers often hurt them'². Within the case of developing countries, it's been claimed during a number of heavily-cited studies that strong labour laws cause reduced employment within the formal sector and a better level of labour informality, as firms take steps to avoid the impact of regulatory legislation³. India's experience could be a critical one for this hypothesis.⁴ Labour Laws in India are very vast and competitive to the standards of developed and developing countries alike, and are at the more protective end of the spectrum, which are time to time strengthened accordingly with the circumstances as and when arise or in need. Besley and Burgess in their 2004 paper took advantage of differences within the level of labour law protection across different Indian states to check the impact of variations in legal regulation on levels of investment and employment in manufacturing⁵. Their analysis found evidence of the adoption of pro-worker labour laws resulting in a call-in employment within the most organised manufacturing sector and a rise within the size of the informal sector within the states concerned. The Besley-Burgess paper⁶ has had a large influence on research and policy, having been cited several hundred times in academic papers, and in an exceedingly number of policy documents discussing labour law reform in India. Later studies have questioned the methodology employed by Besley and Burgess to live the impact of legal change and also the econometric techniques they accustomed estimate the economic impact of law reforms⁷. What so ever view is taken for methodological standing in the Besley-Burgess paper, a significant limitation of their analysis which stops in 1992, round the start of the amount of major institutional economic reforms in India which presaged its more modern period of economic

¹ <https://www.worldbank.org/en/news/press-release/2019/10/24/doing-business-india-top-10-improver-business-climate-ranking>

² <https://www.doingbusiness.org/content/dam/doingBusiness/media/Annual-Reports/English/DB08-FullReport.pdf> pg: 19

³ Fallon, P. and Lucas, R. (1993) 'The impact of changes in job security legislation in India and Zimbabwe' World Bank Economic Review, Volume 5: 395-413.; The Regulation of Labour, Juan C. Botero, Simeon Djankov, Rafael La Porta, Florencio Lopez-de-Silanes, Andrei Shleifer, The Quarterly Journal of Economics, Volume 119, Issue 4, November 2004, Pages 1339–1382

⁴ <https://qz.com/india/1734728/india-may-soon-achieve-modis-ease-of-doing-business-goal/#:~:text=The%20country%20has%20climbed%20to,of%20Doing%20Business%202020%20report.>

⁵ Besley, T. and R. Burgess. 2004. 'Can labour regulation hinder economic performance? Evidence from India.' Quarterly Journal of Economics 119 (1): 91-134, available at <http://econ.lse.ac.uk/staff/rburgess/wp/indreg.pdf>

⁶ Ibid

⁷ Jha and Golder, 2008; D'Souza, 2010

process, and then is of limited assistance in understanding this phase of India's economic and industrial development. It's noteworthy that throughout this era, notwithstanding other legal and regulatory reforms, the basics of Indian labour law didn't change, a minimum of at the amount of the formal law or de jure regulation.

Labour law arose thanks to the strain of workers for better conditions, the right to arrange, and so the simultaneous demands of employers to limit the powers of workers in many organizations and to remain labour costs low. Employers' costs can increase because of workers organizing to win higher wages, or by laws imposing costly requirements, like health and safety or equal opportunities conditions. Workers' organizations, like trade unions, also can transcend purely industrial disputes, and gain political power - which some employers may oppose. The state of labour law at any one time is therefore both the merchandise of, and a component of, struggles between different interests in society⁸.

The law regarding labour and employment is additionally called Industrial law in India. The history of labour legislation in India is interwoven with the history of British colonialism. The industrial/labour legislations enacted by the British were primarily intended to shield the interests of British people employers. Considerations of British economics were naturally paramount in shaping a number of these early laws. Thus came the Factories Act, it's well-known that Indian textile goods offered stiff competition to British textiles within the export market and hence so as to create India labour costlier the Factories Act was first introduced in 1883 thanks to the pressure brought on Brits parliament by the textile magnates of Manchester and Lancashire. Thus India received the primary stipulation of eight hours of labour, the abolition of kid labour, and therefore the restriction of girls in night employment, and therefore the introduction of overtime wages for work beyond eight hours. While the impact of this measure was clearly welfare of the true motivation was undoubtedly protectionist⁹.

