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LABOUR LAW REFORMS IN THE TIMES OF COVID-19

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Abstract

COVID- 19 has affected all the facets of human life. It has had a pernicious effect on the physical and mental health of the population, shattered the world economies, and globalisation came to a stalemate. The devastating effect of pandemic led to social and economic disruption and the global economies are still struggling to attain a stabilized state. The labour group was one such, who was worst hit by the pandemic. Therefore, the government of India felt the necessity to amend the labour laws in the country to exhilarate the labour conditions during the pandemic. Though the changes were aimed at providing a uniform codification of labour laws across the states and to elevate the conditions of the labour class, the amendments seemed to be rigid and complex. Further, the article critically analyses the reforms made in labour laws during the time of COVID-19 and suggest recommendations to be made to improve the same so that it benefits both the employers and the employees.

Introduction

Labour law legislation stands as the guardian of basic rights of labourers around the world and ensures their safety and well-being while providing stable grounds for the economic development of a nation. Several international bodies like the ILO and various other treatises and convention function tirelessly to ensure that these rights are not compromised. Since the reforms of 1991, the Indian economy has witnessed sea change in terms of growth and structuring, hence rendering the existing labour laws incompatible. Further the unfortunate arrival of the COVID-19 pandemic worsened the situation imposing newer challenges such as the lack of new investment, near stagnancy of manufacturing industry, imminent unemployment which made a revision in the legislations inevitable.

India responded to the situation with amendments to 23 of the 40 central labour law legislations. Various states have also taken several initiatives to promulgate ordinances to even completely suspend laws in order to revive the economy. The changes in the labour laws will apply to both the existing business and new factories being set up in the state. The state governments also believe that though it is difficult to kick start industrial activity and generate employment in the post COVID-19 era, there is an important link between light touch labour legislation and attracting crucial investments which could ease the process. All past experiences have led to some serious rethinking about existing institutions and forced legislators to make new laws or amend old ones.

The legislative change although provides employers a fighting chance in these unforgiving situations and warrants progressive measures such as revised benefits and compensation, compounding of offences and technological improvements have resulted in nation-wide protests by labour unions and even world organizations like the ILO stepping in to express “deep concern” citing it's unconstitutional and anti-labourer approach. The changes provide the employers with sizable powers in matters of the employees leaving the latter susceptible to a number of potential hardships at the former’s discretion.

Hence the new laws however need to be analysed and researched in terms of its impact and competency, in the light of the various legislation safeguarding the interests of the ones at stake including international conventions, human rights agreements, prescribed global standards and also fundamental rights guaranteed under the constitution. Further considering the dire necessity for competent legislations in the matter suggestions must be made and counter measures employed to neutralise the imminent threat whilst providing sufficient room for the aspired economic revival, hence forming the crux of this article.

Labour Law Legislations in India

Labour laws define the rights and obligations of workers, union and employers in the workplace. It is a body of laws, administrative rulings, and precedents that governs the rights and obligation

of the workers and their employers, and also places restrictions on them. Labour law can be broadly categorised into two:

1. Collaborative labour law - relates to tripartite relation between employee, employer and the government.
2. Individual labour law- relates to employees' rights at work and the contract for work.

In India, labour law legislations are brought under the concurrent list providing both the centre and state governments to enact legislations[1]. These legislations can be categorized as follows:

1) Labour laws enacted and enforced by the Central Government.
2) Labour laws enacted by Central Government and enforced both by Central and State Governments.
3) Labour laws enacted by the Central Government and enforced by the State Governments.
4) Labour laws enacted and enforced by the various State Governments which apply to respective States.

The state governments under the fourth category have the authority to make their own legislations to govern their own territory based on their own unique characteristics. The labour legislations enacted by the state of Kerala are an important example. Kerala state labour laws legislations like the Kerala Labour Welfare Fund Act 1975, Kerala Payment of Subsistence Allowance Act 1972, Kerala Head-load Workers Act 1978 etc. are a few note-worthy initiatives by states to improve the standard of labour and maximise social security within its own boundaries. The working of the remaining central laws is carried out under the Ministry of Labour and Employment.

