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# To Ease or to Reform the Labour Laws during the Lockdown in India

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## ABSTRACT

*The paper provides a comprehensive insight into labour law in India, tracing its historical roots from the Trade Disputes Act of 1929 to the recent consolidation of four major labour laws. The study delves into the profound impact of the COVID-19 lockdown on the Indian labour force, dissecting challenges faced by both organized and unorganized sectors. The situation of labour migration is more pronounced, illustrating the stark contrast between the resilience of the structured workplace and the struggles of the unorganized sector. The latter part studies the labour law reforms implemented during the epidemic, especially in states like Uttar Pradesh, Madhya Pradesh, and Gujarat is present. While the author acknowledges the importance of economic stability, it raises concerns about potential human rights violations and non-compliance with international treaties. This highlights the need for an emphasis on a balance that prioritizes business and employee interests. Proposed policy recommendations include periodic review of labour laws, enhanced welfare schemes, legal aid, and expanded social safety nets. The paper emphasizes the importance of balanced employment, emphasizing the promotion of easy and equitable conditions in India.*

**Keywords:** Labour laws reforms, Migrant workers, COVID-19 impact, Lockdown, Human Rights violation, State amendments.

## I. INTRODUCTION

Labour law is a set of rules and regulations that aim to protect the rights of employees and organizations. It is divided into two categories: collectivistic labour law, which mainly deals with the relationship between employees, employers, and labor unions, and individualistic labor law, which concerns the personal rights of employees at work through their employment contracts. In India, labor and employment law is a part of the wider industrial law that supports the country's economy. These laws are derived from the Indian constitution, and labor movements have been influential in drafting policies and legislations that safeguard employees' rights. Labor rights have played a crucial role in social and economic development ever since the industrial revolution. As a result, labor law has emerged from the trade unions' demands for

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better working conditions, the freedom to form unions, and the corresponding pressure from employers to limit worker power and maintain lower wages.

India is one of the founding members of the International Labour Organization (ILO), which comprises 187 member states. In 1929, India introduced the Trade Dispute Act (Act 7 of 1929), which was the first statute to deal with employer and workers' relations in the country. However, it lacked any mechanism to resolve industrial conflicts and only addressed the matters related to strikes and lockouts. The Constitution of India gives both the central government and state governments the power to pass labour laws, leading to the creation of several labour laws to address various labour issues. The central government directed the parliament to compile around 44 labour-related statutes, resulting in the creation of four new labour codes: Code on Social Security 2020, Occupational Safety, Health, and Working Conditions Code 2020, Industrial Relations Code 2020, and Code on Wages 2019.

## **II. IMPACT OF LOCKDOWN ON INDIAN LABOUR FORCE**

COVID 19 pandemic has changed the way we work and businesses operate across the globe. India has not been immune to the disruptive effects of the lockdown measures implemented to curb the spread of the virus. The first active case of COVID was reported in India in the month of January 2020 and by the mid- March the number of the cases had increased drastically leading to stringent nation-wide lockdown. The COVID-19 pandemic has brought economic and social disturbances all over the globe, which has affected the living and health conditions of people in general and workers; because of this, numerous nations imposed workplace closures in an attempt to contain the COVID-19 pandemic.

The Indian economy is made up of two main sectors: the organized sector/formal sector and the unorganized/informal sector. The growth of the economy is often associated with these two sectors. The organized and unorganized sectors play a significant role in driving the country's growth, with the unorganized sector contributing more in terms of labour.

