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**Indian Employment Sector in Wake of the Covid-19 Outbreak: A Critical
Analysis**

Freya Irani & Shreya Gokhale

ABSTRACT

As COVID-19 took upon the world by a storm, every single person be it financially stable or not, is facing the gruesome impact of the fatal virus. It has impacted the global economy as a whole and brought the businesses across the globe to a standstill. India being a densely populated country, it comprises of a large working class that has been severely affected by the pandemic in the most devastating form. This paper analyses the issues and impact that the employees of all the sectors ought to face. It explores the detailed analysis of various definitions, in order to interpret the same with respect to different labour legislations in India. Furthermore, it sheds light on the hardships faced by the employees while they search for sustainability within their own household. It discusses not only the issues pertaining to employees but also that of the employers and the difficulties tackled by them during such rigid times.

Keywords: COVID-19, pandemic, employment sector, wages, migrant workers, termination, lockdown, employers, employees

INTRODUCTION

"Pandemic is not a word to use lightly or carelessly. It is a word that, if misused, can cause unreasonable fear, or unjustified acceptance that the fight is over, leading to unnecessary suffering and death. The pandemic is teaching us that health is not a luxury item; it's the foundation of social, economic and political stability. " Dr. Tedros Adhanom, Director General, World Health Organisation

The term "Coronavirus" covers a wide range of infections including the common cold and respiratory diseases. Coronavirus (**"COVID-19"**) is an infectious disease caused by a new form of coronavirus which was first discovered amidst an outbreak of respiratory illness cases in Wuhan, China in the latter part of 2019. The World Health Organization (**"WHO"**), on January 30, 2020, declared the COVID-19 outbreak to be a global health emergency. Soon thereafter, on March 11, 2020, COVID-19 was declared to be a global pandemic by the WHO.

The term **COVID-19** (*"co" and "vi" for coronavirus, "d" for disease, and "19" for the year of its identification*) was coined by the WHO for this fatal respiratory disease.

China immediately took certain aggressive actions at the beginning of the outbreak and sought to tackle the virus by shutting down transportation facilities in major cities and suspending public gatherings. Isolation, contact tracing, and constant tests were some of the measures taken by the Chinese Government to contain the spread of the virus. India ranks third in the list of most affected countries while the US remains the first and is now the epicenter of the crisis with outbreaks accelerating with each passing day. On the other hand, countries like New Zealand, Japan, South Korea, and Germany have been successful in handling the pandemic to a great extent.¹

IRREPARABLE DAMAGE CAUSED BY COVID-19 ON VARIOUS SECTORS

The COVID-19 pandemic is not just a health crisis but also a socio-economic crisis. Affecting every country, it has created devastating political, social, and economic impacts. The outbreak has forced businesses across the world to suspend operations as a result of which the global economy is on the verge of facing another unsparing recession. The pandemic and the consequent lockdown have affected every sector causing economic hardship on the employees, as many companies are

¹<https://www.theverge.com/2020/1/23/21078457/coronavirus-outbreak-china-wuhan-quarantine-who-sars-cdc-symptoms-risk>

adopting cost-cutting measures and leaning towards salary deferrals/ reductions and termination to aid the same.

Various sectors including automobiles, real estate, IT, hospitality, tourism, entertainment, and banking have been affected by the pandemic and seem to be having a difficult time ahead of them.

The COVID-19 pandemic has hampered the food industry due to the closing of multiple restaurants on account of safety measures. People are now cautious about the risks of ordering food online which in turn has massively diminished the business of not only restaurants but also of such online delivery portals.

Self-employed workers and workers without a formal contract of employment, are the ones mainly facing the risk of losing their means of income during this pandemic. The increasing intensity of the COVID-19 has had a huge impact on print media as people refuse to come in contact with hard copies of news. This has caused a serious disruption in the circulation of newspapers and magazines across the country which has in turn forced the media houses to take drastic steps like reducing the number of pages to complete shutdown of printing.

The Micro, Small, and Medium Enterprises (**“MSMEs”**), rightly called the backbone of all Indian sectors has received a harsh blow by this pandemic. Almost all MSMEs are out of action due to the nationwide lockdown, the consequent outcome of which is a financial crisis that has dawned upon the MSMEs.²

The above sectors and many more are dealing with economical and financial problems but it is one sector which plays an important part in all the sectors mentioned above and more, which is facing the most brutal impact from the current situation, indirectly/ directly and that is the employment sector. One must realise how apart from machinery and other miscellaneous technology it is the employees that function them and they are the backbone of every sector in our country. This paper analyses the issues and impact that the employees of all the sectors ought to face. It discusses not only the issues pertaining to employees but also that of the employers and the difficulties tackled by them during such rigid times.

