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India's Stance in Labour Policy Post Covid-19 Pandemic

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ABSTRACT

*This paper aims at answering the question: **Should labour laws be relaxed or reformed during the lockdown?***

Since time immemorial the term 'exploitation' and 'victimization' has been considered as the other name of a labourer in India. These people had to face a lot of torture in the hands of their employers. However after Independence, the scenario somewhat changed as the central legislature decided to come up with new pieces of enactments which can give these people their lost rights. Hence in this write up the different rights and privileges which are available to a labourer in India at present are put together under different sub headings. In the recent time of COVID-19 pandemic however, the some states have suspended several important labour laws which have thrown the workmen at the mercy and sweet-will of the employers. The research deals with the Migrant workers who were thrown out without a properly devised plan for their return at the declaration of the Nation wide lockdown. This paper contains a discussion on the difference between the organised and unorganised sector of employment,

Finally aims at understanding India's international obligations towards the International Labour Conventions and how the same impacts the current scenario of labour reforms in India.

Keywords – Labour, labour laws, minimum wages, industrial disputes, workmen, employers, socialist, welfare, exploitation, victimization, oppression, international obligation, ILO Convention, Constitution etc.

I. GENERAL RIGHTS AND PRIVILEGES OF LABOURERS IN INDIA

Ever since the concept of industrialization emerged prominently within the Indian scenario, the need was felt for the enactment of new and refined laws for the welfare of the workers. Until that time, they were exploited by the employers at their own free will. There were no health and security measures for them, they were made to work overtime without payment. These practices were not only unethical but also against the concept of social justice. The workers

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had to suffer a lot before they decided to raise their voices against such atrocities. Eventually, in order to protect these workers from falling prey to the vicious policies of the employers the Central Government from time to time enacted several pieces of legislations that imposes certain general rights and privileges on these people. The same are categorized under the following heads:

(A) Wages

One of the earliest legislations in this sector was the 'Payment of Wages Act 1936'. The main objective of this act is to ensure that the workers are given wages on a timely basis and they are immune from any sort of unauthorized deduction of wages. Section 5 of this act has made it mandatory for the payment of wages to those working in factories, railways, industries and any other establishment having less than one thousand workers within the 7th of every month and for other similar sectors not having less than one thousand workers within the 10th of every month. If an employee is terminated from work, then his dues must be paid within two days of such termination. Section 7 (1) of this act makes it mandatory for non-reduction of wages except on those grounds which are permissible under the said act.

The Minimum Wages Act of 1948 on the other hand ensures that every worker is given a certain amount of wage in lieu of the work done by him or her. It seeks to prevent the exploitation of their labour. It is applicable to people working in those sectors of employment which are enumerated under schedule I and schedule II of this act. Section 3 of the aforesaid act says that the rates for minimum wages shall be decided by the appropriate government which might differ based on the type of employment, the type of work within the same employment and on the basis of the locality. It might also be different for workers belonging to different age groups. In the case of *Unichay v. State of Kerala*², it was held that "minimum wage rates should be fixed for the subsistence and maintenance of the worker and his family and for the purpose of preserving his efficiency as a worker"³. The act also provides for such provisions where a worker is entitled to get extra payment for working overtime and the usual pay check for working less than the stipulated time limit.

Gender inequality is one of the most remarkable drawbacks of our country. The societal distinction between men and women has led to the problem of discrimination of the female gender in many areas including the workplace. Thus, the **Equal remuneration Act of 1976** was enacted to give a shape to the idea that was envisaged under Article 39 of the Indian

²Unichay v. State of Kerala AIR 1962 SC 12.

³Surya Narayan Mishra and Dr. Sunil Yadav, *Labour and Industrial Law*, 732(29th ed. 2019)

Constitution. Section 4 of this act makes it mandatory for the employer to pay equal salary to people belonging to both the genders for similar work whereas section 5 prohibits the practice of prejudice and discrimination between men and women in the recruitment process.

(B) Health and Safety

It is important to look after the health and safety of workers working in any sort of employment. **The Factories Act of 1948** is one of the major enactments which has provisions for the well-being of those who are working in factories. Chapter III of this act ensures that adequate provisions are there to look after the health of the workers. Section 11 to section 20 deals provisions to maintain the health of the workers such as maintenance of cleanliness inside the factory premises, proper drinking and washroom facilities. Chapter IV of this act deals with a long list of safety criteria for the workers such as proper fencing and casing of machineries. Section 36 ensures that no worker is allowed or made to enter any enclosed or confined space such as a chamber, tank, pit, pipe, vat until proper measures are taken.

Sections 19 and 20 of the **Mines Act of 1952** mandates the need for separate area or enclosure for drinking water and for urinals and latrines respectively. As per section 21 every mine must have a first aid kit which shall be available during emergencies and there should also be proper conveyance facilities to transport a worker to the hospital in case he or she falls ill or suffers any sort of injury while working in the mine.

