

LEGALFOXES LAW TIMES

COVID 19 AND LABOUR LAWS

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INTRODUCTION

Indian Constitution is the largest written constitution in the world which is the basis of almost every Act passed in India. After the enactment of the constitution, the laws which were present were either amended or nullified. Part III of the Constitution (Article 12 to 35) is the benchmark for the passing of Labour laws, which cover Equality before law, Religion, Sex, Caste, Place of birth, abolition of untouchability, freedom of speech and expression, prohibition of employment of children in factories etc. Part IV of the Constitution, also known as Directive Principles of State Policy, although not enforceable in a Court of law, however provide a parameter for making Labour Laws.

Despite of being over 200 State laws and almost 50 Central laws relating to labour yet there is no exact definition of what 'Labour Law' means. As per the Indian Constitution, labour is subject of concurrent list which means that both State and Central Government have the power to make legislation with the residual making power resting with the Centre. There are different legislations such as – Factories Act, 1948, The Contract Labour (Regulation and Abolition) Act, 1970 and the Shops and Commercial Establishment Act, 1958 which deal with the condition of workers, for wages and remuneration – The Minimum Wages Act, 1948 and Payment of Wages Act, 1936, for Employment Security and Industrial Relations – The Industrial Disputes Act, 1947 and Industrial Establishments Act, 1946 and for Social Security – Employee's Provident Fund Act, 1948 and Workmen's Compensation Act, 1923 etc.

The COVID-19 which has been described by the WHO, as pandemic has impacted the lives of people all over the world. The outbreak of this virus has made us realise how unpredictable our lives can be. It has impacted every sphere of our lives, be it security, social, health or economy.

It has changed the way people used to live, work or to perform daily activities. It has brought our lives topsy-turvy and will continue to have a major effect on all, globally.

As the economy is already struggling with the Coronavirus-induced lockdown, workers and the migrant labour are the one's more effected by it, especially those who were hired on daily-wage basis. Since most of the industries were closed, it rendered most of the workers unemployed and they, consequently, had to return back to their villages. To deal with this, most of the States made significant changes in the labour laws.

Workers are the key pivot for successful running and performing of any industry. However, due to the Corona crises and the consequent complete shutdown, the industry had no alternative than to resort to cost cutting and lay-off of the work force to minimise the industrial losses. Thus, two options were available, that is, either cutting down the jobs or general reduction in the wages. However, simultaneously, it was also important to ensure protection and welfare of the workers during this hard period while equally providing safeguards and harmonizing the interests of both the workers and employers.

RECENT CHANGES

Shri Santosh Kumar Gangwar, Minister of State (I/C) for Labour and Employment held a Webinar with the Central Trade Union Organizations (CTUOs) today at New Delhi to discuss the emergent situation arising out of COVID-19 pandemic and to minimize its impact on the workers and on the economy. These issues include (i) Protection of the interest of Workers and Migrant Workers in view of COVID-19, (ii) Measures to generate Employment, (iii) Measures to be adopted for restarting economic activities and (iv) Measures to improve situation of MSME to enable them to discharge their liabilities under Labour Laws. Senior officers of the Ministry of Labour and Employment, representatives of all CTUOs participated in the Webinar.¹

As regards the above, various States gave different solutions for some effective relaxation. According to a release by the Labour minister, some industry bodies asked for relaxing working

¹PIB Delhi, Labour Minister Interacted with CTU Representatives to Fight COVID-19 Pandemic, Posted On: 06 MAY 2020 6:24PM (May 31, 2020, 8:08AM) <https://pib.gov.in/PressReleasePage.aspx?PRID=1621495> .

hours from 8 to 12 hours. They also suggested that power should be supplied to them at a subsidized rate. Instead of red, orange and green zone there should be only two zones – containment zone and non-containment zone and the activities should be facilitated in the non-containment zone. Increase in the limit of workers to at least 50% instead of 33% in order to allow the production of goods and services at an optimal level. Also, the wages paid to workers can be covered under CSR funds as expense or fit charge.

Most significant changes have been made by Uttar Pradesh, Madhya Pradesh and Gujarat through amendments some of which will require the approval of Central Government in order to come into effect. However, changes like increasing the worker's hours from 8 hours per day to 12 hours per day under the Factories Act, 1948 were described by the trade unions as a regressive move. Some other changes have also been made by Rajasthan, Punjab and Odisha.

