



**A CRITICAL STUDY OF THE TRANSILIENCE IN INDIAN LABOUR LAWS IN
LIGHT OF THE CONSTITUTIONAL GUARANTEES AND INTERNATIONAL
COVENANTS**

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ABSTRACT

Labour force plays a vital role in the development of an economy. India is considered to have one of the biggest workforces in the world. In light of this fact, legislations with respect to labour are supposed to greatly decide the pace of economic development. India is a founding member of the International Labour Organization (ILO) since 1922 and has been an active participant in its various endeavors'. In recent times, India has witnessed the passing of labour codes with a view to simplify and modernize labour regulation. The government is planning to implement these labour codes at one go in the month of December of 2020. On account of COVID-19 and ensuing lockdowns, we have also witnessed several states withdrawing the labour legislation with a view to make good the losses incurred by businesses and to attract new investments. In this paper, we will analyze the four labour codes with the lens of constitutionality and with India's allegiance to international agreements. We would also critically examine the suspension of labour laws by states in India on the above-stated parameters. The underlying idea of this study is to analyze India's stance on labour regulation and welfare in modern times.

Keywords: Labour welfare, ILO, Labour Codes, Constitutional Guarantees, International Conventions



INTRODUCTION

The economic development of a country depends upon the goods and services it produces. Land, Labour, Capital, Organization and Management forms the five factors of production. Although all the five factors are important, Labour plays as the most significant one. There have been a lot of efforts by the management leaders to form models which enhance labour productivity. It would not be wrong to conclude that the labour force forms the backbone of India's industrial development. In light of this fact, it becomes imperative for the government and the employer to take welfare measures for them. The Government of India with a view to reduce compliance burden and facilitate the ease of doing business has legislated four labour codes viz; Codes on Wages; Industrial relations; Social security and welfare and Occupational Safety, Health and Working Conditions. These codes are expected to provide social security, timely payment of wages and clean working conditions thereby improving their life and dignity. These codes are passed by both the houses of the parliament and are expected to be implemented from December, 2020.¹ There are serious concerns around these labour codes, the most prominent one being that it compromises the collective bargaining power of the labourers in addition to other ambiguities. The curtailment of collective bargaining rights of the workers is violative of Article 19 of the Indian Constitution. In this research paper the researcher aims to study all the provisions in the new code which trespasses the constitutional guarantees or international commitments which India is signatory to. The second aspect which the researcher aims to study is the suspension of labour laws in several Indian states amid the covid-19 pandemic. These states have promulgated these laws through ordinances. For instance, the state of Madhya Pradesh has amended the Industrial Dispute Act, 1947 making it an exemption for new establishments. The states have temporarily suspended, made cosmetic changes or have exercised powers under the statute itself to bring changes in the labour laws. The reasoning for the suspension of these labour laws is to encourage business and promote flexibility.² In light of this, it becomes necessary to evaluate and examine

¹ Business Standard, Govt looking to implement all 4 labour codes in one go by Dec: Gangwar (November 1, 2020, 9:46PM),https://www.business-standard.com/article/economy-policy/govt-looks-to-implement-all-4-labour-codes-in-one-go-by-december-gangwar-120092700218_1.html#:~:text=The%20Wage%20Code%20Bill%2C%202019,minister%20Santosh%20Gangwar%20has%20said.

² Economic Times, Labour Law Suspension by the states to pull businesses out of crisis: ISF (November 1, 2020, 9:46PM),<https://economictimes.indiatimes.com/news/economy/policy/labour-laws-suspension-by-states-to-pull-businesses-out-of-crisis-isf/articleshow/75674928.cms?from=mdr>



both the changes in labour codes and suspension of labour laws amid COVID-19 through the lens of constitutionality and international covenants.

ANALYSIS OF LABOUR CODES

The Indian government has replaced 29 legislations with four labour codes with a view to simplify and modernize labour regulation in India and to promote 'Make in India' Campaign. The government felt the need to overhaul labour laws to address the emerging forms of labour and ensure simplification and updation. These labour codes are meant for the welfare of labourers but the trade unions and civil society organizations do not repose their trust in these codes. According to them, these codes will lead to employment insecurity, wage insecurity and curtailment of collective bargaining rights. They feel that these codes are not just anti-labour but also violate the mandate of the constitution.³

THE LABOUR CODE ON INDUSTRIAL RELATIONS, 2020

The Labour Code on Industrial Relations, 2020 comprises the Trade Union Act, 1926, the Industrial Employment Standing Order Act, 1946 and the Industrial Disputes Act, 1947. Firstly, this code changes the Industrial Employment (Standing Orders) Act 1946 which defined aspects like the tenure of workers, punishments, subsistence allowance and right to be defended by a trade union. This Code has also brought significant changes in the Industrial Dispute Act, 1947. This legislation was applicable to establishments employing 100 or more workers. Under the new Code the threshold has been increased from 100 or more to 300 or more workers. The Provisions with respect to Prohibition of lay-off would now be applicable to establishments employing 300 or more workers. This means that the companies would not require any prior permission for laying any number less than 300 employees. This change can have extreme ramifications as employer's can now get rid of their employees for any reason and since the threshold has been increased and the code is not applicable to a large number of establishments.

