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The Constitutionality and the Overall Impact of the Dilution of Labor Laws in India during the Covid-19 Pandemic: A Comprehensive Analysis

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'Labor legislations are fortified to revitalize a nation's socio-economic fabric.'

- *Henrietta Newton Martin*

The advent of globalization set forth the profit-motive capitalism which develops through the overuse of workers and other resources. Labor legislations were introduced by the government to enhance the employer-worker relationship at the workplace, to maintain the dignity of the labor force, and to prevent and govern over the exploitation of the labor force at the workplace. The COVID-19 Pandemic is an ongoing humanitarian-cum-economic crisis. It has resulted in stagnation of the production of various enterprises.

To bring the Indian economy back on track, a dilution and consolidation of the existing Indian labor laws were done with presidential assent in September 2020. As a result, the governments of many states of India such as Uttar Pradesh, Madhya Pradesh, Rajasthan, etc. drafted orders and passed notifications which allowed the employers of the workplaces, inter alia, to extend the working hours, to employ more laborers, and modify the over-time work provisions. This has led to debates regarding the constitutionality of such notifications and the overall dilution of the existing labor laws. It is strongly contended that the rights of workmen especially those of the migrant workers are compromised due to such notifications.

This paper briefly examines the background of the labor laws in India and their specific purposes. The paper then analyses the constitutionality of the dilution of labor laws and the overall impacts therein. Finally, the paper suggests some alternative measures which can be applied given that there is a second wave of the pandemic. The paper uses the doctrinal method of research as ample materials for reference are available in form of articles, books, and electronic resources.

Keywords: labor, pandemic, dilution, constitutionality, workers.

INTRODUCTION

The working class was one of the most affected sections of the society in the aftermath of the global novel coronavirus pandemic (hereinafter referred to as COVID-19 Pandemic). A plethora of problems arose for the workers, especially those who had migrated to other regions to search for a livelihood. The sudden imposition of a nationwide lockdown in the wake of the COVID-19 Pandemic and the subsequent closure of physical work in most places became problematic for the migrant workers and other laborers who were then required to migrate back; many of them did so by walking barefoot whereas others took some desperate measures like stealing some essential resources. Data from various news reports show clearly that a large number of laborers died because of starvation, suicides, mishaps, police mercilessness, fatigue, and so forth.

The initial strict phase of the nationwide lockdown inevitably caused most of the economic activities, including the essential activities, to shut down, at least temporarily. This majorly impacted the country's economy in times of a heightening health crisis. All the Indian states unanimously reported a loss of income and opportunities for several people due to the suspension of various economical actions and workings. To cope up with the situation, various states relaxed their respective existing labor law policies and arranged for an increase in working hours by the way of notifications and ordinances.

In September 2020, the President of India gave assent to three labor codes, namely the Code on Social Security 2020, the Occupational Safety, Health and Working Condition Code 2020, and the Industrial relation Code 2020. These three codes were expected to bring flexibility to the

functioning of industries, implementing industrial protests more challenging whilst encouraging adjusted labor, reduced potential collective bargaining, and help in the extension of the welfare system for informal sector, gig and platform labourers.¹

The dilution of the existing labor laws and regulations by the various Indian States has drawn in a lot of scrutinizes and it is often contended that the dilution is unconstitutional since it results in jeopardizing the rights of workmen and is compromising the Art. 21 in times of a global humanitarian-cum-economic crisis. It can be hypothesized that although the objective behind the dilution of labor laws was proper, the implementation was faulty and unconstitutional.

The evolution of labor legislation in India: A brief historical overview

Labour law, in general, was the result of the workers' demands within the working premises, and the corresponding requests of the employers for restricting the authority of worker's group and reduction of labor costs.

Labour legislation that is adjusted to the financial and social difficulties of the advanced universe of work satisfies 3 critical jobs: it builds up an overall set of laws that works with useful individual and aggregate business connections; It acts as a crucial instrument for creating agreeable trade unions founded on democratic decision making by offering a structure inside which businesses, employees, and their agents may negotiate on labour problems; it gives an unmistakable and consistent update and assurance of basic principles and other benefits at work which has gotten expansive social acknowledgment and builds up the cycles through which these standards and rights can be executed and implemented. That being said, history portrays that labour codes can satisfy these capacities successfully on the off chance that it is receptive to the capacities on the work market and the necessities at hand in the moment.²

¹ Prashant K. Nanda, 'President Kovind gives assent to three labour codes', (*The Mint* September 30, 2020) <<https://www.livemint.com/news/india/president-kovind-gives-assent-to-three-labour-codes-11601464291278.html>> accessed April 20, 2021

² S.I.A Muhammed Yasir, 'Labour Legislation –A Historical Study' (2016) 6 *Indian Journal of Applied Research* 34, 35 <https://www.worldwidejournals.com/indian-journal-of-applied-research-IJAR/special_issues_pdf/April_2016_1461058838_11.pdf> accessed April 20, 2021

Labour Legislation has a history of over 170 years from now. The Apprentice Act, 1850 was the first act passed to find employment for the children who were brought up in orphanages, as now the Apprentice Act was replaced by Factories Act, 1881. The Labour Law regulates the betterment of industrial establishment, etc. Both the central and state government can enact their labor laws but the state cannot give something which goes against what is provided prevalently by the centre.