INDIAN EMPLOYMENT SECTOR AND ITS STRUGGLE WITH STABILITY DURING THE PANDEMIC

The government had imposed the first phase of the lockdown (Lockdown 1.0) on March 25, 2020, to fight the fatal virus. Even though this decision was made to curb the spread of COVID-19 and

²<https://www.mumbailive.com/en/civic/industries-affected-by-the-novel-covid-19-as-india-enters-the-fourth-phase-of-lockdown.-49815>

for the welfare of the citizens of the country, it resulted in a lockdown of various workplaces which led to job losses and layoffs³ of an innumerable amount of workforce.

According to a report by the Center for Monitoring the Indian Economy, India's unemployment stood at 24% in May. The high unemployment rate is a result of the COVID-19 pandemic, because of which 120 million people were left jobless in April. This included migrant workers, entrepreneurs, and the salaried class.⁴

According to a survey by the Indian Society of Labour Economics (ISLE), loss of employment is the most severe and immediate impact of COVID-19 pandemic, whereas the low rate in the economic growth and rise in inequality would be the long-term and long-lasting effects.

The survey was discussed at a two-day virtual international conference on “Implications of the COVID-19 Crisis for Labour and Employment in India: Impact, Strategies, and Perspectives.” As per the survey, the protection of workers and their families, the creation of short-term employment opportunities, and the provision of financial aid to affected workers are some of the main policy priorities that are to be looked into. Job losses were estimated at 80 percent, affecting the urban economy, most of which were self-employed and 54 percent jobs were affected in the rural economy, most of which were casual employment.⁵

GOVERNMENT’S ATTEMPT AT “MITIGATING” HARDSHIPS OF GRIEVING EMPLOYEES

The Ministry of Labour and Employment issued an advisory dated March 20, 2020 (“Advisory”)⁶, through which it addressed the issues relating to termination of employees during the pandemic.

³ Section 2(kkk) of the Industrial Disputes Act, 1947 “**lay-off** (with its grammatical variations and cognate expressions) means the failure, refusal or inability of an employer on account of shortage of coal, power or raw materials or the accumulation of stocks or the break-down of machinery 5[or natural calamity or for any other connected reason] to give employment to a workman whose name is borne on the muster rolls of his industrial establishment and who has not been retrenched.”

Explanation- Every workman whose name is borne on the muster rolls of the industrial establishment and who presents himself for work at the establishment at the time appointed for the purpose during normal working hours on any day and is not given employment by the employer within two hours of his so presenting himself shall be deemed to have been laid-off for that day within the meaning of this clause:

Provided that if the workman, instead of being given employment at the commencement of any shift for any day is asked to present himself for the purpose during the second half of the shift for the day and is given employment then, he shall be deemed to have been laid-off only for one-half of that day:

Provided further that if he is not given any such employment even after so presenting himself, he shall not be deemed to have been laid-off for the second half of the shift for the day and shall be entitled to full basic wages and dearness allowance for that part of the day;]

⁴ <https://www.cmie.com/kommon/bin/sr.php?kall=warticle&dt=2020-05-19%2008:41:03&msec=086>

⁵ <https://economictimes.indiatimes.com/jobs/job-loss-most-severe-immediate-impact-of-covid-19-survey/articleshow/76323649.cms?from=mdr>

⁶ https://labour.gov.in/sites/default/files/Central_Government_Update.pdf

The Advisory requested both public/ private sector employers to refrain from terminating their employees, particularly casual or contractual workers, or reducing their wages and also urged them to grant leave to their employees/workers without any deduction in wages, as doing so would further deepen the crisis and worsen the situation. The Advisory further states that in case of establishments that are non-operational due to the lockdown, the employees/workers must be deemed to be on duty. However, the Advisory being an advisory had no legal effect. Thus, it can be rightly said that the Advisory was more humanitarian than legal.

Soon after this, the Ministry of Home Affairs, on March 29, 2020, issued an Order (**“MHA Order”**)⁷ under Section 10(2)(l) of the Disaster Management Act, 2005⁸ for effective implementation of the lockdown measures, for the benefit of migrant workers and to mitigate the economic hardships of such workers. The MHA Order called for certain additional measures to be taken by the concerned state authorities, the most important being -

“All the employers, be it in the Industry or in the shops and commercial establishments, shall make payment of wages of their workers, at their work places, on due date, without any deduction, for the period their establishments are under closure during the lockdown”

By virtue of this MHA Order, the Government laid emphasis on the duty of an employer towards its workers during a point when the entire nation was under lockdown. The MHA Order thus provided a solid legal foundation to the Advisory and in turn, made it mandatory for the employers to pay wages to their employees/workers. It went a step further and directed that any violation of the terms would be punishable under the Disaster Management Act, 2005. The above extract from the Order also makes it clear that it is applicable only to workers drawing wages and to establishments that are closed during the lockdown. At this juncture, it becomes important to analyse the definitions of terms specified in the above extract and to interpret the same.