For March 2020, India had 495.7 million people in labour forces that amounted to approximately 50% of the working age population (aged 15 years and more). Within this number, there were 382.5 million male employees and 114.3 female employees. There were at least 66% of the entire employment in India which was rural and less than a third of overall employment was based in urban areas. Although, in formal sector and households, more than one-third work without any protection that puts them on an informal employment status. It also adds that around 91% of all employment in India is made up of informal employment while

only 9% is made up of formal employment.<sup>2</sup> COVID-19 pandemic has affected the organized sector in India both positively and negatively. Many companies now allow work from home and thus this has enabled employees to continue with their normal routines, guaranteeing them their fundamental rights. However, even in the organised sector, for example, underpaid employees are frustrated with their job and thus do not exhibit maximum productivity. The organized sector as a whole has shown more flexibility than the unorganized one in spite of COVID19.<sup>3</sup>

Migrant workers were among the worst affected group in India during the COVID-19 Lockdowns. Several of them suffered immensely due to lack of food, fatigue, train and railway accidents, torture by police and lack of proper treatment which culminated into suicide. Unskilled and semi-skilled workers fled the city following the declaration of lockdowns. They walked home barefooted, hungry, and with no cash on them. The reverse migration destroyed their normal lives in terms of both health and finance.<sup>4</sup>

### III. CHALLENGES FACED BY LABOURERS DURING LOCKDOWN

#### (A) Challenges faced by the organised sector:

1. Salaried employees in India were greatly affected by the COVID-19 pandemics. The CMIE estimates that the total number of salaried people who lost their job during the period is around 18.9 million. Corporate filings from renowned firms showed a marked decrease in employee cost in the service industry as well as non-core manufacturing. Moreover, there was a significant increment of withdrawal from Employees' Provident Fund Organization which shows some people lost their jobs in organized sector.<sup>5</sup>
2. The idea about working from home came up during the Covid-19 outbreak in India. Many states and federal governments advised people to stay at home, working remotely in order to avoid the virus transmission. Employers had liberty to make decisions on whether to allow their workers to work at home and develop their individual rules that facilitated such a policy. Although "work from home" was not a new concept in the Indian employment law, it gained popularity during the COVID-19 crisis. The work-from-home culture was

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<sup>2</sup> Xavier Estupinan, Bharti Birla and Mohit Sharma, *Impact on labour supply due to COVID-19 containment measures in India: An informal employment analysis*, International Labour Organization 2021, ISBN: 9789220339824 (Web)

<sup>3</sup> Nanda, Ardhendu Sekhar and Panda, Manas Ranjan, *Impact Assessment of COVID-19 on the Labour Forces in India* (November 22, 2021). Available at SSRN: <http://dx.doi.org/10.2139/ssrn.3968701>

<sup>4</sup> Kumar, S., & Choudhury, S. (2020). Migrant workers and human rights: A critical study on India's COVID-19 lockdown policy. *Social Sciences & Humanities Open*, 3(1), 100130. <https://doi.org/10.1016/j.ssaho.2021.100130>

<sup>5</sup> What Job Losses in the Formal Sector Tell Us About the Lockdown's Impact on Economy, The Wire available at <https://thewire.in/economy/job-losses-formal-sector-lockdown-impact-economy-coronavirus-cmie>

geared towards maintaining efficiency amidst safeguarding workers' health and happiness.<sup>6</sup>

3. Indian employers reduced their workers' salaries to ensure that they survive the financial shock brought about by the COVID-19 pandemic. Many families suffered greatly since their earnings were cut down drastically. These pay cut were applied across all employers uniformly and did not constitute punishment for certain workers. This was aimed at ensuring that companies met their financial obligations after experiencing disruptions caused by the pandemic. In many homes it was a catastrophic blow for which there is no compensation.<sup>7</sup>

**(B) Challenges faced by the unorganised sector:**

1. It was not easy for migrant workers in India during lockdown. Most of them were jobless and did not receive their salaries from their employers. Most of these workers get around \$133 (Rs. 10,000) per month as their salary making life impossible when such individuals cease to earn a living. The migrants also lacked ration cards under which free ration schemes could be accessed in their place of work. There was no help offered by the government, leaving the migrant workers in despair.<sup>8</sup>
2. Agriculture too belongs to informal sector because these workers earn little remuneration and works are also season based. Majority of people employed in an agriculture sector are involved just in the seeding and reaping periods. However, the lockdown has totally brought halt to import, hence, no good outlet for our country's produce. Hence the people depending on farming end up selling the fruits and vegetables at giveaway prices. People coming from informal sector such as farmers will only be able to help the development of the economy in a country once they are paid their fair price.<sup>9</sup>
3. Within the ranks of the unorganised workers, domestic workers are the most vulnerable and invisible category. They were nameless and without a voice, and they actually experienced a reduction in remuneration during the disaster. Additionally, another issue on domestic and other informal workers was getting inadequate ration as few workers were offered by the government free rations and direct benefit transfers. Some of them experienced domestic violence as they were restricted at home yet could not add to the family needs.<sup>10</sup>

