



## AN ANALYSIS OF THE EFFECT OF COVID-19 PANDEMIC ON LABOUR LAWS IN INDIA

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### Abstract

The current global situation with the Coronavirus pandemic defining every aspect of society is referred to as being 'unprecedented' in nature. This situation has brought about changes in all the sectors of society making social, economic, political and legal changes at individual, national and international levels. However, as we adapt to the situation, we are required to create a balance between economic stability and fundamental rights provided by the constitution. This is referred to as creating a balance between 'lives and the livelihood'.

This paper gives a brief on the history and evolution of laws during historic pandemics, in comparison to the current contrasting situation of the government suspending labour laws. While the massive hit to the economy requires immediate attention, what is the extent to which the government can compromise the lives and livelihood of its citizens?

**Keywords:** Labour Law Suspension; Global Pandemic; Economy; Fundamentals Rights, Directive Principles of State Policy;

### Historic Pandemics And Their Effects On Labour Law

Historically, pandemics have caused workers to demand more rights than settling for less. The Plague of 1896-1897, as well as the Spanish Flu of 1918 caused a pandemonium amongst the labour sector in India. Historically, pandemics have caused workers to demand more rights instead of settling for less.

Mr. Aditya Sarkar, in his paper<sup>1</sup> analyzes the situation of workers during these times in the city of Bombay, India. His descriptions find a stern resemblance of events unfolding today. As he quotes, "a series of ramshackle medical and sanitary fortifications had been erected, but these proved ineffective." Panic has spread as fast as the contagion. Workers and labourers were asked to migrate to the countryside only to be hit with a famine. Cities were emptied of workers and saw a massive labour shortage, which made employers increase incentives, offer remunerative concessions and higher wages to retain workers from fleeing the city.

Working hours in the early 20th Century, under colonial rule, ranged between 12 to 15 hours, which was justified by employers and the management through old ways of paternalism. The First World War only made the situation worse, with increased working hours, tiresome manual labour, and a sense of freedom being snatched away from family time. Over the next few decades, work hours only went up, with tighter managerial control and harsher punishments for lapses.

On the 29th of May, 1918, a ship carrying Indian troops reached the shores of Bombay and remained anchored to the docks for about

<sup>1</sup>Aditya Sarkar, *The Tie That Snapped : Bubonic Plague and Mill Labour in Bombay, 1896-1898*, Vol.

59 Issue 2, Department of History, University of Warwick, United Kingdom, (2014).



two days. Given the circumstances of World War being on its last leg at this point of time, the docks were often busy with goods being shipped back and forth from England. This ship is traced back to carry the first lethal strains of H1N1 Influenza to Indian urban industrial centres.

Following this, 7 police officials, one of whom was posted at the docks were hospitalized on 10th June, 1918 with symptoms of the flu. This was the first case of Spanish Flu in India that was spreading rapidly across the world at the time. Bombay was crippled and witnessed its effects within the next few weeks. India's railway lines, which are one of the largest and most crowded networks in the world, facilitated in carrying the virus to every corner of the country. As the pandemic wore down by the end of 1920, it claimed almost a 100 million lives on a global scale. India witnessed an estimated 18 million casualties over the period of two years which accounted to approximately 6% of the country's population at the time. The Spanish Flu was the last straw before the government recognized the need for labour reforms in the country. Cities of Bombay and Kanpur in India were the worst affected areas, making labourers coup a strike the following year, in 1919<sup>2</sup>. The unbearable conditions following the World War and the pandemic equally played their part in workers' perturbation.

The Asian Flu pandemic of 1957 was another global showing for influenza. With its roots in China, the disease claimed more than 1 million lives. Although it didn't reach India in a swipe, it's effect was seen in major Asian countries such as Hong Kong and Singapore. The influenza also spread across the U.K and the U.S causing a disturbance in their economies.