The **Beedi and Cigar Workers (Conditions of Employment) 1966**, **The Building and Other Construction Workers (Regulation of employment and Condition of Service) Act of 1966** are some of the other acts which provides facilities for the health and safety of the workers.

According to all the above mentioned act, a worker is not supposed to work beyond the time limit of forty eight hours a week.

The Employee's Compensation Act of 1923 was passed with the main objective of providing compensation to those workers who suffer injury or accident in the course of their employment. In the case of *Daya Kishan Joshi v. Dynemech Systems Pvt. Ltd*⁴, the Supreme Court explained the meaning of the phrase 'in the course of ' and held that for a claim of compensation to be successful it is necessary that the injury to the worker has occurred due to the involvement of a risk and which is incidental to the work involved. Therefore, if a worker dies at the site of his employment due to natural lightening then his family cannot claim compensation because it is a natural cause and has nothing to do with his employment.

⁴Daya Kishan Joshi v. Dynemech Systems Pvt. Ltd 2017 IV LLJ 168 (SC)

Every industry or any other establishment must comprise of certain rules and regulations which caters to the special needs and safety of their female workers. Therefore, the **Maternity Benefit Act of 1961** and the **Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal Act of 2013)** were passed by the Union Legislature. Section 4 of the Maternity Benefit Act prohibits the employment and working of women during the first six weeks following her delivery or miscarriage. Under section 9 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal Act of 2013. In case the charges turn out to be true then the woman shall also be entitled to such compensation as the internal committee deems fit based on the effect of the incident on the woman.

Recently on the 23rd of September, 2020, the Rajya Sabha passed the The Occupational Safety, Health and Working Conditions Code, 2020 which is a consolidated version of thirteen labour laws. The Factories Act 1948, Mines Act 1952 Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979 are examples of some of the few acts that stands abolish.

(C) Pension and Insurance

The Employees State Insurance Act of 1948 has been enacted in an attempt to insure the laborers against certain unforeseen situations. According to Section 38 of this act, all employees working in factories or any other establishment are entitled to such insurance which requires contribution from both the employer as well as the employee. All such contributions will be deposited in the Employees State Insurance Fund after which the employees shall be entitled to some of the benefits that are mentioned in Chapter V of this act namely sickness benefit, maternity benefit and disablement benefit.

The Employee's Provident Fund and Miscellaneous Provision Act of 1952 provides for the establishment of provident funds, pension fund and deposit linked insurance funds for employees in factories and other establishments under sections 5, 6A and 6C of this act. The pension scheme includes retirement pension, disablement pension, widow pension amongst others.

The Payment of Gratuity Act of 1972 was formulated with the aim of providing a token of gratitude and retirement benefit to those workers who have rendered continuous and impeccable service to their employers for at least five years. Section 1 speaks about the sectors where this act shall be applicable and it includes factories, mines, railways, shops amongst others. The gratuity amount can be paid to an employee upon his death, retirement or resignation and the same must be paid within thirty days from the date on which the amount

become payable by the employer.

According to the **Maternity Benefit Act of 1961** every woman who gives birth to a child shall also be entitled to maternity benefit and maternity bonus during her absence from work for such period as is mentioned in this act.

On the 23rd of September the Upper House of the Parliament gave its assent to the Code on Social Security 2020, which replaced all the above mentioned acts.

(D) Dismissal of workers

The Industrial Disputes Act of 1947 is mainly concerned with the rights of workers employed under any establishment in cases of their retrenchment and layoff. Section 25 F of this act lays down the steps that must be followed before the termination of one's employment and which includes giving of a notice to the person concerned and informing him or her about the reason for such action. In lieu of the retrenchment the worker has to be paid a certain amount of compensation. This section is applicable to those who have rendered continuous and undisputed service to their employers. Section 25C also states that in case a workman has been laid off from service due to any external reason then he must be paid for all those days when he is laid off.

1. Right to form and join a trade union

Trade Unions are necessary to uphold the rights of the workers in any work establishment. Every person working in an organized sector in our country has the right to form and join any trade union of their choice.

2. Rights for the vulnerable group of laborers

Since time immemorial children are pushed into forced labour to earn a living for their families. People take advantage of their age to procure more outcome at a cheaper rate. In order to prevent such practices, the makers of the Indian Constitution inserted article 23 and 24 in the Constitution of India. However, in order to provide a proper cap on the system, the union legislature came up with the **Child and Adolescent Labour (Prohibition and Regulation) Act, 1986** which forbids the employment of children in any establishment and the adolescents from working in any such occupation which is hazardous. Contravention of the above provision can attract penalties for the employer. Section 7 and 8 of the said Act stipulates that an adolescent shall only work for six hours a day which also includes his time of rest and he must be entitled to one day holiday every week.

The evil practice of bonded labour has been prevalent in several parts of the world. Generations

after generations are forced to work under this system without any proper wages in order to repay a debt. The system implies the infringement of the basic human rights and destruction of the dignity of human labour⁵. Hence in order to prevent such exploitation the **Bonded Labour System (Abolition) Act of 1976** was passed. This act not only abolished the system of bonded labour and repayment of bonded debt but it also ensured that any person who practices it be punished with both imprisonment and fine.