The Uttar Pradesh Temporary Exemption from Certain Labour Laws Ordinance, 2020 came into effect after receiving consent from the Uttar Pradesh government. According to this ordinance, all the businesses will be exempted from almost all the labour laws for a period of three years. Thereby scrapping all the laws related to labour except - The Building and Other Construction Workers Act, 1996; Workmen Compensation Act, 1923, Bonded Labour System (Abolition) Act, 1976; and Section 5 of the Payment of Wages Act, 1936 that provides the right to receive timely wages. Which means that other labour laws such as laws related to contract workers and migrant workers or the laws regarding health of the workers, working conditions and settling industrial disputes will become invalid. This ordinance will apply to both businesses – the existing one and as well as to the new businesses which will be set up in the State.

The idea behind this ordinance is to protect the interest of the migrants and to provide employment to those who have come back to the state and simultaneously to protect the workers already in the State. In these tough times, the changes made in the Labour Laws will come as a respite to the industries since it will provide them flexibility in various practices. Therefore, to encourage investment for establishing new industrial units, it is important that businesses are given some kind of temporary relaxation and relief from the stringent and penal provisions of the existing Labour Laws.

The industrial and economical activities in Uttar Pradesh have been severely affected and slowed down due to the outbreak of Covid-19. Businesses and economic activities have slowed down due to which labour welfare has also been affected. This is because businesses and economic activities came to a halt more or less due to the national lockdown. To bring economic activity back on track, new investment opportunities would need to be created along with fastening the businesses processes and productivity. ²

While the ordinance passed by the UP government is a blanket suspension of all labour laws for the next three years, barring three (payment of timely wages, the prohibition of bonded labour, and health and safety of workers), MP has amended a few Acts. It has exempted 11 industries-- textile, leather, cement, iron and steel, electrical goods, sugar, electricity, public motor transport, engineering, including manufacturing of motor vehicles -- from the **Madhya Pradesh Industrial Relations (MPIR) Act, 1961**. This, in turn, will affect trade unions. ³The MPIR Act 1961 gave the bargaining powers to employer's association and trade unions in case of any industrial dispute. However now it has exempted 11 industries from the same.

The Industrial Dispute Act, 2000 which acts as an instrument to solve the disputes between employers and the workers has been disabled for the industries that will be set up in the coming 1000 days. Now they can solve disputes as per their suitability and will not be required to go to courts but will be required to make adequate provisions for settling the disputes. All the provisions of the Act except Section 25, which is related to safety, is now relaxed. Also, in order to suspend workers from job the industry people will not be needing to secure permission from the government. However, due permission will be needed in order to remove them from the job.

In order to increase the production, the industries can now change the shifts, as per their convenience. Under Labours Laws, instead of maintaining 61 registers, now only a single register is required and only single return has to be filed instead of 13. The working hours of the industrial units have also been increased from 8 hours to 12 hours with 72 hours overtime a week, but the latter is against the provision of the Factories Act, 1948 which authorizes only 48 hours of

²Aanchal Magazine, COVID-19 Effect: Relaxation in labour laws, exemptions to cos in various states draw trade union ire, Business (May 31, 2020, 5:09PM) <https://indianexpress.com/article/business/covid-19-effect-relaxation-in-labour-laws-exemptions-to-firms-in-various-states-draw-trade-union-ire-6399183/>.

³Sonal Khetarpal, Coronavirus crisis: Why MP's labour law changes are more balanced than UP, Economy and Politics (June 2, 2020, 8:37PM) <https://www.businesstoday.in/current/economy-politics/coronavirus-crisis-why-labour-law-changes-by-mp-are-more-balanced-than-up/story/403669.html>.

weekly overtime. Under the new guidelines, shops can now operate from 6am till midnight as compared to the earlier timings of 8a.m. to 10p.m. in order to provide a stimulus to the economic activities which have been adversely affected by the Coronavirus.

In order to attract new industries and start-ups, amendments have been made in the licensing and registration processes which have become more flexible as compared to the earlier provision. Earlier licence and registration was issued in 30 days but now it has to be issued in just one day. The renewal of factory license is now valid for 10 years. The start-ups will be requiring only one-time registration and no further renewal of registration is required.

It has also ended the process of inspection for the industries, non-hazardous in nature and which employ less than 50 workers. Now inspection can only be made in the case of some complaint, with the express permission of Labour Commissioner. Under the Contract Labour (Regulation and Abolition) Act, 1970, contractors will be required to register only after employing 50 workers as compared to the earlier rule which required them to register in case of 20 workers. The establishments with 100 workers can hire according to their need.