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<sup>6</sup> Prof. Dr. Suresh.V. Nadagoudar & Rajashree Patil, *Impact Of Covid-19 On Employment Of Workers In Organised And Unorganised Sector*, Labour Law Reform 2021, Centre for Transparency and Accountability in Governance, National Law University, Delhi. ISBN: 978-93-84272-30-2

<sup>7</sup> Rudra Srivastava, COVID-19: Our Take on Employment Issues in India, S&P blog, available at <https://singhania.in/blog/covid-19-our-take-on-employment-issues-in-india>

<sup>8</sup> See supra 4

<sup>9</sup> Gaikwad, Saurabh & Devhade, Rameshwar. (2020). An Overview: Impact of COVID on the Unorganized workers.

<sup>10</sup> Jeemol Unni, Impact of Lockdown Relief Measures on Informal Enterprises and Workers, available at

#### IV. EXPLORING LABOUR LAW REFORMS IN THE LOCKDOWN PERIOD

Society and its laws need to evolve with changing times, particularly when it comes to labour legislation. If existing laws are not updated according to new requirements, they can hinder progress. Consequently, the government consistently makes efforts to review and amend these laws.

Numerous studies and real-life experiences have consistently revealed a troubling truth - a significant portion of employees and employers, especially those in the informal and unorganized sectors, are being deprived of their rightful labour rights and social security entitlements. The shortcomings of current labour laws, such as imposing wage and employee number restrictions, coupled with a lack of education and awareness among workers of their legal entitlements, are the main contributing factors to this issue. The complex nature of these laws also makes it challenging for individuals to fully comprehend and assert their rights. Moreover, the sheer number of laws and outdated provisions, along with inadequate penalties for non-compliance, further hinder their effective implementation. To address these challenges, a comprehensive reform that simplifies, streamlines, and updates these laws in a language that is easily understandable is urgently required.

The current government has taken a significant step in regards to labour law reforms through amalgamation of a large number of existing labour laws in 4 major labour codes namely (i) Labour Code on Wages; (ii) Labour Code on Industrial Relations; (iii) Labour Code on Social Security; and (iv) Labour Code on Occupational Security, Health and Working Conditions.

1. **Code on Wages, 2019** amalgamates, simplifies, and rationalizes the provisions of various wage-related legislation, including the Payment of Wages Act, Minimum Wages Act, Payment of Bonus Act, and Equal Remuneration Act. The Code seeks to universalize the provisions of minimum wages, ensuring timely payment to all employees regardless of the sector of employment or wage ceiling. Overall, the Code on Wages aims to simplify compliance, ensure wage and social security to workers, and establish a fair and transparent system for wage-related matters.<sup>11</sup>
2. **Industrial Relations Code, 2020** rationalizes and amalgamates the provisions of the Trade Unions Act, 1926, the Industrial Employment (Standing Orders) Act, 1946, and the Industrial Disputes Act, 1947. It aims to streamline and simplify the industrial relations

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<https://www.epw.in/engage/article/impact-lockdown-relief-measures-informal-enterprises-workers>

<sup>11</sup> Dr. Sanjay Upadhyaya, *Labour Law Amendments, Reforms And Codification In India: Recent Initiatives*, Labour Law Reform 2021, Centre for Transparency and Accountability in Governance, National Law University, Delhi. ISBN: 978-93-84272-30-2

framework. Overall, the Industrial Relations Code aims to streamline industrial relations, facilitate effective dispute resolution, protect the interests of workers, and ensure a fair and balanced framework for both employers and employees.<sup>12</sup>