Covid-19 pandemic has affected public health and global economic crises among the industries. because the economy struggles with the lockdown and thousands of firms and employees stare at an uncertain future, a number of the state governments last week decided to form significant changes within the application of labour laws. These changes are being led to to incentivise economic activity in several states. However, this move may undermine the interest of

⁸ https://ncib.in/pdf/ncib_pdf/Labour%20Act.pdf

⁹ Ibid

labourers, who are one in all the foremost vulnerable sections that are impacted by the pandemic.

LABOUR LAWS AND COVID-19 IN INDIA:

In India various states for aiming to boost the economy crisis amidst the continued Covid-19 pandemic, have recently started up with placing ordinance and notifications containing exemptions to industries from compliance with certain labour laws. Such suspension has been sought to offer more flexibility to businesses and employers so as to assist curb the consequences of the Covid-19 mandated lockdowns. Labour laws provide social insurance measures for workers and while these measures may help boost the economy, they need also raised concerns regarding protection of the rights of the Indian labour force.

In this regard the State of Uttar Pradesh has announced to promulgate an ordinance as the 'Uttar Pradesh Temporary Exemption from Certain Labour Laws Ordinance, 2020' and gave exemption from compliance a various of the labour laws for a period of three years at present¹⁰. And subsequently other States like Madhya Pradesh, Gujarat, Rajasthan and Himachal Pradesh have issued notifications to grant certain exemptions under the Industrial Disputes Act, 1947, the Factories Act, 1948 and also made extension in working hours for a period of three months as specified right now.

Uttar Pradesh

That on dated 08.05.2020 the state of Uttar Pradesh brought Ordinance¹¹ for suspension in majority of the labour laws and rules in the State for all factories, industries and other establishments which covered under labour laws and engaged in the manufacturing process, for a period of three years.¹²

The list of those labour laws which are put on suspension for establishments are as follows:

1. Apprentices Act 1961;
2. Beedi and Cigar Workers Act 1966;

¹⁰<https://timesofindia.indiatimes.com/india/major-labour-laws-suspended-in-up-for-3years/articleshow/75624732.cms>

¹¹ THE UTTAR PRADESH TEMPORARY EXEMPTION FROM CERTAIN LABOUR LAWS ORDINANCE, 2020 https://www.nasscom.in/sites/default/files/corona-files/20200503_UP_Labour%20laws.pdf

¹² <https://economictimes.indiatimes.com/news/economy/policy/uttar-pradesh-brings-ordinance-to-suspend-most-labour-laws-for-3-years/articleshow/75609934.cms?from=mdr>

3. Cine Workers and Cinema Theatre W. Act 1981;
4. Contract Labour (Regulation and Abolition) Act, 1970;
5. Dookan Aur Vanijya Adhistan Act 1962;
6. Factories Act 1948 (barring provisions relating to safety and security of workers);
7. Industrial Disputes Act 1947;
8. Industrial Employment Act 1946;
9. Minimum Wages Act 1948;
10. Motor Transport Workers Act 1961;
11. Payment of Bonus Act 1965;
12. Payment of Gratuity Act 1972;
13. Payment of Wages Act 1936 (barring Section 5);
14. Public Liability Insurance Act 1991;
15. Sales Promotion Employees Act 1976;
16. The Indian Boiler Act, 1923;
17. Trade Unions Act 1926;
18. Weekly Holidays Act 1942;
19. Working Journalists Employees Act 1955;
20. Dangerous Machines Act 1983;
21. Sick Industrial Companies Act 1985;
22. Building and other construction workers (Regulation of Employment and Conditions of Services) Act, 1996 (barring provisions relating to safety and security of workers);
23. UP Shops & Establishments Act 1962;
24. UP Welfare Fund Act;
25. UP Industrial Peace (Timely Payment of Wages) Act 1961;
26. UP Industrial Housing Act 1955;
27. Industrial Establishment (National Holidays) Act 1961;
28. UP Industrial Undertakings Special Provisions for Prevention of (Unemployment) Act 1966;
29. UP Employment of Substitute Workmen Act 1978; and
30. UP Sugar & Power Alcohol Industries Labour Welfare & Development Fund Act 1950.