Indian Economy before and during COVID-19

With a projected GDP-growth rate of 12% in 2019-20, remarkable increase in FDI equity inflows, 53.3% increase in M&A activity and over 2% increase in overall exports, India is the fastest

[1] INDIA CONST. sch. 7, list. III, ent. 22, 23, 24, 55, 61, 65.

growing major economy in the world and is expected to be the among the top three economic powers in the world. Further, with a 13% increase in its expenditure India is gearing up for huge improvements in foreign investment with an emphasis on the manufacturing sector[2]. However certain internal factors have been considerably slowing the economic progress of the nation. Some of the major hurdles include scarcity and low formation of capital, under-developed infrastructure and low levels of technology. The root cause of these problems can be traced to the lack of newer investment in the state. In spite of governmental initiatives like the make-in-India project the investment inflow to the state remained limited. Strict labour laws in the state slow down the functioning of firms and compromises on efficiency.[3]

Impact of COVID-19

From the report of the first case on 30th January 2020[4], India has taken drastic measures to counter the spread of the pandemic in the state. India has initiated nation-wide lockdown spanning over two months and other counter-measure. According to the WHO India is among the top 10 worst affected countries in the world[5]. With a revised GDP estimate showing 0.2% decrease and a projected growth of 1.9% for the year, coupled with linkages in worst affected nations, supply chain and macroeconomic factors, Indian economy is in for a tough ride. The decline in the supply chain coupled with the sluggish demand side and lack of labour inputs has posed deadly challenges to businesses across the state. The low credit flow has affected both public and private firms causing a massive slow-down in the economy.

[2] *About Indian Economy Growth Rate and Statistics*, INDIA BRAND EQUITY FOUNDATION (Jun, 2020), https://www.ibef.org/economy/indian-economy-overview.

[3] Anshul Pachouri, *Labour Regulation and Job creation in India*, WORLD BANK BLOGS (Aug. 20, 2014), https://blogs.worldbank.org/endpovertyinsouthasia/labour-regulation-and-job-creation-india/.

[4] Mukesh Rawat, *Corona Virus in India: Tracking country's first 50 covid-19 cases; what numbers tell*, INDIA TODAY (Mar.12, 2020), https://www.indiatoday.in/india/story/coronavirus-in-india-tracking-country-s-first-50-covid-19-cases-what-numbers-tell-1654468-2020-03-12/.

[5] *WHO Corona Virus Disease (Covid-19) Dashboard*, WORLD HEALTH ORGANISATION, (Sept. 8, 2020) https://covid19.who.int/?gclid=Cj0KCQjwiYL3BRDVARIsAF9E4Gfyg4MyjGhSwiPWdt4RPFU6d6lszmo1LIKP4dyCzBeg5zS_cGYAdbYaAqaHEALw_wcB.

However, the new challenges have also provided India with opportunities owing to adoption of de-risking strategies and potential shift in manufacturing bases of various firms from China. However, these opportunities are highly dependent on economic recovery of the state and the investment conditions. However, the rigid and outdated labour laws meant a hindrance to the process and hence making a reform inevitable.

Recent amendments to the Indian Labour Law Legislations

The following table provides the legislation-wise amendments made by the various states in India.

Legislations-wise Amendments in labour law(w.e.f.06/03/2020)

Legislation	Original section	Amendment	States(s)
1. Industrial Disputes Act 1947	a. 25K(1)	Enhancing threshold from 100 to 300 for prior-permission for lay-off, retrenchment, closure	Andhra Pradesh, Assam, Haryana, Madhya Pradesh, Maharashtra, Rajasthan, Uttarakhand, Jharkhand, Uttar Pradesh and Under consideration By Chhattisgarh
	b. 25F(b)	Enhancement in retrenchment compensation	Gujarat (45 to 60 days), Madhya Pradesh (15 to 90 days), Rajasthan (plus 3 months wage)

