

ISSN: 2582-2942



LEXFORTI

Legal Journal

Vol-II Issue- I

October, 2020

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Reforms in Contemporary Factories Act, 1948: Amid 2020 Lockdown

Sarrah Kawiwala

ABSTRACT

As the economy struggles with the lockdown and thousands of firms and workers assert an uncertain future, some state governments in our country have decided to make significant changes in the application of labour laws within its boundary. The most significant changes were announced by three BJP-ruled states- Uttar Pradesh, Madhya Pradesh and Gujarat- but several other states like Rajasthan, Punjab, Himachal Pradesh, etc. too made some changes. This article particularly focuses on changes made in the Factories Act, 1948, by various states and its effects on the society at large.

Key words: Factories Act, notification, amendment, hours, working days, employ, challenges, government, change, state, increase, withdrawal, labour law, lockdown.

INTRODUCTION:

Labour law or labour legislation is the body of laws, administrative rulings, precedents which address the relationship between and among employers, employees and labour organisations, often dealing with the issue of public law. Labour is a concurrent subject in the Constitution, on which the Centre and the States, both can make laws. Whenever there is conflict between a central law and state law on any subject, the central law will prevail, subject to the permission of Central Government for such conflicting State laws. Some of major labour laws in India are: Minimum Wages Act, 1948, Factories Act, 1948, Maternity Benefits Act, 1962, Payment of Bonus Act, 1965, Workmen Compensation Act, 1923. The Factories Act, 1948 is a beneficial legislation. The object of the Act is to safeguard the interest of the workers, stop their exploitation and take care of their safety, welfare and hygiene at their places of work. State governments such as Uttar Pradesh, Gujarat, Rajasthan, Punjab, various others have taken steps to amend this Act in order to boost the economy. This paper elaborates on what are the changes undertaken by these states.

Section 2(m) of the Act, defines the term 'factory'. State of Madhya Pradesh have suggested the Central government on changing the definition of 'factory'¹.

¹ Section 2(m), The Factories Act, 1948.

AMENDMENTS TO THE FACTORIES ACT, 1948 BY THE VARIOUS STATE GOVERNMENTS

STATE OF UTTAR PRADESH

The Uttar Pradesh Government passed an on-May 8², an Order of increasing the working hours for labourers from eight to twelve hours. The order also stated that the payment for additional hours (overtime) of work will be in proportionate to existing wages³.

STATE OF MADHYA PRADESH

Similarly, the Government of Madhya Pradesh also allows employers to increase working hours in factories by four hours from 8 to 12 hours⁴. The rationale given was to generate employment opportunities, encourage industrial activities, protect the rights of workers, bring in investments, bring about transparency in the administrative process, re-rail industries hit by Covid-19 and convert the challenges of a distressed economy into opportunities. The government has also stated that the factory registration will be done and completed in one day from now, instead of 30 days⁵. If the official concerned for factory registration does not give the go-ahead signal within a day then he will have to pay a fine to the aggrieved firm. And also, to ease the working of factory, the licence should be renewed after 10 years, instead of every year⁶. The State Government has proposed to the Centre to change the definition of factories under the Factories Act, 1948. Those using electricity in the manufacturing process and employing at least 20 workers should be registered, against the existing condition of those using electricity and employing at least 10. And without the use of electricity, the limit should be increased to 40 workers from 20⁷.

² Notification No. 13/2020/502/XXXVI-03-2020-30 (Sa.)/2020TC, Dated Lucknow, 08 May, 2020.

³ Swati Mathur, *After HC notice, UP withdraws order extending working shifts to 12 hrs in manufacturing units*, The Times of India(17/05/2020), available at <https://timesofindia.indiatimes.com/india/after-hc-notice-up-withdraws-order-extending-working-shifts-to-12-hrs-in-manufacturing-units/articleshow/75783231.cms>, last seen on 05/07/2020.

⁴ *Madhya Pradesh*, Government of India Ministry of Labour & Employment, available at <https://labour.gov.in/madhya-pradesh-0>, last seen on 10/07/2020.

⁵ Section 6, The Factories Act, 1948.

⁶ Sidharth Yadav, *Coronavirus | Madhya Pradesh pushes working hours from eight to 12 in factories*, The Hindu (08/05/2020), available at <https://www.thehindu.com/news/national/coronavirus-madhya-pradesh-pushes-working-hours-from-eight-to-12-in-factories/article31527330.ece>, last seen on 03/07/2020.