One of the biggest and most famous pandemic to which countries are prey till even today is the HIV/AIDS pandemic which came about in the year 1981 and exists till date. Despite being home to the world's third-largest population of persons with HIV/AIDS, the AIDS prevalence rate in India is lower than that of many other countries. The HIV/AIDS (Prevention and Control) Bill 2014, sought to end stigma and discrimination against HIV positive persons in workplaces, hospitals and society while ensuring patient privacy. Landmark cases which debated for this Bill include *Love Life Society v Union of India & Others*<sup>3</sup> where there was a demand for a machine for the testing of HIV symptoms and denying it amounts to a violation of right to life under fundamental rights. The second case is that of *Delhi Network of Positive People & Another v Union of India & Others*<sup>4</sup> in which Public Interest Litigations were filed demanding concessions in railway travel for HIV positive citizens.

<sup>2</sup>Chitra Joshi, *Lost Worlds : Indian Labour and it's Forgotten Histories*, Permanent Black Publications, (2003).

<sup>3</sup>*Love Life Society v Union of India*, (2006) Writ Petition (Civil) No. 8700 of 2006, High Court of Delhi.

<sup>4</sup>*Delhi Network of Positive People & Another v Union of India & Others* (2007) Writ Petition (Civil) No. 2885 of 2007, High Court of Delhi.



### Coronavirus Pandemic And The Suspension Of Labour Laws In India

In the present day, while the government slowly and steadily tries to revert back to normalcy, there is chaos amongst the working sector following the weeks of lockdown. The government has brought about a slew of far-reaching changes to labour laws, touting them to be a necessity for more flexibility, ease of business and as an impediment to economic growth by attracting foreign investment. This has been followed by a number of state governments who have taken steps towards diluting labour laws and vindicating economic growth with an underlying sense of paternalism.

Over the past month, several states like Maharashtra, Madhya Pradesh, Uttar Pradesh, Haryana, Himachal Pradesh and Gujarat have announced labour law suspensions. Even the State capital of New Delhi has expressed its desire for suspension of labour laws for the 2-3 years in lieu of helping industries come out of the present crisis<sup>5</sup>. This effort was made by 12 employer's associations and industrial bodies to the Labour Minister, Mr. Santosh Kumar Gangwar. One of the suggestions made by these organisations was relaxation of the Industrial Disputes Act, 1947 wherein the whole lockdown period could be treated as a lay-off. The wages that should be paid during this period should be treated as part of

the Corporate Social Responsibility (CSR) reserve. This will show an increase in the maximum workforce to 50% from the current rate of 33% after suspension of labour laws, except those governing minimum wages, bonus and statutory dues, for upto 3 years. Another suggestion made was to increase working hours to 12 hours a day from the current 8 hours a day and industries should be given appropriate packages to ensure that there are no job losses.

Karnataka has been a model state in both, tackling the COVID-19 numbers and ensuring that the economy of the state is well balanced. Along with this, the Karnataka government started a shuttle train between states called 'Shramik Special Trains'<sup>6</sup> which took thousands of migrant labourers back home, especially to the northern states of Madhya Pradesh, Bihar and some North-Eastern areas. This rail transport was made affordable and even free for certain categories of individuals in order to ensure that people got back to their hometowns at the earliest. On the downside, it has been alleged that the states of Karnataka, Gujarat and Punjab are trying to prevent large-scale evacuation of migrant labourers back to their hometowns, in order to ensure they are not faced with labour shortage amidst the states resuming construction and other such activities that are dominated by migrant workers. This amounts to violation of their

<sup>5</sup>Author Unknown, Coronavirus lockdown | Suspend labour laws for 2-3 years, employers' associations urge government, The Hindu, May 09, 2020, 02:15 IST.

<https://www.thehindu.com/news/national/coronavirus-lockdown-suspend-labour-laws-for-2-3-years-employers-associations-urge-government/article31537997.ece>.