3. **Code on Social Security, 2020** aims to universalize social security by providing comprehensive coverage to all categories of marginalized employees and workers, including those engaged in new forms of employment such as gig workers and platform workers. It covers aspects like old age, unemployment, sickness, invalidity, work injury, maternity, and loss of a breadwinner. Overall, the Code on Social Security aims to extend social security to all employees and workers, simplify compliance, and ensure wage and social security to workers in various sectors.<sup>13</sup>
4. **The Occupational Safety, Health and Working Conditions Code, 2020** amalgamates, consolidates and rationalizes the provisions of 13 existing labour legislations. The Code envisages to prescribe occupational safety standards for different sectors; health and working conditions; hours of work, overtime hours; leaves and holidays; welfare provisions (canteen, creche and restrooms etc.); duties of employers, employees and manufacturers etc.; registration of establishments including deemed registration and license for contract workers, factories and beedi and cigar workers etc.<sup>14</sup>

## V. POTENTIAL EASE OF LABOUR LAWS: A NECESSITY OR A RISK?

As the lockdown is being gradually lifted from June 2020 to contain the COVID-19 crisis and the facilities are operating with very few people, the key issue is to ensure that the reopening of these facilities is sustainable. Thus, some exceptions are provided in the existing labour laws. States that have amended or repealed existing labour laws include Uttar Pradesh, Madhya Pradesh, Gujarat and Rajasthan, while others like Himachal Pradesh, Odisha, Punjab and Goa have also made minor amendments and suspensions. While the amendment provides external support for the dismantled projects, it also raises questions as to whether it violates fundamental elements of the Indian Constitution.

Uttar Pradesh is one of the largest states in India with the highest number of amendments comprised in The Uttar Pradesh Temporary Exemption from Certain Labour Laws Ordinance, 2020. The Ordinance exempts all offices in UP from complying with all labour laws for years three, until 2023 including the laws required to implement the Minimum Wages Act, 1948, and

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<sup>12</sup> Ibid

<sup>13</sup> Ibid

<sup>14</sup> Ibid

the Public Liability Insurance Act, 1991, among others which help improve the lives of workers and prevent exploitation. Furthermore, according to the law, the maximum working hours should be between 11 and 12 hours per day, a very inhuman and degrading law.<sup>15</sup>

Along with Uttar Pradesh, Madhya Pradesh has also introduced several amendments to its existing labour laws through The Madhya Pradesh Labour Laws (Amendment) Ordinance, 2020, and Gazette Notification. Factories will not be required to comply with the Industrial Disputes Act, 1947 for 3 years. Further, the Act compelling employers to make contributions to the Employees Welfare Fund can be waived by the government by giving notice to all other establishments of exemption<sup>16</sup>.

In Gujarat, certain reforms were also introduced by notification exempting factories registered under the Factories Act from regulations relating to weekly working hours, daily working hours, rest periods, and so on. Subsequently, the government announced an ordinance to modify Contract Labour (Regulation and Abolition) Act. The Act increases the number of employees from 20 to 50. Other states like Rajasthan, Himachal Pradesh, Haryana, Odisha, Maharashtra, Bihar and Punjab have increased daily working hours to 12 hours through various labour law amendments.

## **VI. REPERCUSSIONS OF LABOUR LAW REFORMS IN A PANDEMIC**

Some Indian states have implemented changes to labor laws that have raised concerns about the safety and well-being of workers. Critics argue that these modifications primarily benefit industrialists at the expense of employees who lack the education and economic resources to protest. For example, the Uttar Pradesh Temporary Exemption from Certain Labour Laws Ordinance, 2020 places little burden on employers to provide secure and humane working conditions. Important provisions related to labor welfare, including those dealing with industrial disputes, trade unions, and strikes, are not applicable. Instead, the only provisions in force for these new factories are those related to layoffs, retrenchment, and closure of establishments..

Industries are seeking aid to recover from the impact of COVID-19 on the economy. However, there is a risk that exemptions granted to these industries may lead to human rights violations for vulnerable employees. Currently, millions of people are unemployed and struggling to meet basic needs such as food and shelter due to the lack of regular wages. This situation is worrisome and requires attention from authorities to ensure the safety and well-being of all individuals.