The present labour policies in our country govern not just the workplace practices of industry's enterprises, but also labour connections, salaries, collective bargaining formation, validation of normal procedures, and so forth. They characterize the lawful rights and commitments of employers and employees and give guidelines for the future course of actions to be taken in between these concerned parties. In our country, every formulation emanates from and have to correspond to the requirements in the Constitution of India.³

The major issues and concerns over the dilution of labor laws and the constitutionality therein: An analytical overview

Before analyzing the constitutionality of the reforms and dilution of the existing labor laws in India during the COVID-19 Pandemic, it is pertinent to examine certain major labor law reforms brought by some major states in India and the changes brought about by the three labor codes being assented to by the President of India.

On 6th of the fifth month of 2020, the MP govt. declared the Madhya Pradesh Labour Laws (Amendment) Ordinance, 2020 in effect. The aforementioned action brings about changes to 2 presently applicable state's laws, namely the Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961, and the Madhya Pradesh Shram Kalyan Nidhi Adhiniyam, 1982.⁴

The 1961 Act deals with the criteria of employing people and how they are to be treated, what are the correct practices etc. for the limit of 50 workers. The Ordinance expands this limit to 100

³ *Ibid* at 36-37

⁴ Anya Bharat Ram, 'Relaxation of labour laws across states' (*PRS India*, May 12, 2020)

<<https://www.prsindia.org/theprsblog/relaxation-labour-laws-across-states>> accessed April 21, 2021

or more workers. As a result, the Legislation would now not fully apply to formerly controlled enterprises with 50 - 100 employees.⁵

The State of Karnataka amended some provisions of the Industrial Disputes Act, 1947, The Contract Labour (Regulation and Abolition) Act, 1970, and The Factories Act, 1948. The changes include exemptions from the Industrial Disputes Act, 1947 to the factories that employ workers up to 300 workers as against 100 workers, Increase in Overtime from 75 hours to 125 hours per quarter. The amendment brings in changes to allow women to work at night from 7 p.m. to 6 a.m. which was not permitted earlier.⁶

The UP Temporary Exemption from Certain Labour Laws Ordinance, 2020, cancels the application of all legislations related to labour for about a time of 3 years, except for the Bonded Labour System (Abolition) Act, 1976, and some parts for security reasons of the Factories Act, 1948, and Building and Other Construction Workers (Regulation of Employment and Condition of Service) Act, 1996.⁷

The 2020 Bills raise several thresholds. Regulations give the govt. the authority to exempt businesses from some or all of their requirements and procedures. The Industrial Relations Code governs workplace environment, organised labour, downsizing, cutbacks and redundancies, conflict settlement, and the establishment of industry-specific tribunals. For the national good, the govt. may exclude any modern manufacturing facility out from restrictions of this Regulation. The Occupational Safety, Health, and Working Conditions Code specifies

⁵ *Ibid*

⁶ PDS Legal Advisors, 'Industrial Disputes and Certain Other Laws (Karnataka Amendment) Ordinance 2020 – A special report' (*Mondaq*, 10 August, 2020) <<https://www.mondaq.com/india/employee-benefits-compensation/974582/industrial-disputes-and-certain-other-laws-karnataka-amendment-ordinance-2020-special-report>> accessed April 21, 2021

⁷ Justice V Gopala Gowda, 'Dilution of Labour Laws is Unconstitutional' (*Indian Express*, 20 June 2020), <<https://www.newindianexpress.com/opinions/2020/jun/20/dilution-of-labour-laws-is-unconstitutional-2158931.html#:~:text=The%20Uttar%20Pradesh%20Temporary%20Exemption,workers%20under%20the%20Factories%20Act>> accessed April 21, 2021

vacation and max shift of tasks, as well as quality standards such as proper air and light supply, as well as financial assistance.⁸

It consumes 13 legislations including the Factories Act. The 2020 Bill permits the State govt. to absolve any new machinery facility from its rules in light of a legitimate concern for expanded economic activity and employment generation. In addition, The Code forbids the hiring of salaried employees in any key activity while expressly permitting recruitment in a set of non-essential activities such as cafeteria, surveillance, and sewerage systems.⁹

The extension of working time which was proposed in the ordinance may not be able to solve the issues curtailing the Indian industrial growth. Indian industries are unable to stand against the competition from other countries not in terms of productivity but based on quality. It has been the issue of quality because of which the Indian products have been rejected internationally. The law-making in a democratic nation is a process given by the people, for the people, through their representatives in the legislature. If they are not involved in the making of the new law, then that law may not stand the scrutiny of the country. Here, in this case, the States brought in the Ordinances without opting to lay down procedure.