<sup>6</sup>Author Unknown, Karnataka resumes Shramik special trains, 1,200 migrants sent home to Bihar, The Times Of India, May 08, 2020, 09:41 PM IST, <https://timesofindia.indiatimes.com/videos/city/bengaluru/thousands-flout-social-distancing-norms-at-karahunime-fair-in-karnatakas-haveri/videoshow/76346394.cms>.



fundamental rights under Article 19(1)(d) which is the right to move freely throughout the territory of India.

Furthermore, RSS-affiliated Bharatiya Mazdoor Sangh (BMS) has raised concerns over the condition of unorganised and migrant workers during the coronavirus lockdown, through a memorandum handed over to Union Home Ministry. The memorandum spoke about a term called ‘assault on employment’ which was deepening amidst the COVID-19 threat. Those workers who were stranded midway to home should reach home on priority, the memorandum said. Those still living near their workplaces should be provided jobs, for which export units, construction sites, small and medium enterprises should be allowed to open. Those workers who have made it back home should be provided employment through The Mahatma Gandhi National Rural Employment Guarantee Act, 2005 (MGNREGA) in their villages, adding that transportation should be arranged for those wanting to return to their workplaces. For construction workers, the BMS said not only should registered workers get cash assistance, but also those unregistered workers who present identification documents.

While the Chief Minister of Madhya Pradesh, Mr. Shivraj Singh Chouhan stated his government would “seize this opportunity” to bring about the much-needed labour law reforms in India to entice foreign investment

and boost the economy, Uttar Pradesh has proposed to suspend nearly the entire gamut of labour laws upto the next three years.<sup>7</sup> Punjab, Himachal Pradesh, Gujarat and Rajasthan have made amendments to their state Factories Act in April, 2020 which has increased the working hours to 12 hours/day from 8 hours/day and 72 hours a week, replacing the previous 48 hours a week provision, which is currently extended over the following 3 months, subject to further extension at the discretion of state legislatures.

It is important to note that regardless of the government making attempts at helping labourers find work, there have been multiple negative impacts over such actions of the government. These impacts affect the interest of labourers working in industrial units. For example, as already stated in the preceding paragraphs, the changes in labour laws have allowed the industries to increase working hours by 50% without paying any overtime dues. This simply means that each labourer can be forced to work up to 12 hours a day on six working days of a week now, from an earlier schedule of 8 hours per day. This goes against the International Labour Organisation (ILO) Convention of 1921 on the number of hours of work that an worker is expected to log, to which India is a signatory. This 1921 Convention has been the basis of several labour laws in India, including the Factories Act of 1948, which also has been invoked in a petition filed in the Supreme Court<sup>8</sup> earlier this month.

<sup>7</sup>Deepa Jainani & Surya Sarathi Ray, States suspend/relax labour laws to help industry emerge from crisis, Financial Express, May 08, 2020, 5:55 AM IST, [https://www.financialexpress.com/industry/states-](https://www.financialexpress.com/industry/states-suspend-relax-labour-laws-to-help-industry-emerge-from-crisis/1951744/)

[suspend-relax-labour-laws-to-help-industry-emerge-from-crisis/1951744/](https://www.financialexpress.com/industry/states-suspend-relax-labour-laws-to-help-industry-emerge-from-crisis/1951744/).

<sup>8</sup>Murali Krishnan, Plea in SC against labour law dilution, Hindustan Times, May 15, 2020 08:48 IST, <https://www.hindustantimes.com/india-news/plea-in->



Petitioner Pankaj Yadav, a journalist from Jharkhand, sought direction from the Supreme Court for revoking the executive orders by different states to suspend the provisions of working hours to deal with the economic situation arising out of COVID-19 lockdown. He argued that the Factories Act, 1948 provides for changes in working hours only during public emergency, which the law defines as "a grave emergency whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or internal disturbance". The COVID-19 outbreak does not fall under public emergency definition under the law, thus this particular provision of the Act cannot be invoked.