⁷ Ibid

STATE OF GUJARAT

On April 17, 2020⁸, the Gujarat State Government issued a Notification under the Factories Act, amending sections 51, 54 and 55 of the Act to provide that for the period of April 29 to July 19, 2020, workers can be made to work 12 hours in a day, 72 hours in a week with a 30 minutes break after 6 hours. The Factories Act otherwise provides that workers can only be made to work 9 hours in a day- but 48 hours in a week, with 1 weekly off day, thus coming to 8 hours in a day with 30 minutes break after 5 hours. The Notification⁹ also states that no overtime will be paid for the extra four hours (additional work), these will be paid at the usual hourly rate (existing rate). This is directly in violation of Section 59 of the unamended Act, which provides that wages must be paid at double the ordinary rate for hours worked in excess of 48 hours in a week¹⁰.

State of Rajasthan

The Rajasthan State Government passed a Notification on April 11, allowing 12 hour working days for the next three months, but providing for overtime pay for the extra hours worked, up to 24 hours a week. The rationale given is to reduce the manpower requirement for manufacturing in those factories exempted from the lockdown¹¹.

State of Punjab

The State Government of Punjab vide notification dated April 2020 has permitted a 12-hour working day for the next three months, with payment of overtime for additional 4 hours.

State of Himachal Pradesh

The State of Himachal Pradesh has also gone into the similar changes allowing 12-hour working days for a period from April 21 to July 20, 2020. However, this has been allowed for all factories in the State and not just essential services or those exempted under the lockdown.

Various States like Gujarat and Himachal Pradesh have issued such executive orders under Section 5 of Factories Act, 1948¹², which allows states to exempt all provisions of the Act in case of the “public emergency”. “Public Emergency” is defined to mean a grave emergency whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or internal disturbance. While Uttar Pradesh had also issued an order under Section 5, which had also been

⁸ Labour & Employment Department Government of Gujarat, available at https://labour.gujarat.gov.in/Portal/News/477_1_IMG_0001.pdf, last seen on 10/07/2020.

⁹ Ibid

¹⁰ Jane Cox, *May Day: 12-hours working day notification*, The LeafLet (30/04/2020), available at <https://theleaflet.in/may-day-12-hour-working-day-notifications> last seen on 05/07/2020.

¹¹ Ibid.

¹² Supra (1)

challenged in the Allahabad High Court, it has since been withdrawn. Punjab has issued the order amending working hours under Section 65 of the Factories Act, which only states to extend working hours to deal with an exceptional press of work. The State of Rajasthan has issued the order without referring to any provision of law.

STATE-WISE CHANGES IN WORKING HOURS

The following table shows state-wise increase in the maximum working hours¹³:

State	Establishments	Maximum weekly work hours	Maximum daily work hours	Time period
Gujarat	All factories as per the Factories Act, 1948	Has been increased from 48 hours to 72 hours	Has been increased from 9 hours to 12 hours	For three months
Himachal Pradesh	All factories as per the Factories Act, 1948	Has been increased from 48 hours to 72 hours	Has been increased from 9 hours to 12 hours	For three months
Rajasthan	All factories distribute essential goods and manufacturing essential goods and food.	Has been increased from 48 hours to 72 hours	Has been increased from 9 hours to 12 hours	For three months
Haryana	All factories as per the Factories Act, 1948	Not specified anywhere	Has been increased from	For two months

¹³ Anya Bharat Ram, *Relaxation of labour laws across states*, PRS Legislative Research (12/05/2020), available at <https://www.prsindia.org/theprsblog/relaxation-labour-laws-across-states>, last seen on 08/07/2020.

			9 hours to 12 hours	
Uttar Pradesh	All factories as per the Factories Act, 1948	Has been increased from 48 hours to 72 hours	Has been increased from 9 hours to 12 hours	For three months
Uttarakhand	All factories distributing essential goods and manufacturing essential goods and food.	Maximum 6 days of work in a week	Two shifts of 12 hours each per day	For three months
Assam	All factories as per the Factories Act, 1948	Not specified anywhere	Has been increased from 9 hours to 12 hours	For three months
Goa	All factories as per the Factories Act, 1948	Not specified anywhere	As been increased from 9 hours to 12 hours	Approximately for three months
Madhya Pradesh	All factories as per the Factories Act, 1948	Not specified anywhere	Not specified anywhere	For three months

- ***Rationale behind these changes/ amendments:***

In tough times like these, brought about by the Covid-19 pandemic, industries throughout the country are facing various challenges and there is a need to create an environment in which businesses can

survive in the present and grow in the future. If more work opportunities come up as a result of these changes in norms and regulations, it will definitely benefit all the stakeholders, including labour, business entities and Indian economy at large.