Analysis of definitions

The preamble to The Payment of Wages Act, 1936 states that the act has been enacted to regulate the payment of wages⁹ to certain classes of employed persons. A mere reading of the preamble

⁷https://www.mha.gov.in/sites/default/files/MHA%20Order%20restricting%20movement%20of%20migrants%20and%20strict%20enforcement%20of%20lockdown%20measures%20-%202020.03.2020_0.pdf

⁸ Section 10(2)(l) of the Disaster Management Act, 2005- Without prejudice to the generality of the provisions contained in sub-section (1), the National Executive Committee may lay down guidelines for, or give directions to, the concerned Ministries or Departments of the Government of India, the State Governments and the State Authorities regarding measures to be taken by them in response to any threatening disaster situation or disaster.

⁹ Section 2(vi) of the Payment of Wages Act, 1936 defines the term wages as follows: "**wages**" means all remuneration (whether by way of salary, allowances, or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in

makes it amply clear that there are certainly other classes of employees who are excluded from the application of the aforementioned act. Section 3 of the said act states that under the act, the employer shall be responsible for payment of wages only to those persons employed by him in factories, industrial or other establishments.¹⁰ Furthermore, the act only applies to those employees whose wages do not exceed Rs. 24000 per month.¹¹

The Industrial Disputes Act, 1947, and the Shops & Commercial Establishments Act (State Specific) also mention the term wages, and thus it becomes important to analyse the applicability of those definitions as well. According to the Industrial Disputes Act, 1947, wages¹² are payable

respect of his employment or of work done in such employment, and **includes** (a) any remuneration payable under any award or settlement between the parties or order of a Court;(b) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period;(c) any additional remuneration payable under the terms of employment (whether called a bonus or by any other name);(d) any sum which by reason of the termination of employment of the person employed is payable under any law, contract or instrument which provides for the payment of such sum, whether with or without deductions, but does not provide for the time within which the payment is to be made;(e) any sum to which the person employed is entitled under any scheme framed under any law for the time being in force, **but does not include**- (1) any bonus (whether under a scheme of profit sharing or otherwise) which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a Court;(2) the value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the State Government;(3) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;(4) any travelling allowance or the value of any travelling concession;(5) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment; or(6) any gratuity payable on the termination of employment in cases other than those specified in sub-clause (d)”

¹⁰ Section 3 of the Payment of Wages Act, 1936 -Responsibility for payment of wages-(1) Every employer shall be responsible for the payment of all wages required to be paid under this Act to persons employed by him and in case of persons employed,--(a) in factories, if a person has been named as the manager of the factory under clause (f) of sub-section (1)of section 7 of the Factories Act, 1948;(b) in industrial or other establishments, if there is a person responsible to the employer for the supervision and control of the industrial or other establishments;(c) upon railways (other than in factories), if the employer is the railway administration and the railway administration has nominated a person in this behalf for the local area concerned;(d) in the case of contractor, a person designated by such contractor who is directly under his charge; and(e) in any other case, a person designated by the employer as a person responsible for complying with the provisions of the Act,the person so named, the person responsible to the employer, the person so nominated or the person so designated, as the case may be, shall be responsible for such payment.”

(2) Notwithstanding anything contained in sub-section (1), it shall be the responsibility of the employer to make payment of all wages required to be made under this Act in case the contractor or the person designated by the employer fails to make such payment.”

¹¹ Section 1(6) of the Payment of Wages Act, 1936 - This Act applies to wages payable to an employed person in respect of a wage period if such wages for that wage period do not exceed six thousand five hundred rupees per month or such other higher sum which, on the basis of figures of the Consumer Expenditure Survey published by the National Sample Survey Organisation, the Central Government may, after every five years, by notification** in the Official Gazette, specify. "Twenty-four thousand rupees per month" vide S.O. 2806 (E), dated 28.8.2017.