Affected by these changes and many more, 10 central trade union organizations across India called for a nationwide strike on 22nd May, 2020 in an attempt to protest against the draconian measures taken by the state governments and the anti-workers labour law changes brought about by the central government which facilitate brutal exploitation of labourers. They had also decided that they will take this matter to the International Labour Organisation (ILO). And a one-day hunger strike was to be observed at Rajghat, New Delhi.

Other than the outburst by such associations and unions, even workers themselves have expressed their anger and outrage by engaging in violence with police officials. An incident in Ahmedabad<sup>9</sup> witnessed hundreds

of migrant labourers hurling stones at police trying to enforce a lockdown to stem the spread of coronavirus. In the Hazira belt, on the outskirts of Surat in Gujarat, more than 500 workers from various industries protested that the authorities arrange for their safe return to their respective native states. The protesters, who were migrant workers from the states of Uttar Pradesh and Bihar, told the police that they are struggling to survive without work and money. Around 50 workers were arrested and charged with unlawful assembly and rioting. Several incidents of violent protests have been seen in Gujarat, by not only migrants but also the residents since the nationwide lockdown began.

### **Constitutional Validity Of Suspension Of Labour Laws**

The Constitution of India upholds democracy by conferring innumerable rights directly and indirectly to safeguard the interests of workers under Part III and Part IV of the Constitution which deals with Fundamental Rights and Directive Principles of State Policy respectively.

The fundamental right of forming associations or unions under Article 19(1)(c) is violated by the aforesaid action taken by the government. As held in *Raja Kulkarni And Ors. v State of Bombay*<sup>10</sup>, the term 'associations' mentioned under the said provision of the Constitution includes the right to form trade unions. Suspending the Trade Unions Act, 1926 directly affects this

sc-against-labour-law-dilution/story-DwyPdSZ8COi7VFBIO3k5MM.html.

<sup>9</sup>Sumit Khanna, Migrant workers throw stones at police in India and protest against lockdown, Thomson Reuters WORLD NEWS, May 09, 2020, 5:49 PM

IST, <https://www.reuters.com/article/us-health-coronavirus-india/migrant-workers-throw-stones-at-police-in-india-in-protest-against-lockdown-idUSKBN22LOJZ>.

<sup>10</sup> *Raja Kulkarni And Ors. v State of Bombay*, (1954) AIR 73 (India).



fundamental right. Trade unions are formed on the basis of the collective bargaining structure to address disputes of any employee(s) and bring it to the notice of authorities. The rationale to grant this as a fundamental right is to balance the power that the employer holds over their employees. If this argument is countered by stating that the suspension is valid under Article 19(4) which empowers the state to impose reasonable restrictions on the right of freedom of association in the pretext of “morality” and “public order” or the “sovereignty and integrity” of India, this exceptional provision still calls for the government to strike a balance between the restrictions imposed and the rights of the workers in order to avoid abuse of power.

The case of *Maneka Gandhi v Union of India*<sup>11</sup> widened the scope of the fundamental Right to Life and Personal Liberty elaborated under Article 21 of the Indian Constitution to be inclusive in nature. This fundamental right has taken the form of a Pandora's box over time, with various interpretations.

As held in *Francis Coralie v Union Territory of India*<sup>12</sup>, Article 21 of the Constitution does not merely include and imply the right to stay alive but includes the right to live with dignity as well. Furthermore, the case of *Olga Tellis v Bombay Municipal Corporation*<sup>13</sup> characterized the right to life to include the right to livelihood. Hon'ble J. Bhagwati expanded the interpretation in the case of *Bandhua Mukti Morcha v Union of India*<sup>14</sup> and observed :

*“It is the fundamental right of everyone in this country... to live with human dignity free from exploitation. This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief.”*

Suspension of statutes such as Factories Act, 1948, Industrial Disputes Act, 1947 and Minimum Wages Act, 1948 amounts to the exploitation of workers' fundamental right to live a dignified life along with their right to livelihood as they no longer have a guarantee of a fixed minimum wage nor any form of protection against retrenchment. While extra incentive to work during these tough times seem “far fetched” to the government, the employers will not even be statutorily liable to provide minimum standards of safety and care to the employees.