³ Justice K Chandru, A wage code that is a hasty composition (Oct 15, 2020, 4:12PM), <https://www.thehindu.com/opinion/lead/a-wage-code-that-is-a-hasty-composition/article32726499.ece>



Secondly, the definition of “industry” has also undergone tremendous change under the new code. Earlier under the Industrial Dispute Act, 1947 industry included philanthropic, charitable and religious institutions but under the new code philanthropic, social and charitable institutions are excluded expressly under section 2(p) of the Code⁴. This means that the workers employed in philanthropic, social and charitable institutions would not be afforded any protection under the Labour Code on Industrial Relations, 2020. It is pertinent to mention here that the activity for the sovereign functions will also be not included. The redefinition of the term “industry” and the departure from the definition in Industrial Dispute Act, 1947 have significantly narrowed down the ambit of establishments covered under the Code.

A grievance redressal committee has also been set up under the Code to address individual grievances. This is in addition to the Conciliation process put up in place for the resolution of industrial disputes. This would not only cause confusion in the minds of complainants but delay the decisions which the grievance redressal should deliver. These mechanisms would also curtail the right of trade unions to go on a strike because they will have to exhaust all mechanisms before doing so. Under the new code, the requirement to register trade unions has also been increased to a great extent with mandating 10 percent or 100 workers, whichever is less number to members for the trade union to be registered. This provision under the new code is arbitrary and unreasonable as it removes formation of trade unions in the private sector as it comparatively employs less number of people. The government has also laid down the period of union elections which would be every two years. Placing such conditions and prior authorization requirements is against the freedom of association and formation of trade unions as enshrined in Article 19(1)(c) of the Indian Constitution.

THE LABOUR CODE ON SOCIAL SECURITY, 2020

The Labour Code on Social Security, 2020 has been introduced to provide benefits to employees such as life insurance, provident funds, health and maternity benefits. Although few of these benefits were available to workers through legislations, it is expected to widen its deep in providing

⁴ The Labour Code on Industrial Relations, 2020, No. 35, Acts of Parliament 2020



social security benefits to a majority of workers. The most remarkable contribution of this code is that it covers workers in the unorganized sectors within its ambit. Following types of workers are now covered under this code:

1. Home-Based Workers
2. Self-Employed Workers
3. Gig Workers
4. Platform workers
5. Wage workers

Legislated with a view to provide social security benefits to all, the Code on Social Security (CSS) continues to keep certain benefits mandatory based on the number of workers employed in an organization. Workers below the prescribed threshold are left at the mercy of discretionary schemes notified by the government for their social security benefits. This means that workers are still treated differently despite being covered by the same code. This would also result in exclusion of a large number of workers from the ambit of the welfare measures. Moreover, under this code the definition of gig worker and platform worker is overlapping and unclear, which can cause unnecessary litigation and can cause deprivation of benefits to the workers.

THE LABOUR CODE ON WAGES, 2020

The Labour Code on Wages, 2020 consolidates in itself four Central Labour laws i.e; Payment of Bonus Act 1965, Equal Remuneration Act 1976, Minimum Wages Act 1948 and Payment of Wages Act 1936. The Wage Code provides for different minimum wages for employees at Central, State and sectoral levels without setting the minimum benchmark below which no employer should pay. Also the code puts in place the demarcation between employee's and workers based on skill parameters. By this, basic standards of protections will be applied differently to classes of workers created under this code. The central unions were also concerned that the code ignores the recommendations made by the 44th Indian Labour Conference held on 14-15 February 2012



calling for the adoption of the formula for minimum wage determination agreed at the 15th Indian Labour Conference and supported by Indian Supreme Court in the Raptokos and Brett Case.”⁵