The above-mentioned changes have been done in order to boost up the economy, to increase the job opportunities and to attract more investments and start-ups. However, it is said that changes made in Labour Laws by Uttar Pradesh are harsher than the changes done in Madhya Pradesh. Madhya Pradesh has allowed the increase in working hours only if workers are willing to do so and are paid overtime for the same. Also, approval of State Government will be required in the case of wrongful termination. Although in Uttar Pradesh, now, it has become easy to hire the workers and even fire them and these changes are same for all the existing manufacturing units and as well as for the new ones.

After Uttar Pradesh and Madhya Pradesh announced the changes made in Labour Laws, Gujarat also made amendments in the laws. The ordinance promulgated by Gujarat stated that the new industries, which will set up in the state, do not have to comply with the Labour Laws for 1200 days except for the three basic acts - Minimum Wages Act, Industrial Safety Rules and The Employees Compensation Act. The process of taking approvals for establishing new businesses has become online and the necessary government approval will be accorded within 15 days.

In a tweet, Chief Minister's Office said that this step was being taken to "boost economic activities and generate employment in post-lockdown period", but the exemption will not apply to "provisions for minimum wages, safety and compensation in case of accidents". Kumar also said that Micro, Small and Medium Scale Enterprises such as ceramic units in Morbi in Saurashtra and units in south Gujarat which depend on gas supplied by Gujarat Gas can now pay their bills due in the second half of March by May 10, and bills due till May 10 can be paid in fortnightly instalment still June 23. The government also waived Minimum Offtake Guarantee (minimum fixed charge for gas) for these industries from April to June, as they are unable to use the gas due to coronavirus lockdown, Kumar said. Interest on late payment of gas bills for these units was also reduced to 10 per cent from 18 per cent, he said.⁴

WHETHER THE CHANGES MADE WILL CREATE MORE INVESTMENT OR MORE DISORDER?

The recent changes were done on the pretext that they will boost up the economy and bring in more investment, whereas, according to some views, the earlier Labour Laws hardly served any purpose for protecting the workers, rather it only increased difficulties for the companies.

However, CITU (Centre of Indian Trade Unions) have opposed the 'Labour Law reforms.' According to them it will only create chaos in the labour market and will decrease the productivity of the workers. They have condemned the action and termed it as a vicious step against the workers who actually facilitate in creation of wealth for the economy. Only by weakening the laws which are meant for the protection of the workers and believing that it will bring more investment is both regressive and unethical in nature.

States like Uttar Pradesh, Madhya Pradesh and Gujarat have already made the changes and other states will follow the same path in the name of progress. Karnataka is also ready to make amendments in order to help the industrial units and claim the proposed amendments will not go

⁴PTI, Exemption from labour laws in Guj for new industrial units, Labour (June 2, 2020, 11:34PM), https://www.business-standard.com/article/pti-stories/exemption-from-labour-laws-in-guj-for-new-industrial-units-120050900863_1.html.

against the interests of the labourers. The Factories Act will only apply to those units having a labour force of more than 40 workers. The Industrial Disputes Act will apply to those units employing 300 or more workers. The overtime of the workers is being increased from 75 hours per quarter to 100 hours. Rajasthan has increased the threshold from 100 to 300 layoffs and have also increased the working hours under the Factories Act, from 48 to 72 hours a week. States like Punjab and Himachal Pradesh have also increased the hours. In Kerala, too, the industries will get the license within seven days from the date of filing of the application for the same.

The Government, in general, has a rather too simplistic and a rather fallacious misconception that bringing flexibility to the labour laws will, ipso facto, attract new and increased investments and also believe that those companies which earlier had their base in China, will shift their units to India. However, the experts believe that changes in Labour Laws, whether already made recently or have been proposed, will only lead to the exploitation of the workers. In India, where the workers are largely in a vulnerable condition, these changes will only serve to increase the gap between the workers and employers. The labour laws were made to protect the workers but their dilution will only lead to turning back the economy shifting 100 years back. By scraping off the laws which ensure minimum wages, provide social security and the right to form unions will only lead to increase in workers agitation and activism.