¹² Section 2(rr) of the Industrial Disputes Act, 1947 “**wages**” means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a workman in respect of his employment or of work done in such employment, and includes—(i) such allowances (including dearness allowance) as the workman is for the time being entitled to;(ii) the value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of food grains or other articles;(iii) any travelling concession;(iv) any commission payable on the promotion of sales or business or both;

only to a workman¹³ in respect of his employment or of work done in such employment. The Shops & Establishments Act (State Specific) defines “employee” to mean a person- wholly or principally employed, whether directly or through any agency, and whether for wages or for any other consideration, in or in connection with any establishment; and includes an apprentice but does not include a member of the employer’s family. The above definition thus makes it clear that under the Shops and Establishments Act, “employees” are eligible to draw wages. Furthermore, wages under the Shops and Establishments Act are payable as per the Payment of Wages Act, 1936.¹⁴

From the perusal of the relevant extract of the MHA Order, it is clear that it only applies to those establishments which are under closure during the lockdown. Closure¹⁵ under the Industrial Disputes Act, 1947 specifically talks about permanent closing of establishments either in whole or in part and thus in the backdrop of the MHA Order it can be interpreted in two ways, firstly, going by the definition in the said act, it can be referred to as permanent closing down of the establishment or a part thereof due to the nation-wide lockdown or; it can be interpreted to include those establishments which are unable to perform their functions from the place of employment and are thus working from home.

Several petitions have been filed in the Supreme Court challenging Point (iii) of the MHA Order which reads as follows-

“All the employers, be it in the Industry or in the shops and commercial establishments, shall make payment of wages of their workers, at their work places, on due date, without any deduction, for the period their establishments are under closure during the lockdown”

but does not include—(a) any bonus;(b) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the workman under any law for the time being in force;(c) any gratuity payable on the termination of his service

¹³Section 2(s) of the Industrial Disputes Act, 1947 “**workman**” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding ten thousand rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

¹⁴ *Supra note 9*

¹⁵ Section 2(cc) of the Industrial Disputes Act, 1947- “**closure**” means the permanent closing down of a place of employment or part thereof.

The Supreme Court on *May 15, 2020*, granted interim relief in a petition by *Hand Tools Manufacturers Association* and *Indian Jute Mills Association* and directed that no coercive action shall be taken till the next date of hearing against those who fail to comply with the MHA Order. The petitioner in the Hand Tools Manufacturers Association case also stated that the Government of India is benefitting out of the unclaimed provident fund and Employees State Insurance Corporation contribution which stands in the banks stimulating interests, instead of using this contribution of the industry towards the welfare of workers/employees and thus has completely erred in directing the private establishments to pay full wages.

Since the court granted interim relief only in 2 out of 15 petitions, there was confusion as to whether it operates in rem or in personam. The Court order also made no mention of staying the MHA Order. However, on *May 17, 2020*¹⁶, the government withdrew its order i.e. the MHA Order directing companies and other non- operational public/ private establishments to make payment in full to their workers

On *June 4, 2020*, the Supreme Court extended the interim relief with the same directions, however, in a slightly different jumble of words-

“In the meantime, no coercive action, against the employers, shall be taken pursuant to notification dated 29.03.2020.”

This direction clearly specified the word “employers” and thus can be interpreted to mean that it applies to all the employers.

On *June 12, 2020*, a three-judge bench of the Supreme Court in *Ficus Pax Pvt Ltd & Ors. Vs. Union of India and Ors.* held that-

“efforts should be made to sort out the differences and disputes between the workers and the employers regarding payment of wages of above 50 days and if any settlement or negotiation can be entered into between them without regard to the order dated 29.03.2020, the said steps may restore congenial work atmosphere.”

The petitioner in this case has challenged the MHA Order on the grounds of being arbitrary, unreasonable, illegal, irrational, and unconstitutional. The petitioner’s case is that the orders are unreasonable and arbitrary interference with the rights of petitioner employers and thus violative

¹⁶ https://www.mha.gov.in/sites/default/files/MHAOrderextension_1752020_0.pdf

of Article 19(1)(g)¹⁷. Furthermore, the orders are also violative of Article 14¹⁸ since they are contrary to the provisions of Equal work Equal pay and also No work No pay, for it does not differentiate between the workers who are working during the lockdown period in establishments that have been allowed to function during the lockdown, such as that of the petitioner and the workers who had not worked at all. Furthermore, the petitioner has also contended that The Home Secretary, Ministry of Home Affairs, Government of India, cannot invoke Section 10(2)(l) or any other provisions of Disaster Management Act, 2005, to impose financial obligations such as payment of wages on the private sector. The petitioner further stated that the ultimate onus for any compensation towards workers shall be of Government and the said liability cannot be shifted upon the employers in the private establishment and also shed light on the Central Government's power to allocate funds for emergency response, relief, rehabilitation, mitigation of disasters under Disaster Management Act, 2005.