To make things worse, the fundamental Right to Access justice as recognized by the Supreme Court in the case of *Anita Kushwaha v Pushap Sadan*<sup>15</sup> is also violated due to the suspension of Industrial Disputes act, 1947 which provides for a grievance redressal mechanism. As held in *Sanjit Roy v*

<sup>11</sup> *Maneka Gandhi v Union of India* (1978) AIR 597 (India).

<sup>12</sup> *Francis Coralie Mullin v The Administrator, Union Territory of India*, (1981) AIR 746 (India).

<sup>13</sup> *Olga Tellis & Ors v Bombay Municipal Corporation & Ors*, (1986) AIR 180 (India).

<sup>14</sup> *Bandhua Mukti Morcha v Union Of India & Others*, (1984) AIR 802 (India).

<sup>15</sup> *Anita Kushwaha & Others v Pushap Sudan & Others*, (2016) 8 SCC 509 (India).



State of Rajasthan<sup>16</sup>, it is a violation of Article 23 to provide wages lower than the prescribed minimum wage to a person employed on famine relief work.

The Directive Principle of State Policy specifically seeks to promote the welfare of people by securing economic, political and social justice through Articles 38, 39, 41, 43, 51. The well-being of the workers is not supported by the suspension of labour laws, but instead they are stripped of the resources to guarantee social and economic fairness, leading to inequality in the payment of income. The employers can exploit the workers according to their whims and fancies with no legal repercussions. “Job security” has been made an essential ingredient of the right to work which was elaborated in the case of Daily Rated Casual Labour v Union of India<sup>17</sup>, which must be read in the light of socio-economic benefits of the right. Moreover, the suspension is also against obligations taken up by India through various international labour conventions.

### Conclusion

As the conditions decline in India, with thousands of news cases on a daily basis, it is evident that public fear regarding the pandemic has proportionally declined as well. India has the largest and the cheapest labour force in the country, this comes as a boon and a curse. Multinational companies from all over the world have their branches in India which has been feeding our economy. But when it comes to taking care of the labourers who have helped achieve this said global standing that India has achieved, we have disappointed ourselves gravely.

Although the suspension of labour laws and other related reforms made in this regard are being justified to promote investment and uphold the economy, these steps taken by the government retrogresses the situation and contradicts the reason labour laws were put in place. While the circumstances are unprecedented and therefore call for unprecedented measures, it reminds us of Machiavelli, who said “Never let a good crisis go to waste”. In contrast to various other countries’ responses to the pandemic who are aiming at minimizing the lay-off by providing additional incentive and wage subsidies conforming to directions given by the United Nations to minimize the burden on workers, India has taken a step in the opposite direction.

Based on the objectives of a given labour law legislation, it can be broadly classified into the following four categories : social security provided to the workers, wages, industrial relations and conditions of work. The sudden abolition of labour legislation will leave the workforce on various sides at the whim of the employers. Employers are required to be compliant by asserting minimum standards of protection which branch out to all four broad objectives. If an establishment is employing over a certain number of workers, the closure would require prior approval. Statutory protection included providing notice, retrenchment compensation, gratuity etc. These provisions can now be easily exploited by the employers to fire employees without the hassle of complying to statutory formalities, directly abusing workers’ rights.

<sup>16</sup> Sanjit Roy v State Of Rajasthan (1983) AIR 328 (India).

<sup>17</sup>Daily Rated Casual Labour Employed Under P & T Department & Ors v Union of India & Ors, (1987) AIR 2342 (India).



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Furthermore, the suspension violates the right of trade unions to raise a dispute under the Industrial Disputes Act, 1947, leaving the labourers without a grievance mechanism.

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