Lastly the **Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979** regulates the rights of those workers who travels outside their home States or home countries for the purpose of work. They are entitled to such wages, holidays and hours of work that are enjoyed by the other workers of the establishment. Moreover, they are also entitled to a displacement allowance and a journey allowance which is payable by their contractor at the time of recruitment.

Over the years each of the abovementioned acts have been able to cater to the needs of the labourers and workers in one way or the other. They were able to give them those rights and privileges which they never had. However, in the current pandemic situation many of these labour laws have been suspended by some States including Uttar Pradesh, Madhya Pradesh, Maharashtra, Rajasthan and Gujarat in order to bring renewed laws. The Central Legislature has recently come up with three new pieces of legislations which are expected to give renewed privileges to the workers of our country.

II. SUSPENSION OF LABOUR LAWS DURING LOCKDOWN, 2020

In order to recover the economy during the ongoing COVID – 19 pandemic, various States in India had come up ordinances and notifications containing suspension of certain labour laws. This suspension has been initiated to give more flexibility to businesses and employers in order to help curb the effects of the COVID – 19 mandated lockdown. Labour laws provide social security measures for workers and while these measures may help boost the economy, they have also raised concerns regarding protection of the rights of the Indian labour force.⁶ Worker's rights which are protected by the labour laws, form an impediment during the trying times of lockdown in the course of developing business. Hence the suspension has been used as an arsenal to remove that obstacle from the road.

(A) Uttar Pradesh

⁵ Surya Narayan Mishra and Dr. Sunil Yadav, *Labour and Industrial Law*, 1128 (Central Law Publications. 2019)

⁶ Ashima Obhan, *Suspension Of Labour Laws Amidst Covid-19*, Obhan & Associates, 18.05.2020 available at <https://www.mondaq.com/india/employment-and-workforce-wellbeing/935398/suspension-of-labour-laws-amidst-covid-19>

The Uttar Pradesh State government promulgated an ordinance called the *Uttar Pradesh Temporary Exemption from Certain Labour Laws Ordinance, 2020* on May 8, 2020. This ordinance will exempt compliance to several central and state labour legislations for a period of three years. Before looking into the figures of those laws which have been suspended, let us check the laws which have not been suspended and shall still remain in force.

The following four legislations shall still be in force:⁷

1. Bonded Labour System (Abolition) Act, 1976 (it abolishes bonded labour or “*bandhua mazdoori*”)
2. Employee Compensation Act, 1923 (statutory liability upon an employer to discharge his moral obligation towards employees when they suffer from any physical disabilities or diseases, during the course of employment in hazardous working conditions);
3. Building and Other Construction Workers Act, 1996 (safety, health and welfare measures); and
4. Section 5 of Payment of Wages Act, 1936 (ensure timely payment of daily wages).

Apart from these, **27 central legislations**, (including Trade Unions Act, 1926, Payment of Bonus Act 1965, Industrial Disputes Act 1947, Factories Act, 1948 and Maternity Benefit Act, 1961). Besides these, **9 U.P. state legislations** have been suspended (including UP Industrial Housing Act 1955, UP Employment of Substitute Workmen Act 1978, Contract Labour (Regulation and Abolition) Act, 1970).⁸ Also, **26 Rules** have been suspended such as Industrial Disputes Rules, Factories Rules, Equal Remuneration Rules etc. The Industrial Disputes Rules and Workmen Compensation Rules have not been suspended. A detailed list of acts and rules which have been suspended has been given in **Annexure 1**.⁹

Essentially, the Ordinance makes the key labour laws and rules there under relating to workers and those concerning the following defunct for a considerable period of time. (3 years)

- a) occupational safety,
- b) industrial disputes,
- c) contract workers,
- d) trade unions,

⁷List of the Suspended Laws under U.P Temporary Exemption from Certain Labour Ordinance 2020, Advocatanmoy Law Library, available at <https://advocatanmoy.com/2020/05/09/suspended-laws-under-up-labour-laws-ordinance/>

⁸ Ibid

⁹ See Pg. 30

e) fair practices of hiring and firing, etc.

(B) In Other States

The Government of *Madhya Pradesh* vide a gazette notification dated May 05, 2020 has amended the Industrial Disputes Act, 1947 allowing new establishments to be exempt from provisions under the Industrial Disputes Act, 1947, barring the provisions of Chapter V-A (Lay-off and Retrenchment), provisions of Chapter V-B (Special Provisions relating to Lay-off, Retrenchment and closure in certain Establishment) pertaining to conditions precedent to retrenchment of workmen, procedure for closing down an undertaking, special provisions as to restarting of undertakings closed down before commencement of the Industrial Disputes (Amendment) Act, 1976, penalty for lay-off and retrenchment without previous permission and penalty for closure. Furthermore, some provisions of the Factories Act, 1948 have also been exempted.¹⁰

Similarly, the *Gujarat* government has exempted the factories in the State registered under the Factories Act from various provisions relating to weekly hours, daily hours, interval for rest etc. Likewise changes have been made in *Rajasthan* where the working hours have been increased to 12 hours per day for 3 months whereas the maximum should be 8 hours. Similar changes have been brought about in *Himachal Pradesh* as well.