The Court observed that the lockdown measures imposed under the Disaster Management Act, 2005 had an equally adverse effect on the employers as well as on the employees. The court further noticed that all industries/ establishments are different and capacity including financial capacity and thus some of the industries/ establishments may bear the burden of payment of wages or substantial wages during the lockdown to its workers/ employees but some may not. It is, therefore, necessary to strike a balance between the two competitive claims. As only interim orders have been passed, there is no finality in the judgment and the matter is still sub-judice. The above order as well as the order dated June 4, 2020, are directed towards all the employers and thus can be said to be in Rem unlike the order dated May 15, 2020, which was silent on this issue since relief was only granted to 2 out of the 15 petitioners.

Even though the government orders seem to have been passed keeping in mind the welfare of the employees, it still is important to analyse its standing vis-à-vis the labour legislations. The Disaster Management Act, 2005, imposes an obligation on the Central and State Governments to ensure that effective measures are taken for the prevention, mitigation, and management of disasters¹⁹. However, nothing in the Disaster Management Act, 2005, vests any power with the Central and State Governments to direct private establishments to pay wages/salaries to their employees/workers. The rationale behind the various orders passed by the Central and State Governments is to save the employees from the wrath of weak financial conditions and the

¹⁷ Article 19(1) (g) of the Indian Constitution- Protection of certain rights regarding freedom of speech, etc- (1) All citizens shall have the right— (g) to practise any profession, or to carry on any occupation, trade or business.

¹⁸ Article 14 of the Indian Constitution- Equality before law- The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

¹⁹ Section 35 and Section 38 of the Disaster Management Act, 2005

resulting economic hardship. However, an order issued by an instrumentality of the State can by no means abrogate a right that has been conferred pursuant to a statute, save and except by the due process of law.

Employers are under a great financial burden due to closure of establishments and stoppage of operations, bringing the businesses to a complete halt. Continued payment of salaries even when there is practically no source of income could force the small/medium enterprises into insolvency.

ELUCIDATING THE METHOD OF TERMINATION, ESPECIALLY DURING THE RECENT TIMES

Since there are no standard procedures to terminate an employee, employers are often dealing with an inconsiderable amount of reputational and legal risks arising from wrongful termination. Usually, an employee's termination is led in accordance with his/ her employment contract which states certain rights of the employee and the process of termination that is to be followed thenceforth. Nevertheless, if the employment contract does not abide by the labour laws then they shall have no legal standing as the labour laws supersede the provisions of any labour contracts. Hence it is of utmost importance to check and verify that the termination policies and the clauses outlined within a contract are in compliance with the laws. In the case that there is no labour contract, or it does not define a method of termination, then the employer has to follow the state law. In this scenario, an employer needs to abide by India's distinct, state-specific labour legislation in order to terminate the employee and also to protect themselves from any adverse litigations and disputes, as an employee can seek relief from the court for wrongful termination.

Termination under a Contract

Termination through an employment contract usually takes place when the employment is for a fixed period of time and when the termination is dealt with on a mutual agreement between the employer and employee due to which an employment contract is always detailed and precise with respect to the clause that states the process for terminating employment.

After the conclusion of such a contract, it is understood that the employee has been terminated, although most countries offer a prior one month notice for the termination or payment of one month in lieu of the same. An employee can be considered to have not been terminated post the expiration of the contract if the employee has been offered a fresh contract or the previous contract has been amended to extend the fixed period mentioned in the earlier concluded contract.

Termination by Law

Central and State laws are to be obeyed during a termination process of an employee irrespective of an existing employment contract, whilst State laws are prominently more important when there is no specific course of action for terminating the services of an employee. Consequently, the State law becomes the thumb rule when terminating an employee and the operation of the employer depends on the State law.

TERMINATION OF EMPLOYEES DURING THE COVID- 19 PANDEMIC

Employees' Perspective:

Layoff and Suspension

There is no certain way to terminate the employment of an employee if there are no precise contractual rights laid down in the contract. An employee may seek relief if his/her employer has suspended the contract without the employee's consent.

Layoff means termination of employment by the employer or management irrespective of whether notice was issued or not and is not due to the negligence of the employees. If it results to be permanent it is called termination. If an employee is dismissed, it does not mean that they have voluntarily left the job although if the circumstances are improved the dismissed employees may be permitted to return to their respective jobs. Layoffs apply to workers and suspensions apply to all other employees of the company, including managers.