The CTUs have also submitted a letter to Prime Minister Narendra Modi arguing against the privatisation of the public sector and other enterprises, as well as the dilution of labour laws. “The extreme cases are those of UP, Gujarat and MP, where almost all the labour laws are sought to be suspended for three years while same is being expanded to other states at the direct instance and insistence of central government,” the letter read. They have demanded that privatisation be stopped and the dilution of labour laws be scrapped.⁵

Radhicka Kapoor of ICRIER characterised this as “creating an enabling environment for exploitation”. That’s because far from being a reform, which essentially means an improvement from the status quo, the removal of all labour laws will not only strip the labour of its basic rights

⁵Wire Staff, [Trade Unions Across India Protest Changes in Labour Laws](https://thewire.in/labour/trade-unions-protest-changes-in-labour-laws), Leaders Detained in Delhi (June 3, 2020, 4:50PM) <https://thewire.in/labour/trade-unions-protest-changes-in-labour-laws> .

but also drive down wages. For instance, what stops a firm from firing all existing employees and hiring them again at lower wages, she pointed out.⁶

International Labour Organization was founded in 1919. It is an agency whose work is to ensure social and economic justice by setting up International Labour standards. India is one of the founding members of this agency and has ratified about 47 conventions which relate to the compensation in case of any injury, fair compensation, labour working hours etc.

The International Labour Organization maintains a system of international labour standards aimed at promoting opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and dignity. In the context of the crisis response to the COVID-19 outbreak, they provide a tried-and-trusted foundation for policy responses that focus on a recovery that is sustainable and equitable.⁷ In order to revive the economy, while many States have made sweeping changes in labour laws, the trade unions argue that they are in violation of the standards set by International Labour Organisation. The trade unions have shown their concern and asked the authorities to make sure that such changes are in harmony with the global standards, including Fundamental Principles and Rights at Work (FPRW) and are implemented after proper consultation only.

The ILO reply to the letter signed by trade unions such as AICCTU, AITUC, CITU and HMS says: “Please allow me to assure you that the ILO Director-General has immediately intervened, expressing his deep concern at these recent events and appealing to the Prime Minister to send a clear message to Central and State governments to uphold the country’s international commitments and encourage engagement in effective social dialogue.”⁸

Along with the Central Trade Unions, major opposition has been shown by the Bharatiya Mazdoor Sangh (BMS). They have termed the changes made in the Labour Laws as violative of the ILO's conventions. They held a nationwide protest to fight against the changes

⁶Udit Misra, Explained: What labour law changes by states mean (June 5, 2020, 1:04AM) <https://indianexpress.com/article/explained/what-labour-law-changes-mean-coronavirus-6403611/>.

⁷ ILO, Why International Labour Standards matter in a public health crisis, COVID-19: Protecting workers (June 7, 2020, 4:43PM) https://www.ilo.org/global/about-the-ilo/multimedia/video/institutional-videos/WCMS_740023/lang-en/index.htm.

⁸Express Web Desk, ILO ‘expresses concern’ at labour law changes in India, asks PM to intervene (June 7, 2020, 9:23PM) <https://indianexpress.com/article/india/ilo-expresses-concern-at-labour-law-changes-in-india-6426909/>.

made by Uttar Pradesh, Madhya Pradesh, Gujarat etc. The BMS president stated that in the name of so-called labour reforms the government is only exploiting them.

While the Trade Union bodies supports the initiative of bringing new industrial units in the country, however, during the current tough period, it is necessary to enforce those laws which will provide social security to the workers and migrants

CONCLUSION

In the midst of Covid-19 crises, where lakhs of workers have migrated back to their states, some State Governments have made a few changes in their labour policy. However, the policy which was meant to give employment opportunities and social security in the states to which they have migrated has been opposed by some Trade Unions.

In order to give a kick-start to the economy various States like Madhya Pradesh, Uttar Pradesh, Gujarat, Punjab and Himachal Pradesh have already made certain changes. However, the steps taken by the states have turned the clock back by more than a hundred years when workers around the world fought for their rights. The increased working hours will not only lead to an increase in accidents of workers but also have a terrible effect on their health thus increasing the chances of industrial conflict in the long run.

The State Governments believe that the changes may help the economy to bounce back in the post-pandemic period. However, various Trade Unions consider such changes to be in violation of the standards set by the ILO and infringe upon the Fundamental and Human Rights. The introduction of new Laws may compromise the existing provisions of fair compensation and wages, right to health and social security and suitable working conditions.

The approach that providing cheap labour will attract more foreign investments in the post COVID-19 crisis period is illogical and morally foul. The decision to invest is based on various factors like good infrastructure, domestic market demands and also healthy and educated workforce. The labour in India is the most exploited one. Even if the companies want to move out of China, they may prefer those countries like Vietnam and Thailand which have a more comprehensive and effective system for the protection of workers.

The labour laws were made in order to protect workers from the exploitation of the employers. The reforms are meant to simplify and ease the way of doing business by regulating the production process and increase the employment opportunities, while keeping in mind that the interests of the workers do not suffer. So, the question arises as to how the industrial sector will benefit by ignoring and violating the rights of workers!



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