India has ratified C131 - Minimum Wage Fixing Convention, 1970 (No. 131)⁶ on minimum wages. The Convention undertakes to establish a system of minimum wages which covers all groups of wage earners whose terms of employment are such that coverage would be appropriate. Article 5 of this convention provides for ensuring the effective application of all provisions relating to minimum wages. Article 4 of the C131 convention provides for the enforcement of minimum wages. However, the wage code does not provide for any inspection or enforcement. This is a departure from the international covenant India is signatory to. The code is silent with respect to whether creditors shall be treated as privileged creditors either as regards wages due to them for service rendered during such a period prior to the bankruptcy or judicial liquidation as may be prescribed by national laws or regulations, or as regards wages up to a prescribed amount as may be determined by national laws or regulations. This is important to point out because India has also ratified C095 - Protection of Wages Convention, 1949 (No. 95)⁷ and Article 11 of the said convention covers this aspect. Though the Labour Code on Wages does not violate any provision of the Constitution but it is silent on provisions of International conventions which India has ratified. This silence also can be construed as departure from the international agreements.

THE LABOUR CODE ON OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS 2020

The Labour Code on Occupational Safety, Health and Working Conditions 2020 consolidates 13 existing Acts regulating health, safety, and working conditions. These include the Factories Act, 1948, the Mines Act, 1952, and the Contract Labour (Regulation and Abolition) Act, 1970. The threshold to constitute a factory has been increased to 20 workers where manufacturing is carried

⁵International Trade Union Confederation, *Labour Law Deregulation in India* (Oct. 12, 2020, 3:34PM), https://www.ituc-csi.org/IMG/pdf/labour_law_deregulation_in_india-en.pdf

⁶International Labour Organization, *C131 - Minimum Wage Fixing Convention, 1970 (No. 131)* (Oct.13, 2020, 3:12PM), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C131#:~:text=1,2.

⁷International Labour Organization, *C095 - Protection of Wages Convention, 1949 (No. 95)* (Oct.11, 2020, 10:09AM), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C095



through power and 40 workers if the manufacturing is carried without power against the 2019 bill and the Factories Act, 1948. This would exclude small manufacturing activities to constitute a factory. The Code mandates the establishment of a workplace committee where the workers employed are 100 or more with a view to ensure cooperation between workers and employers so that Occupational Safety and Health measures are implemented with ease. These measures are required in all workplaces regardless of the number of workers. The Inspectorate system under the new code has undergone change and it has now moved from Inspectorate system to system of facilitators. The states, in the new system, are allowed to prescribe their own conditions for conducting inspection including web-based inspections from a centralised and coordinated inspectorate system. These practices and provisions under the new code are in violation of C081 - Labour Inspection Convention, 1947 (No. 81)⁸.

ANALYSIS OF SUSPENSION OF LABOUR LAWS AMIDST THE COVID-19 PANDEMIC

The COVID-19 pandemic is a black swan event in the history of mankind. The government with a view to contain the spread of the virus has imposed lockdowns on all economic activities except essential services. This has resulted in loss of income and has made survival of many difficult. With a view to give some boost to the economic activity, the states have provided some relaxation in the labour laws. As the labour falls in the concurrent list of the constitution, States have the liberty to regulate labour by passing their own labour laws or amending the central level labour laws. The States of Uttar Pradesh Cabinet and Madhya Pradesh have promulgated an ordinance, to relax certain aspects of existing labour laws. Further, Gujarat, Rajasthan, Haryana, Uttarakhand, Himachal Pradesh, Assam, Goa, Uttar Pradesh, and Madhya Pradesh have notified relaxations to labour laws through rules⁹. The shift times have increased from 8 hours to 12 hours in states of Uttar Pradesh and Madhya Pradesh. This violates the International covenants which India is signatory to. Most of these states have bought relaxations through ordinances. The promulgation of these ordinances is ultra vires and unconstitutional for the following reasons:

⁸ International Labour Organization, C081 - Labour Inspection Convention, 1947 (No. 81) (Oct. 11, 2020, 2:30PM), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C081

⁹ PRS Legislative, Relaxation of labour laws across states (Oct.10, 2020, 2:34PM), <https://www.prsindia.org/theprsblog/relaxation-labour-laws-across-states>



STATE GOVERNMENTS DO NOT HAVE THE POWER TO BRING SUCH ORDINANCES

Article 123 of the Constitution of India grants president the power to promulgate certain ordinances when the two houses of the parliament are not in session. This means that ordinances should not be issued when the house is in session and should only be used to deal with situations where an emergency in the country necessitated urgent action. Also, if the ordinance so promulgated transgresses parent legislation, then it should be immediately struck down. The apex court through various judicial pronouncements has time and again reiterated that with respect to matters in the list III, the executive function shall be vested with the states, subject to the parent legislation¹⁰. It has been well settled through *Rai Sahib Ram Jawaya Kapur v. State of Punjab*¹¹ that by virtue of Article 162 the law making power of the executive is co-extensive with that of the state legislature in respect of subjects mentioned in list II and III. Article 254 states that the state law will only prevail in cases of conflict between the state and Centre law, if the same has been assented by the president. In light of these observations, it can be concluded that the ordinances passed by the states are not assented by the president and can be struck down if they are not in conformity with the Central legislation. In the case in hand, the ordinances promulgated are in direct conflict with the central legislation and should be struck down.