Mandatory payment of wages during the non-continuance of job responsibilities.

Employees may not be able to perform their jobs due to two reasons: Either due to contracting the illness themselves or with respect to a family member suffering the same or if there is incapacity of work from home being supported at home. If an employee were to take a sick leave, it would be administered in accordance with laws of the state in which the establishment is situated. This leave can be permitted if he has been infected or has been tested for the virus but the results are negative. If the employee has been infected due to an official trip, then he has will be provided 28 days paid leave for a full recovery. Although if it is due a personal trip the employee must not be provided with paid leave, except in Karnataka. There is no overall Indian legal mandate for employers to pay during the lockdown and hence are not obligated to pay employees who refuse to work from home unless there are restrictions under State orders²⁰.

²⁰<https://timesofindia.indiatimes.com/city/noida/coronavirus-in-noida-28-day-paid-leave-for-those-infected-says-dm/articleshow/74869312.cms>

Employers' Perspective:

Payment Obligations of an employer

Teleworking representatives must be paid by pertinent law and work contracts. The inquiry is just important if the association doesn't permit it or if the representative does not follow the work from home orders. The Central Government notice makes no mention of the business' commitment to pay. Orders in certain states, for example, Delhi, Tamil Nadu, Uttar Pradesh, and Telangana, expect businesses to pay remuneration without reasoning in their salary. Additionally, the Ministry of Labor and Employment gave a proposal to every single private employer on 20 March 2020. It is non-operational, where core exercises can't be performed remotely and incorporate all commercial facilities, shops, and manufacturing departments engaged in non-essential merchandise. It likewise expresses that workers who have taken leave during lockdown must be considered on duty without wage reduction. Considering these, there is no lawful commitment in India for employers to pay during the lockdown. Along these lines, the business isn't obligated to pay workers who reject work from home, except if limited under State order. Such explicit cases can be taken care of by organization strategy and material laws in regards to leave, loss of pay, and disciplinary actions. All things considered, if the business is non-operational and the explanation cannot be credited to the employee, it is fitting to pay as though the worker was on duty.

MIGRANT WORKERS AND THEIR JOURNEY TO SURVIVAL

“The greatest nations are defined by how they treat the weakest inhabitants”- Jorge Ramos

Migrant workers are those workers, who migrate from one area to another area within the state or country in order to get seasonal or temporary or part-time work in different sectors. Migrant workers, who are not organized under any trade unions and their labor standards, are not protected by the government., These migrant workers are illiterate and ignorant and they do not get minimum wages stipulated under the Minimum Wages Act, 1948. The issues faced by migrant workers have always been a substantive social problem but it is only now that the world seems to be noticing it and it is majorly seen in developing countries.²¹

It is greatly upsetting to see that the world is shutting its doors for the migrant workers and leaving them at an unfortunate state during such devastating times. With the immediate shutdown of businesses, the lives of all the migrant workers have been altered in a drastic way. Deficiency of

²¹ National Commission on Rural Labour in India, 1991

food and basic day to day amenities are not only impacting the migrant workers but also their families who depend on the former's daily wages to function their livelihood. The absolute fear of unknown and lack of social support not only distresses them financially but also socially and mentally. Millions of migrants have protested across the country, for reasons ranging from demanding transport back home, quality of food served, not being allowed to cross the border, and against government directives preventing them to walk home.²²

On 23 March, India's Prime Minister, Narendra Modi, entered the country into a period of lockdown to manage the spread of COVID-19. While India's population of 1.3 billion people came to terms with the changes of enforced social distancing, India's 40 million migrant workers had a different set of challenges to contend with. The inter-state migrant workforce represents the lowest paying and most insecure jobs, in key sectors such as construction, hospitality, textiles, manufacturing, transportation, services, and domestic work.²³

Due to the precarious nature of labor jobs in India, many daily laborers, who are often migrants, lost their livelihood due to lockdown. This has created issues including starvation, separation from family, and no alternative forms of employment.²⁴ As lockdowns around the world increase unemployment, many vulnerable workers will be pushed into more hazardous situations and lack protection²⁵. After the pandemic has subsided and managed to where workplaces are safe to attend to for work, migrant workers may be taken advantage of as they will accept any kind of work they are offered in order to bring the income flow back into their families which in return will only cause exploitation of those migrant labourers.