The state of Uttar Pradesh has put bar on the provisions relating to safety and security of workers under the Factories Act, 1948 and the Building and Other Construction Workers

(Regulation of Employment and Conditions of Service) Act, 1996; Child Labour (Prohibition and Regulation) Act of 1986; Maternity Benefit Act, 1961; Employee's Compensation Act, 1923; Equal Remuneration Act, 1976; Section 5 of the Payment of Wages Act, 1936 (the right to receive timely wages) and Bonded Labour System (Abolition) Act, 1976, except these all labour laws as listed above are put on suspension for a period of three years in the State. The exemptions to the labour laws are subjected to the fulfilment of certain conditions which are following:

1. Name and details of all employed workers shall be entered electronically on attendance register prescribed in Section 62 of the Factories Act, 1948.
2. No workers shall be paid less than minimum wage as prescribed by the UP Government.
3. The wages of the workers shall be within the time frame limit prescribed under Section 5 of the Payment of Wages Act, 1936.
4. The wages to workers shall be paid only in their bank accounts.
5. The provisions of the Factories Act, 1948 and the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 relating to safety and security of workers shall remain applicable.
6. The workers shall not be allowed or required to work for more than eleven hours per day and the spread over of the work shall not be more than twelve hours per day.
7. For any death or disability due to accident arising out of and in the course of employment, compensation shall be paid in accordance with the Employees Compensation Act, 1923.
8. The provisions of the various labour laws relating to the employment of women and children shall remain applicable.
9. The provisions of Bonded Labour System (Abolition) Act, 1976 shall remain applicable.

Substantially, this Ordinance made by UP Government makes the key labour laws and rules thereunder relating to workers and those concerning occupational safety, industrial disputes, contract workers, trade unions, fair practices of hiring and firing, etc. defunct for a considerable period of time.

Madhya Pradesh

That on 05.05.2020 Madhya Pradesh Government released a gazetted notification¹³ while amending the Industrial Disputes Act, 1947 to allow new establishments to be exempted from provisions made under the Industrial Disputes Act, 1947, while barring the provisions of Chapter V-A (Lay-off and Retrenchment), provisions of Chapter V-B (Special Provisions relating to Lay-off, Retrenchment and closure in certain Establishment) in reference to conditions precedent to retrenchment of workmen, procedure for closing down an undertaking, special provisions as to restarting of undertakings closed down before commencement of the Industrial Disputes (Amendment) Act, 1976, penalty for lay-off and curtailment without any prior permission and penalty for closure. The exemption is applicable for a period of one thousand days subject to the condition that adequate provisions are made by such industries for the investigation and settlement of industrial disputes of the workmen employed by them.

In continuation, the said gazette notification allows exemption from the date of publication of this notification to factories from provisions of the Factories Act, 1948 and MP Factories Rules, 1962 for a period of three months. Exemption is available from all provisions of the Factories Act, 1948 barring provisions pertaining to approval, licensing and registration of factories, notice by occupier and inspectors, provisions of Chapter IV (*Safety*), Chapter IV-A (*Provisions relating to Hazardous Processes*), Section 59 (*Extra wages for overtime*), Section 65 (*Power to make exempting rules*), Section 67 (*Prohibition of employment of young children*), Section 112 (General powers to make rules), Section 88 (*Notice of certain accidents*) and Section 79 (*Annual leave with wages and rules made therein*).

Gujarat

On 17th April 2020 Government of Gujarat has issued a notification¹⁴ for exempting all the registered factories under the Factories Act, 1948 under various provisions relating to weekly hours, daily hours, intervals for rest etc., w.e.f. 20.04.2020, on the below mentioned following conditions until July 19, 2020:

1. No adult worker shall be allowed or required to work in a factory for more than twelve (12) hours a day and seventy-two (72) hours in a week.

¹³[https://prsindia.org/files/covid19/notifications/4980.MP%20Labour%20Laws%20\(Amendment\)%20Ordinance%202020%20May06.PDF](https://prsindia.org/files/covid19/notifications/4980.MP%20Labour%20Laws%20(Amendment)%20Ordinance%202020%20May06.PDF)

¹⁴Exemption For Factories From Various Provisions Of Factories Act 1948 In Gujarat <http://bombaychamber.com/admin/uploaded/NEWS%20Block/Exemption%20For%20Factories%20From%20Various%20Provisions%20Of%20Factories%20Act%201948%20In%20Gujarat.pdf>

2. No worker shall work for more than six (6) hours before he has had an interval for rest for at least half an hour on each day.
3. No female worker shall be allowed or required to work in a factory between 7:00 PM to 6:00 AM.
4. Wages shall be in proportion of the existing wages. (E.g. if wages for eight (8) hours are Rs. 80, then the proportionate wages for twelve (12) hours will be Rs. 120).