			Gujarat and Madhya Pradesh
	c. 2A(3)	Reduction in Limitation Period for raising ID from 3 years to 1	Gujarat
	d. addition	Compounding of offences introduced	Rajasthan (15-30%)
	e. 33	Threshold for recognition of trade unions increased	
2. Payment of Wages Act 1936	a. Addition	Notification for payment of Wages in Bank account	Andhra Pradesh, Assam, Gujarat, Haryana, Kerala, Madhya Pradesh, Punjab, Rajasthan, Uttarakhand, Jharkhand, Telangana, Chattisgarh, Uttar Pradesh and Under consideration by Nagaland and Meghalaya
	b. addition	Compounding of	Madhya Pradesh and

		offences introduced	Uttar Pradesh
3. Factories Act 1948	a. Addition	Permitting Night work to women	Andhra Pradesh, Assam, Goa, Gujarat, Karnataka, Madhya Pradesh, Punjab, Rajasthan, Uttarakhand, Tamil Nadu, Uttar Pradesh, Himachal Pradesh
	b. 2	Enhancing threshold for the definition of factory [10 to 20 (with Power) & 20 to 40 (without Power)]	Andhra Pradesh, Maharashtra and Rajasthan Under consideration by Uttarakhand
	c. Addition	Enhancing Overtime Time	Madhya Pradesh(75 hrs to 125hrs), Maharashtra 75 hrs to 115hrs)
	d. addition	validity of license for factories upto 10 years	Madhya Pradesh, Uttarakhand, Odisha, Bihar and Uttar Pradesh
4. Industrial Employment	a. 1	Threshold enhanced for applicability of	Madhya Pradesh and Rajasthan

Standing orders Act 1946	b. addition	Act Exemption from Act to some sectors	Karnataka, Madhya Pradesh, Rajasthan
	c. Addition	Compounding of offences	Madhya Pradesh and Uttar Pradesh
	d. addition	Fixed Term Employment	Madhya Pradesh, Gujarat, Uttar Pradesh, Haryana, Odisha, Rajasthan, Jharkhand
5. The Contract Labour (Regulation and Abolition) Act, 1970	a. 1	Threshold enhanced for applicability of Act	Andhra Pradesh, Haryana, Maharashtra, Rajasthan, Uttar Pradesh
	b. addition	Timeline for registration certificate or license to contractors	Andhra Pradesh, Madhya Pradesh, Tamil Nadu, Uttarakhand, Rajasthan, Telangana
	c. addition	Compounding of offences introduced	Gujarat
6. Trade Union Act 1926	a. addition	Timeline prescribed for disposal of	Andhra Pradesh, Assam, Gujarat,

		application for registration of Trade Unions [varies from 15 days to 4 months]	Haryana, Kerala, Madhya Pradesh, Punjab, Rajasthan, Uttarakhand, Karnataka, Tamil Nadu
7. State Shop and Establishment Act	a. Addition	Deemed Registration if no action on application in stipulated time	Andhra Pradesh and Madhya Pradesh
	b. addition	Adoption of model Act	Maharashtra, Under consideration by Nagaland
8. Equal remuneration Act 1976	a. addition	Compounding for offences introduced	Gujarat, Madhya Pradesh and Uttar Pradesh
9. Minimum Wages Act 1948	a. addition	Compounding for offences introduced	Gujarat and Madhya Pradesh
	b. 11	Minimum wages to be paid by cheque or in Bank A/C	Andhra Pradesh, Gujarat, Madhya Pradesh, Rajasthan, Chhattisgarh, Uttar Pradesh

10. Sales Promotion Employees Act 1976	a. addition	Compounding for offences introduced	Madhya Pradesh and Uttar Pradesh
11. Interstate migrant workmen Act 1979	a. 4	Deemed Registration if no action on application in stipulated time	Andhra Pradesh, Madhya Pradesh and Telangana Under consideration by Uttar Pradesh
12. Motor Transport Workers Act 1961	a. 3	Deemed Registration if no action on application in stipulated time	Andhra Pradesh, Madhya Pradesh ,Telangana ,Uttar Pradesh
	b. addition	Compounding for offences introduced	Gujarat, Tamil Nadu and Uttar Pradesh
13. BOCW (RECS) Act 1996	a. addition	Compounding for offences introduced	Under consideration by Uttar Pradesh
	b. addition	Time Limit of 30 days for registration certificate	Andhra Pradesh, Madhya Pradesh, Rajasthan, Uttarakhand and Under consideration by Meghalaya

14. BOCW Welfare Cess Act 1996	a. Omission	Plant & Machinery of Factory excluded for assessment of cess	Madhya Pradesh
15. Employees Compensation Act 1923	a. addition	Facilitating filing of claim for compensation	Gujarat, Rajasthan, Chhattisgarh