Once the workers are permitted to resume their respective jobs at their working sites, wherever it may be, precautionary measures such as regularly checking the temperatures of workers and maintaining social distance will have to be introduced and enforced to mitigate the risks of COVID-19

Due to differing circumstances, some groups of people are more vulnerable to the impacts of COVID-19 than others. Since migrant workers do not have the basic facilities such as masks and sanitizers and the access to transportation to able to go back home, they may not have access to

²²https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3629773

²³ <https://www.bbc.com/news/world-asia-india-52360757>

²⁴<https://www.aljazeera.com/ajimpact/indian-companies-rethink-strategies-post-covid-19-world-200506023826035.html>

²⁵ United Nations, (2020), UN rights expert urges States to step-up anti-slavery efforts to protect most vulnerable during COVID-19, UN News, 5 May- <https://news.un.org/en/story/2020/05/1063222>

local healthcare and same legal rights as that of the local and domestic workers and without those rights, they have reached an absolute vulnerable to the state to contribute and work at this time.

Many of the migrant workers may not be eligible for any kind of assistance from the government and probably will not receive unemployment benefits as they will not be eligible for the same causing more strain on their unemployment crisis. Along with this, there are still a few migrant workers who are employed in factories producing essential goods and are unable to distance themselves due to lack of precaution and are at high risk but only a few are fortunate to receive hardship benefits and incentives.

With most states gradually lifting travel restrictions, many of the migrant workers who had left Maharashtra have started returning in the absence of employment opportunities in their native states.

According to the Maharashtra government, 26-27 lakh migrants had returned home by trains during the lockdown period.

“More than 26 lakh migrants officially left Mumbai by trains while many more left by the road. Their total number could be more than 30 lakhs in Mumbai alone. Migrant workers panicked due to rising COVID-19 cases and the absence of work during the lockdown. Now, many of them are coming back,”²⁶

VARIOUS COUNTRIES AND THEIR EFFORTS TO COMBAT COVID19

Italy:

Measures were introduced by the government that employers were not permitted to start collective redundancy and serve individual dismissal of employees for economic reasons (does not apply to employees with the rank of executives) for 60 days starting from 17 March 2020 and during the same time all pending redundancy procedures post 23 February 2020 are also suspended. Irrespective of any financial support or benefits received, these provisions apply to all employers. After the 60 day period i.e. 17 May 2020 the COVID-19 emergency lay-off system does not expressly prohibit individual and collective redundancies.

England:

²⁶<https://www.newindianexpress.com/thesundaystandard/2020/jul/05/covid-19-as-india-begins-to-unlock-migrant-workers-flocking-back-to-mumbai-for-work-2165468.html>

On Friday 20 March 2020 the Government of England announced the introduction of the Coronavirus Job Retention Scheme in an effort to help employers avoid the need to make mass redundancies as a result of the impact of COVID-19. The scheme's aim is that companies would furlough employees rather than make them redundant. The claim must be made only by those who have remained in employment. Coronavirus Job Retention Scheme has prevented a respected amount of COVID-19 related terminations in the UK.

France:

The French government initially announced in mid-March that any redundancies as a result of COVID-19 would be prohibited, however, termination of the employment contract is still a possibility. According to French labour law, COVID-19 pandemic does not fall under "force majeure", hence employers must abide by the legal criteria governing dismissals on economic grounds. Termination would be restricted strictly if the company has benefited from a partial activity scheme twice in 36 months or if the employer has agreed not to proceed to any collective redundancies under the terms of a collective agreement in exchange for certain concessions from the employees (increase in working time, reduction in salary, etc.).

Germany:

The general statutory provisions for the termination of employees apply in Germany and no prohibitions or concessions or facilitating assistance is planned due to the COVID-19 pandemic. Any dismissal for operational reasons or with an offer for altered conditions (e.g. in order to reduce working time and/or salary) is with respect to strict requirements and is only considered possible if the shortfall of work is permanent and in exceptional cases.

Spain:

ERTE (Spanish acronym for temporary layoffs) has been incentivized and it is of two types i.e. due to business reasons and due to force majeure. The essential difference between the two is that in case of temporary layoff due to business reasons, a consultation period with employee representatives must be held whereas in force majeure the labour authority would take a decision if the requirements for force majeure are complied with based on the documentation provided by the company.

Australia:

Australia has implemented the JobKeeper Payment scheme and its aim is to provide temporary subsidy for business significantly affected by COVID-19 and to support businesses that have been greatly affected by the pandemic. It provides eligible employees to receive \$ 1,500 each, per fortnight on the application issued by their eligible employers, sole traders, and others to help with the costs of their employees' wages which in return would help the employees to earn income with a secured job. The plan was passed in a special sitting of parliament with a reduced number of lawmakers. Australia's parliament passed a record A\$130 billion (\$80 billion) jobs-rescue plan while the government continues efforts to strengthen the economy from the coronavirus outbreak.