(C) Reason given by UP Government

The Government of Uttar Pradesh under CM Yogi Adityanath issued an official statement on May 6th 2020¹¹ justifying the suspension of labour laws by stating that it is the need of the hour in order to give concessions to the various industrial establishments especially the new ones, businesses and factories and to release them from the restrictions of the labour laws. The Government claimed that it is a move to revive and boost businesses and industries. Thus the government is increasing industrial impetus at the cost of worker's rights and dignity

(D) Criticisms in our submission

As the labour legislations are the sentinel on qui vive protecting the rights of the workmen, suspension of labour laws in an antithesis to protection of labour class and democratic socialism which is the idea enshrined in the Preamble of our Constitution. In our humble submission, we would like to point out the following criticisms of this move of the Government:

¹⁰ Supra 1.

¹¹ Official communication, Council of Ministers, Government of Uttar Pradesh, available at <http://information.up.nic.in/attachments/CabinetDecisionfile/7c223b50d3fdc5a2c4a53863012ed0b0.pdf>

- 1) *Firstly*, Article 21 of the Constitution guarantees right to life and personal liberty of the individuals. The term “life” does not mean mere animal existence, as it was enunciated in the case of *Francis Coralie v. Union Territory of Delhi*¹². It means right to live with human dignity. But suspension of labour laws like the Industrial Disputes Act, 1947, will leave the workmen at the mercy of the employers who can hire and fire them whenever they want.
- 2) *Secondly*, the Factories Act ensured certain safety and welfare measures for the workers such as drinking water, electricity, healthcare etc., but the suspension of it will mean no more humane condition of work for these factory workers.
- 3) *Thirdly*, suspension of Minimum Wages Act, 1948 will strip the workmen of their guarantee of minimum wages and it will have an adverse impact on their economic conditions which are especially worsened by the ongoing COVID-19 Pandemic. Though the Bonded Labour Act, is still in effect, the suspension of Minimum Wages Act will practically push the workers into bonded labour. This is also the violation of the law as established by the Apex court in the following case:

In *PUDR v. UOI*¹³ the Supreme Court held that non-payment of minimum wages to the workers employed in certain Asiad Projects in Delhi was a denial to them of their right to life with human dignity and hence violative of Article 21 of the Constitution. **Bhagwati J.** said

“if the workmen are deprived of any of these rights and benefits (under labour laws) that would clearly be a violation of Article 21”.

- 4) *Fourthly*, the suspension of the Equal Remuneration Act, 1976 which guarantees that ladies are not victimized men as far as wages, will empower the businesses to pay less to ladies when contrasted with men for equivalent measure of work. This will add up to the infringement of Article 14 of the Constitution which secures the essential right to correspondence. Not paying similar wages, notwithstanding the work being something very similar, abuses Article 39(d) which expresses that the State should guarantee that wages are not decided based on sex however on the measure of work done by the laborer.
- 5) *Fifthly*, the Trade Unions Act has been suspended which is a violation of Article 19(1)(c) of the Constitution which establishes right to form associations and unions.

¹² Francis Coralie v. Union Territory of Delhi AIR 1981SC 746

¹³ Peoples Union for Democratic Rights v. Union of India AIR 1982 SC 1473

III. MIGRANT LABOURERS: THE IMPACT OF PANDEMIC AND NEED FOR NECESSARY LEGISLATION

The current situation gives us a portrayal of the misery faced by the labourers across the length and breadth of the country. The hunt for employment and a better living and lifestyle led the people flock from place to place, with or without their families. Some have stayed away from home for years, some for months due to their respective job obligations, but now suddenly it is time for them to leave their source of earnings and return home, without much hope for a sustainable living.

This portion of the research talks about the migrant workers who have faced this sudden loss of employment and have been traumatised due to the shock that it entails. The unprecedented and the unpleasant conditions created due to the Pandemic has left these people with very few options to eke out a living. They have walked miles hungry, thirsty and some have even succumbed to the situation. Thus, the motto is to throw a light upon the various aspects that define the migrant labourers, the very reason behind their migration, their life after declaration of the Nation-wide Lockdown, the failure of the existing legislatures and the requirement of the reformation of the same. These very arenas of discussion will be put under the headings furnished below.

(A) Organised and unorganised sectors of labourers

The employment of the labourers can be segregated into two broadly classified sectors namely, the Organised and the Unorganised sectors of labourers. These two sectors have their own specific characteristic feature that differentiate them from one another and hence, the labourers falling within the ambit of these respective sectors are subject to such differences as well. The differentiating factors may be discussed as follows:

1. The meaning

The organised sectors of employment have a fixed and organised term of employment and have codified rules and regulations for the workers or the employees to follow and have assured work. These sectors are affiliated to or are associated with a recognised authority or the government.