Impact and Effect of Instituted Changes

Indian labour laws are often described as inflexible and complicated. Further, owing to the lack of proper administration and unnecessarily large volume of these legislations they often result in compromising the overall efficiency. Furthermore, the laws vary considerably from state to state and are revised regularly making it very difficult for employers to be in compliance. The recent amendments were primarily targeted at sorting this issue by providing a uniform codification of labour laws across the states and inclusion of flexibility to favour the employers without having to compromise the right of the employees. Further technological improvements and strict administration were to be inculcated to ensure maximum efficiency of the laws and to cope with the huge changes in the economy since the last labour law reform in 1991.

Critical Analysis of Changes to Important Labour Law Legislations

1. Industrial Disputes Act, 1947:

The increase of threshold for the applicability from 100 to 300 provides for the unmonitored and uncontrolled working of firms that fall below the prescribed standards. Though this is an advantage for the employers, the labourers under them are not entitled for any of the benefits listed under these statutes. This includes procedure for retrenchment/closure, working conditions, terms,

policy, etc. Even though only a small number of firms fall into this bracket[6] and the law itself may not be immoral or unconstitutional, it poses a potential risk to the labourers by leaving them defenceless. Further, these changes result in undermining the dispute redressal mechanisms hence paving way for unwanted labour disputes and aggressive strikes which will further slowdown the system. The emphasis on the current laws being on better investments and economic revival, the changes instituted has been in favour of the employers. Though at first glance they provide for faster and efficient functioning of businesses in the country, they might not yield the desired effects. The abundance of unsupervised powers with the employers and the absence of a neutral third party can have the opposite effect by straining the employment relations. Employers can now maximise profits by streamlining their approach to maximise efficiency, hence proving harsh on aspects of work conditions, working hours, welfare, etc. Further, these conditions are not ideal to attract new investments due to the problems in the long run. Moreover, such investors may demand continuation of such policies even after the economic threat brought by the pandemic is long over, to which compliance may not be possible.

2. Contract Labour (Regulation and Abolition) Act, 1970:

The Contract Labour (Regulation and Abolition) Act 1970 was enacted as a Central law with the aim to regulate the conditions under which contract labourers' work and also help in the gradual abolition of the contract labour system as and when possible. The primary objective of the act was to prevent contract labour and enable absorption of those in the sector to the mainstream workforce. Though this is legislation powerful enough to resolve a number of issues prevailing in the labour market certain shortcoming made it have the opposite effect. The poor implementation of the act remains the root cause for the prevailing evil. Hence the new changes made to further increase the threshold of applicability without any means of effective enforcement will only worsen the issue. Compounding of the offences alone will not resolve the issue, warranting the establishment of a devoted enforcement mechanism. However, this change would be considered significant by

[6] Somesh Jha, *Plan to allow larger firms to shut shop sans govt.nod*, THE HINDU, (Feb.25, 2017), https://www.thehindu.com/news/national/plan-to-allow-larger-firms-to-shut-shop-sans-govt-nod/article17363355.ece/.

establishments with small scale operations and those who rely on an outsourced workforce for multiple aspects of such operations.

3. Factories Act 1948:

Considering the current situation of employment in India, firms owing to the previous laws have an abundance of unused capacity[7]. Hence, the increase in the duration of shifts and overtime and exception from the statutes will only result in increased unemployment and workload of the employees. This can also lead to an increase in the wage gap between the organised and unorganised sector while further increasing the strength of the latter. Further, the new amendments further tilt the scale in terms of regional disparity of labour legislations and can increase inequality due to regional disparity in work and employment opportunities. The provision for women to work under night shifts through a progressive measure to reduce sexual discrimination in workplace, must comply with the guidelines laid by Madras High Court in *Vasantha R v. Union of India (UOI) And Ors*[8].

4. Industrial Employment Standing orders Act 1946:

According to the amendment, "Fixed Term Employment" has been newly introduced irrespective of the industry of work. The amendment also holds that no employer of an industrial establishment shall convert the posts of the permanent workmen existing in his industrial establishment on the date of commencement of the Industrial Employment (Standing Orders) Central (Amendment) Rules, 2018 as fixed term employment thereafter. Further the hours of work, wages, allowances shall not be less than that of permanent workman and all statutory benefits available to a permanent workman proportionately according to the period of service rendered by him albeit his period of employment does not reach the qualifying period of employment as provided by the statute. This was a progressive measure by the government though the liberty of the enterprises has been slightly compromised.