1. It is essential to kick start the economy during lockdown.
2. To boost manufacturing/ processing units and supply of essential goods and services without violating the home ministry's guidelines on working with reduced staff to maintain social distancing and hygiene to curb the spread of Covid-19.
3. To reduce the manpower requirement for manufacturing in those factories exempted from the lockdown.
4. The various State Governments have noted that an increase in work hours would help to address the shortage of workers caused by the lockdown in the country.
5. Also, longer shifts would warrant fewer numbers of workers in factories and meet the increasing demands of essential goods and food.
6. As workers are going to work for more hours, there will be higher incomes for the labour class.
7. It will convert the challenges of a distressed economy into new opportunities.
8. It will attract more investment and ultimately money will circulate in the country.

SOCIAL CONSEQUENCES OF THESE CHANGES

- i) As workers will be working for long hours, there will be less demand for new workers, hence unemployment will increase mainly in the manufacturing sector.
- ii) Along with changes in Factories Act, 1948, there are proposed changes in various other labour laws, which are mainly in the favour of the employer. This will ignite the agitation and anger in the mind of workers against the employer and the concerned government.
- iii) Due to agitation of workers, they might get involved in violent acts.
- iv) As there will be lesser jobs available in the market, poverty will increase.
- v) Alongside poverty, other criminal acts may also increase.

A NATION-WIDE PROTEST AGAINST THESE CHANGES/AMENDMENTS¹⁴

Ten Central Trade Unions gave a call for a nation strike on May 22, 2020 to protest against the suspension of labour laws by some states during the lockdown period, and also decided to take the matter to the International Labour Organization (ILO), as suspension of labour laws violates international commitments on labour standards and human rights. India is a signatory to ILO convention, which includes the following: Freedom of association, to bargain collectively, and the need of three parties- decision making involving employers, employees and government. If the ILO takes note of the complaint, it can form a commission of inquiry to investigate into the matter and take action accordingly¹⁵ as soon as possible.

This move came after the eight states increased the daily working hours to 12 from 8 earlier through executive order in the direct violation of the Factories Act, 1948, while taking advantage of the lockdown situation. These stringent measures have prostrate vulnerable sections into conditions of slavery. The national-level leaders of the ten trade unions would organize a day-long hunger strike on May 22 at Gandhi Smadhi, Rajghat, New Delhi. Simultaneous protests would be jointly organized in all states by these trade unions.

PLEA IN SUPREME COURT/APEX COURT

A law student from State of Kerala has filed a petition in Supreme Court against the recent amendments to the Labour laws, which ultimately resulted into forced labour in corporeality. The petition stated that the challenged laws, by suspending welfare and health measures of workers and by increasing the work hours, constituted forced labour as widely defined by the Supreme Court in its judgment in the People's Union for Democratic Rights case¹⁶ of 1982. It also stated that the laws violated workers' right to assemble peacefully, form unions or associations. These laws also affected the workers' right to health, leisure, safe working conditions that fall within the ambit of right to life

¹⁴ *Trade Union to go on strike on May 22 to protest against labour laws suspension*, The Hindu (15/05/2020), available at <https://www.thehindu.com/news/national/trade-unions-to-go-on-strike-on-may-22-to-protest-against-labour-laws-suspension/article31594022.ece>, last seen on 08/07/2020.

¹⁵ Geetika Srivastava, *Covid-19: Why labour law relaxations will need to undergo judicial scrutiny*, Business Standard (17/05/2020), available at https://www.business-standard.com/article/economy-policy/covid-19-why-labour-law-relaxations-will-need-to-undergo-judicial-scrutiny-120051700487_1.html, last seen on 08/07/2020.