However, on the other hand, if we consider the meaning of an Unorganised sector, we see that it is not incorporated or associated or is under the umbrella of a recognised authority. Thus, there remains no scope for an assurance as to the term of the job for which the people are employed and does not entail any codification of well chalked out rules and regulations which

can bind the employer and the employee.

2. Legislations that govern the sectors

The Organised sectors, being associated or incorporated with the government has the advantage of being governed with specific legislations passed by law-making wing of the government. Special Acts, like the Trade Unions Act, 1926, The Industrial Dispute Act, 1947, The Minimum Wages Act, 1948, to name a few, are in existence in order to protect the interests of the employers and the employees who fall within the province of the Organised Sector.

But on the other hand, the Unorganised sector, has no such special legislations to protect the labourers and the employers from any dispute or any issue, in any form, that may arise. The Migrant labourers, falling under this Sector, have thus, faced a time of pathetic chaos due to the lack of proper legislations that could have supported and hold together the situation in which these labourers were living quite a nomadic life wandering from one place to another.

3. The aspect of remuneration¹⁴

For every job or the service that is to be performed, a particular amount of payment must be made in exchange of such service in order to enhance the will of the employees to engage themselves into varied genres of employment. Remuneration acts like an incentive to work and plays a vital role in compelling a person to search around for better and standard opportunities. In case of the organised sector, there is an assurance regarding the payments of an amount of remuneration in the form of salary, which attracts the labourers or the workmen to such sectors. But if we consider the same aspect of discussion for the Unorganised sector, we see an uncertainty which comes along with the job that has to be performed. In most cases the labourers are paid a daily wage. But this sector does not have a protection of the interests of the workmen and thus, the aspect of remuneration is no exception. The Pandemic has turned the world topsy-turvy for the migrant laborers as they unfortunately fall within the definition of this sector.

4. The aspect of Job Security

The organised sector, being associated and incorporated with the Government or any recognised authority, having the backing of proper legislations, provides a security regarding the jobs that are to be performed by the workmen. There is a fixed working hour, provision for remuneration, payments made for work done overtime, however, in case of the Unorganised

¹⁴ Surbhi S, *Difference between Organised and Unorganised sector*, Key Differences, <https://keydifferences.com/difference-between-organised-and-unorganised-sector.html>

sector, it is the opposite. There is no such job security, one can be expelled at any time, there is no protection of the rights of the workmen, neither do they have the provision for a payment for a job done overtime, that is, beyond the fixed span of working hours.

5. The benefits that are provided by the respective sectors

The Organised sector has such provisions which enables the labourers to not only work for the establishments or the industries but also acts an incentive for them to put in a lot more effort into the work they perform and hence, increase the productive capacity, that in turn leads to an increase in production and better service. Benefits like medical security, travel compensation, pensions, and other such facilities are provided, which are lacking in the purview of the Unorganised sector.

Thus, from the above discussion we can derive a clear distinction between the Organised and the unorganised sector which employs the workmen and provides them with the opportunities that these respective sectors constitute of. The fact that the Migrant labourers are considered to belong to the Unorganised sector, they were subject to the adverse effects of that sector and thus, have been facing a humungous tragedy brought about by the Pandemic and the consequent Lockdown.

(A) The reason behind the migration of the labourers.

The migrating labourers have certain explained reasons which compel them to make such movements from one place to another in search of a standard job and a sustainable way of living. These causes are socio-economic in nature and are discussed as follows:

1. Urbanisation

The people from the rural areas move to the urban areas, to the cities and the towns in search of work that suits their standards and this entire process is termed as urbanisation. Due to the desire for a better livelihood, away from an agriculture-based opportunity for income, people resort to the jobs that are generally found amidst the grandeur of the urban life. However, urbanisation takes people far away from their families and their family traditions and customs and their hereditary occupations and beliefs and compels them to assimilate into the lifestyle that the urban districts offer. So, in a way, urbanisation, while offering better quality job opportunities, it also acts as an agent that loosens the ties that one has with his roots.

2. Industrialisation

The industries that have mushroomed since the genesis of the entire process of industrialisation, call for more people to be employed in order to increase the level of production. The

productivity can be enhanced with the enhanced utilisation of the means of production, and labour is certainly a significant component of the same. Thus, with the aim to produce and achieve more, both skilled and unskilled labourers are employed which demands the employees to migrate from place to place in order to place themselves under the umbrella of a suitable job opportunity. This shows us an affinity of the workmen towards industrial scopes for employment.

