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2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

# **COVID – 19 Vis-A-Vis LABOUR LAWS IN INDIA: PRO-MAKE IN INDIA OR ANTI- HUMAN RIGHTS?**

**By: Deboleena Dutta**

## **Introduction**

The labour policy in India has time and again catered to the situational needs of the country and there has been a bunch of efforts, made by the respective governments, to balance the wheels of strategically planned economic development and the so called social justice. Our country is reeling under some critical global pandemic named Covid 19 where we, as citizens, after three versions of national lockdowns, have literally started realizing the essence of survival, necessities and of course, subsistence. In times like these, where on one hand we can see pan-India crisis, with lakhs of migrant labourers finding themselves at crossroads, where they are forced to choose between survival and employment, on the other hand, some recent slew of governmental decisions are directed towards recuperating the economical structure. To meet with the exigencies arisen out of Pandemic, State of Uttar Pradesh, Madhya Pradesh and Gujarat have suspended several labour laws, following which some other State governments also made changes in the application of labour laws. The suspension of these laws in U.P., M.P. and Gujarat are of more significance as they are to have bolder consequences. This move primarily aims at luring industrialists, also focuses on restarting industrial and economic activities in the state that have been severely affected and slowed down due to the nation-wide lockdown.

## **Effect of Suspension of Labour Laws on the Workers**

Migrant workers exodus reveals that they are among the worst hit by the lockdown imposed since March 25, as economic activities ceased leaving them with no jobs and incomes. The main reason of their plight is the poor implementation of existing labour laws. This move by the State governments may further their miseries. With this relaxation of the labour laws, the states would be depriving this oppressed class from welfare measures at a time when they need it more than ever. There have been already so many cases when workers worked overtime but were not given their dues. But now without the labour laws, all responsibility and accountability towards the

workers will be negated.

Out of all these laws, suspension of the Industrial Disputes Act may have catastrophic results in the sense that employers will be at liberty to hire and fire workers at their own will. The accountability of the employers cannot be done away with to facilitate business, avoiding the labour welfare aspects. Moreover, the consequence of suspending The Minimum Wages Act would be forcing labourers into bonded labour. Indian Jurisprudence acknowledges that payment below minimum wages amounts to a situation of bondage. There are numerous Supreme Court judgments on bonded labour-**Bandhua Mukti Morcha v Union of India and Ors**<sup>1</sup> being the landmark case wherein it was held that any payment below the nominal wages amounts to a situation of bondage. The Articles 21, 23, 24, 38, 39, 39-A, 41, 42, 43, 43-A and 47 of the Indian Constitution, contain the idea of conditions under which labour can be employed for work and also the responsibility of the Government, both Central and State, towards the labour to secure for them social order and living wages, keeping with the economic and political conditions of the country and dignity of the nation. Article 23 of the Indian Constitution prohibits traffic in human beings and beggar and other similar forms of forced labour. In **Sanjit Roy v. State of Rajasthan**<sup>2</sup>, it has been held that the payment of wages lower than the minimum wages to the person employed on Famine Relief Work is violative of Art. 23. The decision of the State governments to suspend the labour legislations would result in low wage rate, increase in working hours along with adversely impacting their overall working conditions. The governments' contention that this decision will enhance the productivity and will meet the economic challenges is not very promising.

V.V. Giri National Labour Institute in 2017 conducted a study “Amendment in Labour Laws and other labour reform initiatives undertaken by state governments of Rajasthan, Andhra Pradesh, Haryana and Uttar Pradesh: An analytical impact assessment” wherein it was found out that even after two years of severe reforms in labour laws, states did not succeed in luring investments or creating more jobs. This was later substantiated by CUTS International where the labour was held to be secondary reason for enhancing productivity.

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<sup>1</sup> *Bandhua Mukti Morcha v Union of India and Ors 1984 AIR 802*

<sup>2</sup> *Sanjit Roy v. State of Rajasthan 1983 AIR 328*

**Whether the decision of the State Governments to Suspend the Labour Laws is legally valid?**

The decision of State governments is being opposed by the Labour Unions and experts on the subject for number of reasons, primary argument being that it is unconstitutional and violative of human rights. The centre's approval for the decision is still awaited. The move has also been challenged in the Supreme Court on the ground that it is violative of fundamental rights and Directive principles of state policy. It is also pertinent to note that since labour is concurrent list subject under the Seventh Schedule of the Indian Constitution, both the centre and the states can make laws on it. Most central labour laws have provisions that delegate certain powers to the state government, however, while the states do have the powers to exempt several provisions from enforcement in their respective states, in matters where the centre holds the field, the state cannot directly move to make exemptions. Most of these suspended labour legislations are central enactments. There is no provision conferring power on state governments to nullify the central legislations in one go. Section 5 of the Factories Act, 1948 empowers the State governments to exempt only in case of a public emergency which is explained as a grave emergency whereby the security of India or any part of the territory thereof is threatened, whether by war or external aggression or internal disturbance. This pandemic cannot be counted as threat to the security of India now. The state governments have however, equated the ongoing health crisis with a public emergency to exercise this power.

Furthermore, suspension of these laws is also in violation of International Labour Organisation (ILO) Convention No 144. India has been a committed and founding member of ILO and is therefore expected to implement the social welfare legislations. India being the welfare state cannot allow the suspension of these laws as they are part and parcel of social security framework. Even if this suspension of labour laws passes the legal test and helps in reviving economic activities, it would be at the cost of exploitation of workers in myriad of ways. Governments are under constitutional duty to ensure humane conditions of work, promoting welfare of the labourers and therefore such suspension could result in stripping of human rights of the labourers, in absence of alternative legal framework for their protection.

**Conclusion**

It is more than obvious that this pandemic is still in its evolutionary stage and the entire world is still clueless as to the turns it will take and the sufferings it entails. Most of the economists have proposed that such critical times call for gradual growth since there lies no magic wand theory when it comes to economy and socialism. Both of these evolve with time, and time and again it has been proved that instant steps have yielded either no result or mere immediate relief with no prolonged effect. At times, especially now, when the entire country is under a global pandemic, it doesn't matter how far a governmental move is legally sustainable but what really matters is that it must be optimum, expedient, just, fair and reasonable. We, as a country, have travelled a long road from enslaving the labourers to providing them with a place of dignity and worth and we are still in the process of achieving the milestone named economically social justice. It would have made more sense to grant immunities for shorter periods and extend them as necessary. It could be, and has been, argued that rigidities in labour regimes needed to be removed anyway. That is a matter to be established, on merits, by public discussions involving those involved or interested. The current crisis should not be treated as an opportunity for circumventing legitimate debate.