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<sup>15</sup> Sanjit Kumar Chakraborty and Kanchan Yadav, *India's labour force during a pandemic: how we have failed Journal of Poverty and Social Justice*, vol 29, no 2 Pg 173–186, Online ISSN 1759-8281 <https://doi.org/10.1332/175982721X16184171898653>

<sup>16</sup> Madhya Pradesh Shram Kalyan Nidhi Adhiniyam, 1982.



Although it is important to fast-track the economy, the current reforms seem to prioritize companies over people. As businesses and manufacturing return to normal, these exemptions are expected to continue for several years. As a result, employers will have more freedom to determine critical aspects related to their employees, such as wages and working conditions.

### **(A) Violation of Human Rights**

It is crucial that labor laws and any subsequent reforms prioritize the well-being, protection, livelihood, and human rights of workers. Unfortunately, these crucial aspects are often lacking in many labor reforms. Governments allow inhumane labor reforms that increase work hours, limit wages, make hiring and firing easier, and loosen licensing and permit norms. Employers only need to pay the minimum wages set by law and are not obligated to pay higher wages agreed upon through collective bargaining. This is unacceptable. Employers may also fail to provide basic health and safety protections to employees, which is outrageous. These changes create opportunities for exploitation and evasion of the law, directly violating workers' fundamental rights.

Chapter III (Article 16, 19, 23, and 24) and Chapter IV (Article 39, 41, 42, 43, 43A, and 54) of the Constitution protect human labor and the rights of the working class. The Supreme Court has held that the right to life under Article 21 includes the right to livelihood. Terminating an employee's service without giving them a reasonable opportunity to be heard is unjust, arbitrary, and illegal. Depriving someone of their livelihood must meet the requirements of Article 14 and must be fair and not arbitrary or oppressive. Articles 42 and 43 ensure just and humane conditions of work and a decent standard of living. However, the recent changes do not guarantee these rights and leave them to the discretion of employers, which is unacceptable. The extended working hours of up to 12 hours will have disastrous consequences on the physical and mental health of people, violating an individual's fundamental right to life. It is imperative to uphold these rights, and these reforms should be subject to judicial review as they provide an opportunity for exploitation.

### **(B) Non-Compliance with International Conventions**

India became a member of the International Labour Organization (ILO) in 1919, and has ratified several conventions under the ILO. However, recent changes to labour laws violate the Tripartite Consultation (International Labour Standards) Convention, which mandates that any changes to labour laws must first be discussed and agreed upon by labour representatives, trade union members, and government officials<sup>17</sup>. This was not done in the present case, which is a

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<sup>17</sup> Article 5 of the Tripartite Consultation (International Labour Standards) Convention, 1976.

violation of the Convention. Additionally, some states in India have allowed for more overtime than what is stated in the Hours of Work (Industry) Convention, which India has ratified. This Convention sets a limit of 48 hours per week, unless there is a break in the 8-hour per day limit<sup>18</sup>. The increase in the threshold for recognition of trade unions also conflicts with the Fundamental Principles and Rights at Work and the ILO Constitution.<sup>19</sup>

The Universal Declaration of Human Rights, enacted by the United Nations in 1948, provides a framework for human rights applicable to everyone. Articles 23 and 24 specifically address work and working conditions. Article 23 emphasizes the right to fair working conditions, while Article 24 guarantees the right to rest and leisure with reasonable limitations on working hours. However, recent changes made by states have not been just or fair for workers<sup>20</sup>

## **VII. POLICY RECOMMENDATIONS FOR INDIAN LABOUR LAW**

The COVID-19 pandemic and lockdown have highlighted many of the issues faced by workers. Consequently, policy proposals are needed to address these challenges and potential responses to labour law reform. Here are detailed planning tips:

1. Conduct periodic reviews of labour laws and their impact on employees, and make necessary changes based on feedback and changing economic conditions. This approach can help ensure that labour laws are kept up-to-date and responsive to changing economic conditions.
2. Implement impact assessments of labour law changes to assess their effectiveness and address any unintended consequences. This approach can help monitor the effectiveness of labour law reforms and ensure that they do not cause any unintended consequences.
3. Establish and provide comprehensive welfare programs for migrant workers, including emergency shelter, food and health care. This measure can help protect the rights of migrant workers and ensure that their basic needs are met in the event of an emergency.
4. Establishment of legal aid centers to provide assistance to employees who are experiencing employment-related conflicts or are treated unfairly. This process can help employees access legal aid and ensure their rights are protected. Introduce mechanisms for expeditious resolution of labour disputes to ensure timely resolution. This approach can help resolve employee disputes quickly and employees won't be left in limbo

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<sup>18</sup> C001- Hours of Work (Industry) Convention, 1919 (No. 1) which is ratified by India (14 July 1921)

<sup>19</sup> Albert Benjamin & Amithab Sankar, Labour Law Reforms in the Times of COVID-19, 1 INDIAN J.L. & LEGAL Rsch. 1 (2021).

<sup>20</sup> Supra 15

5. To provide immediate financial assistance to vulnerable workers, especially in the unorganized sector, through direct benefits or other forms of financial assistance. Aid can help them meet immediate needs and loss of income due to epidemics. Ensure food and necessities are available for workers, especially those who have lost their jobs or faced cuts. This approach can help reduce the burden of unemployment and lost income.
6. Strengthen and expand the social safety net to include more types of workers, including gig workers and informal workers. This approach can provide greater financial security and safety in times of need. All employees should be provided with affordable health insurance to deal with health emergencies, including epidemics. This practice can provide employees with better access to health care and reduce their financial burden in the event of a health crisis.
7. Recognize the need for labour law reform and ensure that reforms prioritize the interests of employers and the rights and welfare of employees. There must be a balance of laws to avoid exploitation and deprivation of fundamental rights of workers. Take an approach that takes into account trade union, employer and government representatives when making significant changes to employment law to bring them into line with international agreements. This approach can help ensure that all stakeholders are adequately represented and their concerns taken into account.
8. Implement skill development programs to upskill employees, so that they can adapt to changes in employment. This approach can help employees stay relevant and meet the demands of an ever-changing job market. Develop comprehensive guidelines for remote work, ensure they are treated fairly, and protect the rights of employees who work from home. This approach can help protect remote workers from exploitation and ensure they are compensated accordingly.
9. Mechanisms for monitoring and enforcing labour laws should be strengthened to ensure compliance with prescribed rules in both organized and unorganized sectors. This approach can help employers comply with the law and protect workers' rights.
10. Strengthen or increase penalties for employers who violate labour laws, to ensure accountability and deterrence. This approach can help prevent employers from breaking the law and ensure they face consequences if they do.
11. Launch awareness campaigns to educate employees about their rights and entitlements under labour law, and promote a culture of compliance and empowerment. This approach can help employees understand their rights and promote a culture of labour

compliance. Use digital channels to disseminate information on labour laws, employment opportunities and skills development programmes. This approach can help employees gain access to information and opportunities that can help improve their skills and livelihoods.

This comprehensive policy proposal aims to strike a balance between economic flexibility and worker protection, ensuring that employment law can adapt to changing economic conditions while supporting workers' rights and welfare.

## **VIII. CONCLUSION**

After the COVID 19 some states have implemented labour law reforms to stimulate the economy, but there are concerns over possible violations of human rights and international treaties. These reforms, especially in states like Uttar Pradesh, Madhya Pradesh and Gujarat give importance to the interests of businesses over the well-being of workers rights . Thus, a balanced approach that takes into account the requirements of the industry and the protection of workers' rights is essential. Policy recommendations include periodic inspections, comprehensive welfare programmes, legal aid and enhanced social safety nets. These initiatives, along with skills development programs and enhanced awareness campaigns, can contribute to flexible labour policy to adapt to economic changes while safeguarding workers' rights and welfare. This delicate balance needs to be struck in India though promote a flexible and equitable working environment.

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