3. Modernisation

Modernisation depicts a condition of the society where it gives up the primitive concepts of beliefs and customs and traditions which may prove to be a hurdle in the way of development. Modernisation and westernisation are often understood to be synonymous to each other, however, it is not so. Following the western culture in its true spirit does not mean the country or the society is getting modernised, it instead just getting influenced by the western process of thoughts and beliefs. But Modernisation comes up with new opportunities and throws light upon principles like that of Liberty, Privileges, compensation, scrapes out the customs that may cause a lag in the society. This, brings about a thirst for a new way of livelihood, a desire to start life afresh, people become aware of their Rights and duties as an employer and an employee. Due to this, people leave no opportunity to furnish their lives with better choices.

4. Globalisation

The integration of the socio-politico-economic sphere with that of the world, across the globe, is considered to be Globalisation. This concept also, provides immense scope for opportunities to interact with the world and expand accordingly, in various fields. Thus, as soon as this process was evolved, the demand for labourers geared up, and thus, people travelled from various parts of the country to get themselves involved into any possible work opportunity that came before them.

The above, mentioned reasons define the reason behind the migration of the labourers also, stating the demand for such migration that not only helped people earn a bread for their living, but also, elevated the economy of the country due to intensive employment of skilled and unskilled labourers that led to a spurt of increased productivity.

(A) The concentration of the migrant labourers across India and their movement¹⁵

The discussed reasons for the migration of workers show that there is an urge to bypass the Agro based economy and concentrate on other aspects of the secondary and tertiary sectors of

¹⁵ Madhunika Iyer, *Migration In India and the Impact of Pandemic on the Migrants*, PRS Legislative Research, <https://www.prsindia.org/theprsblog/migration-india-and-impact-lockdown-migrants>

economy to run a living. This entire process of migration can be broadly classified into:

1. Regional

Under this pattern of migration, the workmen move from:

- Rural to rural areas depending on the type of work they opt for that also has to suit their qualifications and generally a movement from the rural to rural areas happens with the family and there are lesser chances of losing a connection with one's roots.
- Rural to urban migration needs the workmen to travel more and have better qualification so as to achieve a job amidst the competition in the city. The job descriptions might demand more specialisation and skills.
- Urban to rural migration shows an aspect where the people tend to shift from the urban areas to the town or rural areas where they might need to impart such services that can be done by specialists only, or, like in the case of the migrant labourers during this lockdown, people might have to return to their roots and engage themselves into agriculture or a trend of job that has been followed through generations as a tradition in the family.
- Urban to urban migration is a pattern that generally classifies and talks about those workmen who comprise of experts or even sometimes opt for a transferable job.

2. State

- Inter-state migration is a pattern in which the workmen choose to shift from one State to another in search of employment. According to a 2011 Census, Uttar Pradesh and Bihar had the highest number of people leaving the respective States and settling in States like Maharashtra and Delhi.
- Intra State migration depicts a picture where the people travel and engage themselves in work which are within the boundaries of the State, they are a resident of. They have an affinity for opportunities within the ambit of the State itself.

With this we understand the pattern and the reason behind such pattern of migration. During the lockdown, the Charts and reports show Uttar Pradesh had over 30lakhs labourers returning to the State and Tamil Nadu being the lowest, having around 7thousand people returning due to the sudden jolt of unemployment.

(C) Legislations for the Migrant workers

The migrant workers fall within the province of the Unorganised sector, which we have already

know, has no scope for proper legislations for the protection of the interests of the workers or the employers. However, the law-making body of the Indian Government had formulated certain provisions which has been codified as:

1. Inter State Migrant Workmen (Regulation of Employment and Condition of Service) Act, 1979 ¹⁶

The motto was to dispense social justice to all the migrant workmen who leave their hometown, their own State, in order to find a breakthrough amidst the socio-economic inequality that prevails in their own state. The society is already divided into numerous strata and these people usually belong to the lowest rung and hence, they are deprived of what they deserve. It is easy to keep them at bay from their rights as workers and the privileges that may be awarded to them through the implementation of this Act.

If we look into the historical backdrop of the Act, we see that the inability of the Arab State to provide the required amount of labour for engaging them in the certain programmes of the oil producing provinces of the Arab states, led to an increase in the demand for labours from various countries, especially the Asian countries which included, Pakistan, India, Sri Lanka, Bangladesh, etc., and it was observed that these were mostly the South Asian countries. The people who migrated from their own States to the Arab States for such job obligations, they were ready to accept a remuneration lesser in amount than what was being denied by the local workers in Arab itself. This cheap labour, and numerous participations of the labourers, led to the concept of Contract Labourers. But it was also observed that these labourers were not being provided their basic rights and protection. In fact, in certain cases, the Supreme Court of India opined against this concept as it was a threat to the welfare and well being of the workers. And thus, this Act, was necessary to be enacted and implemented in its true sense and spirit. Now, this migration does not only happen from a country to another country but within India as well, as has been mentioned earlier. This Act, ensures to protect and provide the rights and privileges of the workmen and the duties and other obligations of the contractor, keeping a fair compliance with the Supreme law of the land.