THE ORDINANCES ARE IN CONFLICT WITH THE CENTRAL LEGISLATIONS

The subject matter “labour” falls in the concurrent list and hence both the centre and the state are competent to make laws. The laws promulgated through ordinances stand in direct conflict with the central laws thus attracting Article 254. Article 254 gives central legislations supremacy if the pith and substance of both the laws are same¹². Section 1 of all the central legislations which extends enforceability of the acts across the country is in “clear and direct conflict” with the ordinances promulgated which seeks to suspend operations within their respective jurisdictions. These ordinances can also not be saved from being struck down as they do not have the assent of the president as per article 254(2) of the constitution.

¹⁰ A.P. Public Service Commission v. Baloji Badavath & Ors. (2009) 8 SCJ 426

¹¹ AIR 1955 SC 549

¹² Tika Ramji vs. State of Uttar Pradesh 1956 AIR 676 1956 SCR 393



THE ORDINANCE VIOLATES THE FUNDAMENTAL RIGHT OF THE WORKERS

The Hon'ble Apex Court has time and again, through judicial pronouncements reiterated that the law enacted by the authority which is incompetent will have no existence in the eye of law and will be in violation of fundamental rights. The Court in *I R Coelho v State of Tamil Nadu*¹³ also stated that "a denial of fundamental rights of the workers in the guise of promoting economic interest is untenable since both the social and economic interests go hand in hand." There the state government has no power to promulgate such ordinances. Suspension of minimum wages act in the states is violative of Article 23 of the Indian Constitution. Any wage below the minimum wage leads to forced labour according to the judgment in *PUDR v. Union of India*¹⁴. In light of this, one can conclude that the suspension/relaxation of labour laws in states, although temporary in nature, violates the fundamental rights of workers and have failed to keep up to the constitutional values and respect for international agreements.

CONCLUSION

Through the findings in this paper we have found out how introduction of the new labour codes have brought change in the labour regulation in India. Though the labour codes have brought certain remarkable changes, it also has areas of concern. The major concern among trade unions is that the new code dilutes the formation of trade unions which adversely affects their collective bargaining rights. These changes against the trade unions do not violate the fundamental rights¹⁵ but also depart from the International conventions which India has ratified. An action against the trade union does not violate only Article 19(1)(c) but also violates Article 21 of the Constitution. To add more to the plight of workers, amidst the pandemic, several states suspended/relaxed the labour laws with a view to provide a boost to the economic activity. Several states have relaxed and modified the labour laws according to their whims and fancies making the labour force even more vulnerable. This measure has been taken by promulgation of ordinances which are in direct and clear conflict with central legislation on the subject area and should be struck down. The objective of the paper which was to study the stance of India on its welfare measures for its labour

¹³ (1999) 7 SCC 580

¹⁴ (1983) SCR (1) 456

¹⁵ *Raja Kulkarni And Ors. v State of Bombay* (1954) AIR 73 (India)



force, which has yielded mixed results in the sense that, on one hand India has brought remarkable legislations in form of labour codes to revamp and modernize the labour regulation albeit these codes have some serious concerns that need immediate attention. On the other hand, suspension of labour laws to boost the economy at the cost of labour welfare has reflected poorly on India. Suspension of labour laws does not only affect fundamental rights of workers but is also ultra vires.

In the case of Apparel Export Promotion Council v. A.K. Chopra¹⁶ the apex court stressed the need to follow international conventions. The Courts are under an obligation to give due regard to International Conventions and Norms for construing domestic laws more so when there is no inconsistency between them and there is a void in domestic law. From the analysis above, it is clear that India has completely disregarded international conventions before introducing labour codes or suspending labour laws in its various states. A healthy and satisfied workforce is one of the most important factors for the development of any country. If India wishes to be a super economy it has to strengthen and train its labour force. All this is possible with a labour friendly law and robust mechanism for its implementation.

¹⁶ AIR 1999 SC 625 (India)