¹⁶ People's Union for Democratic Rights vs. Union of India, 1982 AIR 1473, 1983 SCR (1).

under Article 21 of the Indian Constitution. These laws are also violative of the international framework on labour laws¹⁷.

UTTAR PRADESH WORKER FRONT V. UNION OF INDIA & ANR.¹⁸

On May 8, 2020, the Uttar Pradesh Government had issued a notification¹⁹ relaxing the provisions relating to working hours, overtime, intervals for rest, welfare etc. as stipulated under Section 51, 54, 56 and 59 of the Factories Act, until July 19, 2020. As per the notification, Factories were permitted to employ their workers for 12 hours a day, instead of 8 hours as originally stipulated under the Act. Against the same Uttar Pradesh Worker's Front moved to the Allahabad High Court, alleging that the same violated Constitutional values. The court had there by issuing notice to the government and posted the matter on May 18, 2020²⁰.

Subsequently, withdrawal of the said Notification extending working shift to 12 hours by Uttar Pradesh Government.

The Uttar Pradesh government on May 15, 2020 withdrew an order which had increased the daily working hour limit in manufacturing units from 8 to 12 hours. The Uttar Pradesh Government had also cleared the Uttar Pradesh Temporary Exemption from Certain Labour Laws Ordinance, 2020, exempting factories and other manufacturing establishments in the state from the obligations contained under various labour laws, for a period of three years. This development came a day after the Allahabad High Court issued a notice to the State in a Public Interest Litigation (PIL) challenging the order²¹. As a result, the case was dismissed on withdrawal of the notification by the UP government.

¹⁷ Krishnadas Rajagopal, *Plea in Supreme Court challenges changes in labour laws*, The Hindu (20/05/2020), available at <https://www.thehindu.com/news/national/plea-in-supreme-court-challenges-changes-in-labour-laws/article31622334.ece>, last seen on 08/07/2020.

¹⁸ Public Interest Litigation No. 579/2020.

¹⁹ Notification No. 13/2020/502/XXXVI-03-2020-30 (Sa.)/2020TC, Dated Lucknow, 08 May, 2020.

²⁰ Akshita Saxena, *As UP Govt Withdraws Dilution of Labour law: Allahabad HC disposes PIL as 'Infructuous'*, Live Law (19/05/2020), available at <https://www.livelaw.in/news-updates/allahabad-hc-disposes-plea-challenging-relaxation-of-labour-laws-on-working-hours-overtime-etc-157014>, last seen on 08/07/2020.

²¹ Ibid

After Uttar Pradesh, Karnataka Government has withdrawn²² its May 22, 2020 notification that allowed all factories, registered under the Factories Act, 1948 to extend working hours from eight to 10 hours and 60 hours a week for three months till August 22, 2020²³.

CONCLUSION

Even as the ameliorate in labour laws is something the manufacturing industry and free-market experts have been calling for long time. It needs to be ensured that the worker welfare is not compromised at any cost. Instead of giving protection to the most marginalized and vulnerable, as exposed by Covid crisis, and thus an opportunity to rectify the fractured economic system, these moves of amendments will further worsen the crisis for those who are worst affected by it till now. Although it may appear that such measures will be in place only for a limited period of time, they may be a herald of things to come and may well become a permanent feature once the waters are tested. There is very little evidence that such changes/ amendments to the labour legislations has resulted in attracting big investments and boost industrialization of job creation. Labour rights are human rights and the Indian government cannot abdicate its constitutional obligations and the commitments that it has made by reason of ratifying the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and various Conventions of International Labour Organization, as a result of which it is bound to promote decent work in conditions of security, equity, freedom and dignity of all the workers/ labourers.

The Notification/Orders of the various State Governments are thus absolutely illegal, being in breach of the very provisions they are purported to be passed under. Moreover, they also provide for workers working 12 hours a day, for at least 3 months, at a time when the most basic medical and scientific advice to avoid contracting the deadly Covid-19 is to take rest and stay home and as healthy as possible. This new regime ensures the complete opposite. That too as we move into the monsoon season when disease and viruses are notoriously rampant.

²² See Nandini Praveen vs. Union of India & Ors

²³ FE Bureau, *After UP, Karnataka withdraws working hour extension notification*, The Financial Express (13/06/2020), available at <https://www.financialexpress.com/economy/after-up-karnataka-withdraws-working-hour-extension-notification/1989937/>, last seen on 08/07/2020.

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