There are workers have left their own States and went to places like Kerala, Maharashtra, Delhi where they get comparatively a higher amount of wage for the service that they provide. The very reason for this pattern of migration, again takes us back to the historical reasoning which shows a low rate of wages in their own States. These workers are mostly supposed to be

¹⁶Anubhav Pandey, *Laws related to Migrant Labours in India*, iPleaders intelligent legal solutions, <https://blog.ipleaders.in/laws-related-to-migrant-labourers-in-india/>

engaged in the act of cultivation and add on to the agricultural produce of the nation, but industrialisation, along with modernisation, has dragged them out of those fields and put them under the contracted job obligations. Thus, we see, to cover and defend the migrant labourers by way of ensuring socio-economic justice to them, this Act, was adopted by the Indian Legislature.

2. Unorganised workers Social Security Act, 2008¹⁷

The section 2(n) of this Act defines the term “wage worker” from which we can derive an understanding that the migrant workers do fall within the definition of the wage workers. The wage workers are those who belong to the unorganised sector, they are employed directly by the employer or through a contractor. They are paid a remuneration by means of cash or kind and they may be employed for one or more employers. The appropriate government, that is, it could be either the Central or the State Government which may fix the amount for remuneration or the monthly wage that has to be paid.

This Act provides certain socio-economic welfare benefits to the workers in the unorganised sectors. It provides for the formulation of welfare schemes by both, the Central or the State government as the case may be, health, maternity and old age benefits, pensions, and other schemes related to provident fund, housing, education for children of the workmen may also be formulated as and when the situation calls for it.

Thus, from the above discussion we can draw a conclusion that there are indeed certain legislations for the wage earners and the migrant workers in particular, but the question arises as to its implementation. How far are these laws enacted and implemented and how beneficial are these for the labourers in the tough times, given this Pandemic situation and its resultant declaration of the Nation-wide lockdown. The workers had to face immense misery and setback and in fact, they are still facing the aftermath of such unplanned and unsecured decisions that created such a humungous conundrum across the country and broke the morale of the common public. The workers still remain the most affected unit of the society, who have actually contributed to the rise of the economy over years and generations. However, the existence of these legislations could not guard the migrant workers from the unforeseen misfortune they had to face.

(D) Atrocities against the migrant workers and the need for proper implementation of laws

¹⁷ Anubhav Pandey, *Laws related to Migrant Labours in India*, iPleaders intelligent legal solutions, <https://blog.ipleaders.in/laws-related-to-migrant-labourers-in-india/>

If we delve into the discussion regarding the atrocities and unfair treatment faced by the migrant workers, the first and foremost mention has to be made of the unplanned declaration of the lockdown. This not only took away their jobs, but also had an impact on their family lives, they were psychologically traumatised and their morale was completely broken as they were in the constant lookout for the bare minimum to sustain a living.

They walked kilometres without water or food, spent days and nights without shelter and some succumbed to the painful barefoot walk and days of chaos. The unstable condition, the uncertainty spread and trickled down to the lowest rung of the society and killed a lot more people than the virus did. The Lockdown required a planning which could at least cover up or at the most support this fallout.

There were people laying dead on the streets, footpaths, railway tracks, sharing one slice of bread among 4 heads just to fill the stomach with a little something, there were no proper policies or programmes for the transportation of the huge chunk of the migrant labourers. Some of them could not return home and some came in touch with the virus due to this unorganised discharge of so many people from their employment and the survival in the worst of the worst situation, the non-availability of proper hygiene and sanitation.

All these could have been avoided only if there was a proper implementation of the existing laws. Before the declaration of the lockdown, there was a requirement for a reform in the laws so as to device the entire process of their return to their home. The lack of design which should have taken care of the transportations, the hygiene, the aspect of sanitation and requirements of women and children, led to the massive and inhuman deprivation of life and livelihood.

The Government, failing to show the records of the rate of death, reflects another arena that has been evidently ignored and neglected. The reports could have facilitated in analysing the demography, the number of deaths, the compensation that can be paid to the families of the deceased. But due to the absence of such report, not only the victim, but his family as a whole is susceptible to unmeasurable magnitude of complication, loss, poverty and the vicious circle of suffering continues to persist.

Thus, from the above, we can chalk out the dejections that came in the way of the migrant workers. The Pandemic not only did cause the loss of life across the globe but also tormented the lives of the ones who managed to survive and reach their homes to their families.

IV. INDIA'S OBLIGATIONS TOWARDS ILO

The International Labor Organization is a United Nations (UN) office that intends to "advance

better than average work all through the world."

India is a founder member of the International Labour Organization, which came into existence in 1919. At present, the ILO has 186 Members.