[7] *The Specter of Unused Capacity*, FOUNDATION FOR ECONOMIC EDUCATION, (Jul.1, 1978), https://fee.org/articles/the-specter-of-unused-capacity/.
[8] Vasantha R v. Union of India And Ors., (2001) IILLJ 843 (Mad).

Legality of the recent Indian Labour Law amendments

1. Constitutionality:

The Indian constitution guarantees and protects the basic rights of its citizens and the workplace is no exception. The dignity of human labour and the rights of the working class are protected under chapter-III (Article 16, 19, 23 & 24) and 7 Chapter IV (Article 39, 41, 42, 43, 43A & 54) keeping in line with Fundamental Rights & Directive Principles of State Policy.

The new amendments can be subject to judicial scrutiny as laid down by the Hon'ble Supreme Court in *S.R. Bommai* v. *Union of India*[9]. The court ruled that any law in force can be questioned on the grounds of propriety, necessity, expediency and non-application of mind. In the case at hand, though the situation warranted necessary reform to the labour law legislation a number of changes made can be disregarded on these grounds. The enhancing of the threshold of applicability of various statutes lacked any form of proper research as the new bulk of institutions falling under the limit can exercise total discretion in matters relating to basic right of employees which can worsen the on-going condition. As per the economic survey of 2019-20, 91.66%[10] of the Indian workforce is employed in the unorganised sector, including self-employed personnel and hence further increasing the threshold of the acts will only result in the worsening of these numbers at the same time worsening employment relations.

Furthermore the increase in the threshold for applicability, owing to its for laws exempting a fraction that earlier availed the benefit can be challenged as a violation of Article 21 as stated in *D.K. Yadav* v. *J.M.A. Industries*[11]. The Supreme Court has held that the right to life enshrined under Article 21 includes the right to livelihood and therefore termination of the service of a worker without giving him reasonable opportunity of hearing in unjust, arbitrary and illegal. The procedure prescribed for depriving a person of livelihood must meet the challenge of Article 14 and so it must be right, just and fair and not arbitrary, fanciful or oppressive. Articles 42 and 43

[9] S.R. Bommai v. Union of India, AIR 1977 SC 1361.

[10] *Employment Vision 2020*, NITI, (Sept.9, 2020), https://niti.gov.in/planningcommission.gov.in/docs/reports/genrep/bkpap2020/32_bg2020.pdf/.

[11] D.K. Yadav v. J.M.A. Industries., (1993) 3 SCC 258.

provide for just and humane conditions of work and ensure a decent standard of life. However, the new changes do not provide for any means to guarantee these rights and leaves them at the discretion of the employers.

The laws in question though not unconstitutional in itself provide an opportunity for exploitation, hence providing sufficient grounds for judicial review. In *Steel Authority of India* v. *National Union Water Front*[12] the court laid down procedure for consultation, notification in terms of changes made relating to contract labour, these provisions were not considered to the new changes made under the act. The unwarranted increase of threshold for recognition of labour unions is against the principles prescribed though it has been established by the Indian judiciary in *Raghubar Dayal Jai Prakash* v. *Union of India*[13] wherein the Supreme Court held that right to freedom of association guaranteed by Article 19(1)(c) did not carry with it a guaranteed right to recognition of the association.

2. <u>Compatibility with Binding Global Conventions and Treaties:</u>

India has been a member of the ILO since 28th June, 1919. At present, India has ratified 6 of 8 fundamental conventions, 3 of 4 governance conventions and 38 of 178 technical conventions under the ILO.

The amendments done to the labour law legislations poses a violation of C144 - Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) of which India has been a ratified member since 27th of February 1978 and which is still in force. The Convention warrants that any change to labour laws made in the country must be done after proper consultation and discussion with labour representatives, trade union members and government representatives and an amicable conclusion must be attained before a legislative measure is initiated. In the case at hand, changes made were done as a governmental initiative without consultation and discussion with the workers and is a violation under Article 5 of the Tripartite Consultation (International Labour Standards) Convention, 1976.