Chief Minister of Gujarat on May 08, 2020, made an announcement and issued a statement that the exemptions and relaxations in the labour laws will be applicable on only new projects in the State on the condition that the establishment will operate for minimum twelve hundred days and for those already operational in that period.

Rajasthan

On 11.04.2020 government of Rajasthan has issued a notification¹⁵ to boost the economy and welfare for labours and establishments the working hours extension granted upto twelve hours per day for a limited period of three months from the date of the order. To reduce manpower requirements in factories manufacturing essential food and grocery supplies, the Government of Rajasthan has exempted the provisions of working hours of adult workers under the Factories Act, 1948 subject to a few conditions. It is also clarified that the additional four (4) hours per day shall be paid as overtime subject to an overtime limit of twenty-four (24) hours per week.

Himachal Pradesh

Himachal Pradesh Government also had issued a notification¹⁶ vide dated 21.04.2020 to grant exemption to all factories/ establishments registered under the Factories Act, 1948 from provisions relating to working hours while granting flexibility until July 20, 2020 with condition which are subjected to the following:

1. No worker shall work in a factory for more than twelve (12) hours in any day and seventy-two (72) hours in a week.

¹⁵ <https://www.prsindia.org/theprsblog/rajasthan-government%E2%80%99s-response-covid-19-till-april-26>

¹⁶ https://himachal.nic.in/showfile.php?lang=1&dpt_id=14&level=1&lid=20170&sublinkid=19723

2. No worker shall work for more than six (6) hours before he has had an interval for rest for at least half an hour.
3. Wages in respect of increased working hours as a result of the exemption shall be in proportion to existing minimum wages fixed by the Government of HP under the Minimum Wages Act, 1948.
4. Provisions of Section 59 pertaining to overtime wages shall continue to be applicable without any change.

It seems that many other States are in the process for exempting businesses and establishments from provisions of labour laws.

Positive view on Suspension/Relaxation in Labour Laws:

Relaxation in Labour laws may attract investment from establishments and will be boost to the slowdown observed in the economy due to this pandemic and also encourage industrial activity. It may to some extent will protect the existing employment, and to provide employment to migrated workers who came back to their respective states due to economic crisis observed in this pandemic. Ease of doing business will may be in true picture with transparency in the administrative procedures and will convert the challenges of the affected economy into opportunities. Increasing the revenue of states is primary aim for the government which have fallen due to closure of establishments during Covid-19 lockdown. To pump up a life in developing and see the visual growth in the establishments Labour reform was much needed for the Industries for a long time, exemption to this limited period will be resulted into boom for investors who previously used to stuck in a web of laws and red-tapism.

Contrary views on Suspension/Relaxation in Labour Laws:

All the labour laws including the Minimum Wages Act has been almost suspended summarily by Uttar Pradesh Government. This move may be characterized as “creating an enabling environment for exploitation of labourers”. Practically amendment or reforms are basically meant for improvement from the status quo, but at present temporary removal of all labour laws will not only strip the labour and its basic rights but also drive down wages. Removing all the labour laws, may turn most employment informal and bring down the basic wage rate rapidly. And the suspension of labour laws and redressal of disputes and exploitation by the

establishment, there is no way for any worker to even seek grievance redressal. Exemptions may lead to reduce wages for the workmen which ultimately reduce consumer demand.

CONCLUSION/ OBSERVATION:

For continuous and stable industrial growth in India, it needs a holistic labour laws reforms, which will enable establishments to expand and contribute towards the economic growth of the state, while keeping the interest of labours intact, thereby it may lead to the formalisation of the Indian economy.

In this paper I analysed how various Indian states have brought ordinances to suspend the labour laws to provide relaxations to establishment to keep the steady growth of industry and welfare of workers and migrant labourers. Which is beneficial at present for the state and establishments. But if we see the contrary view this relaxation will harm in long run for the labourers.

Governments of different States by this move are trying to revive and boost businesses, economy and industries, but it has also received criticism on the ground due to the Ordinance and relaxations of key labour laws which infringe on worker rights.

Therefore, the present way of implementation of these Ordinances and notifications and whether these will be challenged in Indian courts, it is left to see. However, it apparent to see that various States are likely following in a similar direction to suspend / relax labour laws in order to attract investment likewise Uttar Pradesh. Ultimately, the present moves by the states are to be seen to the Centre's attempt to codify and consolidate present numerous labour laws into four Labour Codes.



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