The enrolment of the ILO guarantees the development of the three sided framework in the Member nations. At each level in the Organization, Governments are related with the two other social accomplices, to be specific the laborers and bosses. Every one of the three gatherings are spoken to on practically all the deliberative organs of the ILO and offer duty in directing its work. The three organs of the ILO are:

1. International Labour Conferences: - General Assembly of the ILO
2. Governing Body: - Executive Council of the ILO. Meets three times in a year in the months of March, June and November.
3. International Labour Office: - A permanent secretariat.
4. The work of the Conference and the Governing Body is supplemented by Regional Conferences, Regional Advisory Committees, Industrial and Analogous Committees, Committee of Experts, Panels of Consultants, Special Conference and meetings, etc.

(A) Ratifications of the International Labour Organization Conventions: In India

Yes, India has ratified 6 out of 8 core ILO Conventions:

1. Forced Labour Convention (Convention No. 29)
2. Abolition of Forced Labour Convention (Convention No.105)
3. Equal Remuneration Convention (Convention No.100)
4. Discrimination (Employment Occupation) Convention (Convention No.111)
5. Minimum Age Convention (Convention No.138)
6. Worst forms of Child Labour Convention (Convention No.182)

Conventions that *India did not ratify* are:

1. **Freedom of Association and Protection of the Right to Organize Convention, 1948 (Convention No. 87)** and
2. **Right to Organize and Collective Bargaining Convention, 1949 (Convention No. 98).**

The fundamental explanation behind the non-confirmation of ILO shows No.87 and 98 is because of specific limitations forced on the administration workers.

The ratification of these conventions would involve granting of certain rights that are prohibited

under the statutory rules, for the government employees, namely, the right to strike, to openly criticize government policies, to freely accept a financial contribution, to freely join foreign organizations etc.¹⁸

On the side of its objectives, the ILO offers skill and information about the world of work, obtained over 90 years of reacting to the requirements of individuals wherever for conventional work, occupations and nobility. It serves its three sided constituents - and society in number of ways, including:

- Detailing of international policies and projects to advance essential human rights, improve working and day to day environments, and upgrade business openings
- Making of global work principles supported by a one of a kind framework to administer their application
- A broad program of worldwide specialized participation planned and carried out in a functioning association with constituents, to help nations set up these strategies as a regular occurrence in a powerful way
- Training, instruction and exploration exercises to help advance these endeavours

(B) ILO: Present Day Scenario in India

15th May 2020 when 10 central trade unions had called for a nation wide strike, On may 22nd 2020 to protest against the suspension of labour laws by some states during the covid 19 period and also decided to take the matter to the ILO. There was a Joint platform of CTUs (central Trade Unions) in their meeting held on 14th May 2020 who took a note on the critical situation of the working people during this lockdown period and decided to enhance united actions to meet the challenge. In the meanwhile, UP suspended 38 labour laws and even MP, Guj, Tripura Assam followed the trend. UP had made these 38 labour laws suspension for 1000 days. But out of that they have made sec 5 of payment of wages act functional, construction workers act, comoensation Act, 1993, bonded labour act remained functional. Trade union act, industrial dispute act, occupational safety and health Act, contract labour act, interstate migrant labour act, equal remuneration, maternity benefit act , etc. Were suspended, because the working hours of the workers increased from 8 hrs to 12 hrs daily.

¹⁸ International Labour Organization, <https://www.drishtiiias.com/important-institutions/drishti-specials-important-institutions-international-institution/international-labour-organization>

The union labour minister who said that the states should make changes in the labour laws to sync with the labour code made by the Central Government. Also said that as India is a signatory of the ILO there shall be few changes even in the ILO convention.

ILO has some standards have two things *1. Convention and 2. Recommendation. (International laws are not binding)*

V. CONCLUSION

In the times of the ongoing COVID-19 pandemic, it is indeed saddening that the popularly elected Government voted to protect the rights and ensure welfare of the poor, has become the key player facilitating the oppression of the labour class.

The Preamble to the Indian Constitution starts with the words “We the People of India having solemnly resolved to constitute India into a Sovereign Socialist Secular Democratic Republic”, but the idea of socialism somewhere seems to be a distant goal today.

What started as a debate on whether labour laws should be eased, or should complete reforms be brought about in the existing laws became a journey which showed us in the eyes that it is positive and socialistic reforms that is the need of the hour. No commercial or industrial consideration or need to expand or boost business is as much necessary as is human life, his dignity and his basic minimum wage and livelihood.

Over the years, the laws like Industrial Disputes Act, Factories Act, Trade Unions Act, Minimum Wages Act, and, many such labour legislations have done their part in making India a welfare state. Recently on 22nd September, 2020, while we were still working on this project, our Labour Minister Santosh Kumar Gangwar passed three new bills in the Lok Sabha:-

- 1) *The Occupational Safety, Health and Working Conditions Code 2020*
- 2) *The Industrial Relations Code 2020*
- 3) *The Code on Social Security 2020*

However the step taken by the States by suspending labour laws is not only violative of various provisions of the Constitution, but also in derogation of the decisions of the Supreme Court and India’s international obligations.

What is more condemnable is the growing oppression and brutality against the migrant workers who had set out to reach their homes during lockdown and had been raising demands far lower than sub-human standards.