Now coming to the issue of the constitutionality of the dilution of labor laws in our country, it is important to notice that the increase in the working hours implies the concept of 'forced labor' of the laborers in these dire times. In the *People's Union for Democratic Rights* case, it was observed that Art 23 prohibits every form of forced labor. Further, if a person is made to work without being paid any remuneration, it comes under the ambit of Article 23.¹⁰

In the *Syndicate Bank* case, the apex court of India recognized the right to protest and to be paid of the workmen and that the aforementioned two rights fall under the Industrial Disputes Act 1947.¹¹ In the *Randhir Singh* case, the Supreme Court examined the concept of 'equal pay for

⁸ MR Madhavan, 'Dilution without adequate deliberation' (*The Hindu*, 22 September, 2020) <<https://www.thehindu.com/opinion/op-ed/dilution-without-adequate-deliberation/article32663006.ece>> accessed April 21, 2021

⁹ *Ibid*

¹⁰ *People's Union for Democratic Rights v Union of India* (1982) AIR 1473

¹¹ *Syndicate Bank v K Umesh Nayak* AIR 1995 SC 319

equal work'.¹² In the *Bandhua Mukti Morcha* case, proper compensation was ordered for the petitioner who correctly stated that he was doing bonded labor in stone quarries. The Supreme Court again discouraged the practice of bonded labor in light of Article 23 of the Constitution.¹³

In the times of Pandemic wherein, the economy of the country is hit hard, it can be reasonably expected that the workers will be made to work for longer hours (courtesy to the ordinances) with minimum or no remunerations, thus making it 'forced labor' under article 23.

In the *Damyanti Naranga* case, the SC had noticed that the workmen had all rights to form unions and associations in the place of work under art. 19(1)(c).¹⁴ In the *Sunil Batra*, the Supreme Court had ruled that the right to health is an essential part of the right to live with dignity. The arbitrary increase in the working hours may lead to detrimental health results for the workmen. The health and safety measures should be updated at all times.¹⁵

In the current pandemic scenario, it can be seen that some states, through notifications and ordinances, have expressly discouraged the formation of associations in the workplace. In addition to the increased working hours, it is to be noted that India still lacks the necessary infrastructure for ensuring the health and safety of the general public which includes the workmen.

All these add up for one to state that the labor law reforms have been carried out in haste and are violating the fundamental rights enshrined in the Indian Constitution. Thus, the dilution of labor laws is unconstitutional.

SUGGESTIONS AND CONCLUSION

It is to be noted that the objective of the law-making body behind the dilution of labor laws was to revive the Indian economy to a certain extent. The intent and objective weren't illegal or immoral but the implementation of the labor reforms could've been done in a better fashion,

¹² *Randhir Singh v Union of India* AIR 1982 SC 879

¹³ *Bandhua Mukti Morcha v Union of India* AIR 1984 SC 802

¹⁴ *Damyanti Naranga v Union of India* (1971) SCR (3) 840

¹⁵ *Sunil Batra v Delhi Administration* (1980) SCR (2) 557

keeping in view the constitutionality of the reforms. Following are a few suggestions for improving the lacunae in the labor reforms:-

- The labor law codes need to be re-visited and should be constructively harmonized with the existing constitutional regime. The power of the executive to amend the codes unilaterally should be kept under check.
- The International Labor Organization Conventions on working hours among all other provisions ratified by India are required to be honored and applied under the spirit of Article 253 of the Indian Constitution.
- There are no comprehensive grievance mechanisms, monitoring methods, or adjudication processes in the regulations. The employment of the investigator mechanism in the Regulations, as well as the lack of independent authority to examine sans pre-authorization and take measures, as mandated by ILO Convention No 81, must be remedied immediately.¹⁶

The law-making to enhance the living experience in a civilized democracy is a collective process based on debate and discussion. There can be ways to find convincing statutes to be accepted by the acceptable majority not isolating the minority. In addition, when there is a global crisis, be it health or otherwise, measures must be taken in the best interest of the public, and such measures should conform to the fundamental rights guaranteed to the citizens by the Constitution. This must be kept in mind by the relevant authorities while making such reformatory provisions in the future for a harmonious construction with the constitutional mandates.

¹⁶ Kamala Sankaran, 'Emerging Perspectives in Labour Regulation in the Wake of COVID-19' (2020) 63 *The Indian Journal of Labour Economics* 91, 94-95 <<https://link.springer.com/article/10.1007/s41027-020-00262-1>> accessed April 22, 2021