Canada:

The Government of Canada introduced certain measures pertaining to assist individual Canadians and businesses that are facing hardships due to the COVID-19 outbreak. These measures include two separate wage subsidy programs for employers, the Canada Emergency Wage Subsidy and the Temporary Wage Subsidy. The former aims at providing large as well as small employers with a subsidy of up to 75% employee wages in order to retain their employees' jobs and the latter is aimed at assisting small and medium-sized employers with their payrolls. The Canada Emergency Wage Subsidy provides a subsidy to "enable employers to re-hire workers previously laid off, and to keep those who are already on payroll." The benefit is equal to 75% of "eligible remuneration" paid by "eligible employers" from March 15, 2020, through June 6, 2020. On May 15, 2020, the government announced that this program would be extended by an additional 12 weeks to August 29, 2020.

USA:

On April 1, 2020, the U.S. Department of Labor announced new action regarding how American workers and employers will benefit from the protections and relief offered by the Emergency Paid Sick Leave Act and Emergency Family and Medical Leave Expansion Act, both part of the Families First Coronavirus Response Act ("**FFCRA**").

FFCRA aims to combat the workplace effects of COVID-19 by reimbursing American private employers that have fewer than 500 employees with tax credits to facilitate employees with paid leaves for reasons related to COVID-19 while sanctioning employers to keep their workers on their payrolls and similarly assuring that workers are not compelled with a decision between their paychecks and the public health measures. The Department's Wage and Hour Division administers the paid leave portions of the FFCRA.

On March 27, 2020, the third and largest relief package was signed into law, called the Coronavirus Aid, Relief, and Economic Security Act or Phase 3, appropriated \$2.3 trillion for many different efforts such as the inclusion of people furloughed, freelancers and gig workers in the expansion of unemployment benefits, additional \$600 per week for unemployment, \$500 billion in government lending to affected companies and \$367 billion in loans and grants to small businesses through the Paycheck Protection Program and expanded Economic Injury Disaster Loan program.

CONCLUSION

It is perplexing to see the world take a halt from functioning. Every industry, sector, the person has taken an unexpected pause in their day to day progress and movement. The current situation has caused grave difficulties on the livelihood of people and the economic growth, with times only getting tougher. Hence it is important to showcase the light on the employment sector as it has a contribution to everything functioning in a country. With the lockdown, there is not only a stoppage in businesses but also basic movements in life and it is important to follow and inculcate maximum precautions not only for the welfare of oneself but also of the others. Keeping these precautionary measures in mind many businesses are facing an understandable standstill. From employees losing their jobs and the right to earn their basic livelihood to employers facing difficulties in providing support to their employees due to incapacity in furnishing the amenities. As the paper has analyzed the hardships faced by both the employees and employers, much has been left to interpretation. The government has tried to make efforts with the help of various orders and advisory as discussed but certain loopholes are also to be found within those.

It is understood that the government needs to adopt a different approach to tackling the issues faced by the employment sector. Even though the welfare of the employees/workers is of paramount importance, the welfare of the employers is equally important and needs to be dealt with keeping in mind the financial crisis that has dawned upon them. It is the duty of the state to secure the rights of its citizens and provide help and assistance to them in times of need and it is unfair for the state to assign its obligations to private establishments by orders made solely on humanitarian grounds.

The government has laid down points with respect to protecting the welfare of migrant workers but what's on paper must also be implemented and that is where the whole situation fails. With plenty of daily wage earners and migrant workers jobless, it is greatly hampering the prosperity of the country. There are plenty of remedial measures that might come to mind but in a country, with a population so massive it is no doubt a task to execute the same. The government's efforts to reduce the inequality for employees in turn can jeopardize the sustainability of many companies

which might be forced to terminate the employee after the lockdown causing even greater harm to the employees.

Nevertheless, if certain clarifications were provided by the Government and authorise reasonable reductions in the employees' salaries, as well as prevailing the restrictions on non-payment of wages and termination, there would be no need for the companies to terminate any employee/ personnel and the company will most likely be resilient during these times and in the future. Additionally, the Government may also provide certain financial succour to small and micro companies that are not financially competent in surviving during these difficult times.

There is no doubt the COVID-19 pandemic has taken over the world by storm while being unaware of how long this situation might be prolonged, one can only fight for themselves and hope for times to get better but it is mainly important for every citizen of the country to be aware of the difficulties faced by sectors within the nation as it is the voice of the citizens that can make an impact in the world today.