[12]Steel Authority of India v. National Union Water Front, AIR. 2001 SC 3527.

[13] Raghubar Dayal Jai Prakash v. Union of India, AIR. 1950 SC 263.

Further, the increase in overtime permitted in some states and a permitted ceiling of 60hrs a week is more than the prescribed 48hrs a week according to the C001- Hours of Work (Industry) Convention, 1919 (No. 1) which is ratified by India (14 July 1921) unless there is a break in the 8 hour per day limit, which may provide employers an opportunity to override the Convention. The increase in the threshold for recognition of trade unions is in conflicting terms with the Fundamental Principles and Rights at Work (FPRW)[14] and ILO Constitution (1919).

Suggestions and Recommendations

Before any effective suggestions are made proper identifications of the issue at hand are necessary. The previous system of laws were very rigid and provides less scope for improved efficiency of the employers while the new amendments provides for very favourable conditions for the employers at the expense of the labourers. For a competent system to take shape a perfect balance must be struck between the interest of the labourers and the firms whilst providing room for enhanced economic growth.

Firstly, for the effective functioning and administration of laws they must be boiled down to the essential minimum. Further labour law being in the concurrent list, has vast differences in terms across the country and are revised non-uniformly making it really difficult for the effective compliance by states. Indian labour laws use different acts for different aspects of a particular category of labour hence making laws confusing. The uniform merging of various statutes in particular codes based on its subjective applicability can be more effective and efficient. Further nation-wide use of a uniform code with permissible exceptions only based on unique characteristics and conditions of states, to which a common rule can't be applied, can improve the overall equality in employment across the country.

Opposed to the policy of granting exemptions to firms based on prescribed criteria for the application of the statute, amendments must be made to prescribe procedure for the smaller firms

[14] Declaration on Fundamental Principles and Rights at Work, 1998, Sec.2.

based on their financial output. The number of employees is an out-dated criterion and setting a standard based on overall economic output by firms can help them thrive better and achieve the ultimate goal of increased investments. Further, as opposed to complete exclusion from the statutes, the smaller firms must be prescribed alternate criteria for functioning by which the safety and well-being of the employers can still be guaranteed.

As the ultimate goal of the hour is economic revival, measures must be made to help firms streamline better on efficiency and hence out-dated and rigid principles like the LIFO(Last in First Out) in the Industrial Disputes Act 1947, inefficient non-compete clauses etc., must be lifted. Firms must be able to employ efficiency-based employment structuring without concern to previous employment patterns. Further, the government could incentivise employment procedures by firms to enhance equality in employment patterns by favouring the employers to recruit from an under-privileged group rather than simply lifting restrictions. A small amount of the Union budgetary allocation can be utilized for partnering with industries to share the wage burden and ensure basic safety and welfare.

The primary step however is the effective administration of the laws. The recent amendments provides for compounding of offences. However, strict compliance to the law must be ensured. An efficient dispute redressal system is crucial to prevent major conflicts. The admission for Industrial Dispute in the recent amendments has been reduced to 1 month for effective conciliation. This is an efficient measure in promoting faster dispute redressal whilst protecting the right of the labourers.

Conclusion

As stated by Okun's law, unemployment has a direct negative effect on the GDP of a nation. In India, legislative reforms must be aimed at reducing unemployment rates while coping with the increasing demand for labour. Hence, instead of the increase in the overtime of workers, laws must promote working in shifts. This can increase overall efficiency while improving employment rates. However, the unemployment scenario in India cannot be controlled by just legislative amendments in labour law. Social security is another important aspect that must be looked into. With the rising

mechanisation, and decreasing demand for unskilled labour economic revival only stands a chance if the ones that are left out are also protected. Social protection schemes must be reshaped to fit citizens who lack a steady income and are subject to financial hardships.

Labour law legislation is the backbone of any nation's economy. It makes or breaks the efficiency of the system. It helps to bond the employers and employees for systematic development. Hence, changes will only hold well if the government is successful in conveying its motive to the parties. Therefore, effecting consultation, planning and discussion with all the parties is fundamental not only to develop competent legislation but also for wilful compliance and successful administration of it. India being a ratified member of the relevant ILO Conventions must warrant for effective tripartite consultation before any major policy change is instituted in the country.