



COVID-19 AND LABOUR LAWS IN INIDA

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ABSTRACT

Labour laws stem from the acknowledgment of the fact that every individual is entitled to certain set of rights. The primary objective of the paper is to explore how COVID-19 impacted the organised labour economy of India. It explores the philosophical underpinnings of the labour laws and how they help developed the trade unions and the technique of collective bargaining. The lockdowns imposed to prevent the spread of COVID-19 disrupted the global and national economy. The various state governments in India reacted by suspending the labour laws to kickstart the economy and attract investment. However, the steps taken in this regard violate the cardinal principle of labour laws under the Indian Jurisprudence and India's international obligations under the various conventions of International Labour Organisation and are therefore arbitrary and unconstitutional. The secondary objective is to highlight the need to elevate labour laws to the level of human right and how the recent judgments and the new labour codes are a step in the right direction.

Keywords: Labour Laws, COVID-19, Global economy, National economy



INTRODUCTION

The Coronavirus pandemic has exposed the fragility and exiguity of the labour laws throughout the world. The philosophical underpinnings of the labour laws comes from the acknowledgement of the fact that each individual/worker is entitled to a certain set of rights, derogation from which would be against the interest of humanity as a whole¹. These set of rights were achieved via collective bargaining² and the formation of trade unions with statutory backing³.

The Supreme Court of India in **Karol Leather Karamchari Sangathan v. Liberty Footwear Company**⁴, had defined collective bargaining as “the technique by which dispute as to conditions of employment is resolved amicably by agreement rather than coercion”⁵. Collective bargaining results as an amicable settlement of disputes between the workers and the employers with the workers being generally represented by the trade unions. The trade unions strengthen the bargaining power of the workers⁶ and were regulated and registered⁷ under the **Trade Union Act, 1926**⁸ which has now been replaced by **The Industrial Relations Code, 2020**⁹.

COVID-19 AND SUSPENSION OF LABOUR LAWS

The governments throughout the world imposed lockdowns to prevent the spread of novel coronavirus¹⁰ but it shattered the global economy¹¹. The International Labour Organisation

¹ Barcelona Traction, Light and Power Company Ltd (Second Phase) ICJ Rep 1970 3, 32

² Sunday Samson Babalola, Ajibola Ishola, *Perception of collective bargaining and satisfaction with collective bargaining on employees' job performance*. 2017, Volume 14, Issue 2, Corporate Ownership & Control <https://www.researchgate.net/publication/314205633_Perception_of_collective_bargaining_and_satisfaction_with_collective_bargaining_on_employees'_job_performance> accessed Dec 03 2020

³ C. P. Thakur, *Trade Unions and Social Science Research in India*, 1976, Vol. 12, Indian Journal of Industrial Relations, <<https://www.jstor.org/stable/27765574>> accessed Dec 03 2020

⁴ (1989) 4 SCC 448

⁵ Karamchari Sangathan v. Liberty Footwear Company: (1989) 4 SCC 448

⁶ Dr. W.N. SALVE, *Labour Rights and Labour Standards for Migrant Labour in India*, (International Labour organisation, 2013) <<http://www.oit.org/legacy/english/protection/travail/pdf/rdwpaper22a.pdf>> accessed Dec 03 2020

⁷ Trade Union Act, 1926, No.16, Acts of Parliament, 1926 (India) <<http://legislative.gov.in/sites/default/files/A1926-16.pdf>> accessed Dec 03 2020

⁸ Ibid. (n 7).

⁹ The Industrial Relations Code, 2020, No. 35, Acts of Parliament, 1926 (India) <<http://egazette.nic.in/WriteReadData/2020/222118.pdf>> accessed Dec 03 2020

¹⁰ Dutta, Joystu and Mitra, Abhijit, *Lockdown and Beyond: Impact of COVID-19 pandemic on global employment sector with special reference to India*, 2020, NUJS Journal of Regulatory Studies, Special edition, <https://www.researchgate.net/publication/341881741_Impact_of_COVID_lockdown_on_Employmentpdf> accessed Dec 03 2020

¹¹ McKibbin, Warwick J. and Fernando, Roshen, *The Global Macroeconomic Impacts of COVID-19: Seven Scenarios*, CAMA Working Paper No. 19/2020, <https://ssrn.com/abstract=3547729>



predicted that over 400 million jobs¹² were lost in the second quarter of 2020. India was severely affected by the novel coronavirus due the developing nature of its economy and the high population density¹³. The various state governments in India reacted by suspending the labour laws to kickstart the economy¹⁴ and attract investment¹⁵. The Gujarat and Uttar Pradesh government have made the payment of overtime wages as optional to the owners of the industries. This was in contravention of Section 54 read with Section 59 of the Factories Act, 1948¹⁶ and against the principles of natural justice. According to Section 59 (1) of the Factories Act, the worker is entitled to twice the ordinary rate of wages¹⁷ for working overtime. The operative part of these Section also finds a mention in Section 27 of the new **The Occupational Safety, Health and working Conditions Code, 2020**¹⁸ which has replaced the Factories Act, 1948. Further, the work hour limits of factories was also increased¹⁹. This was done by invoking Section 5 and Section 65²⁰ of the Factories Act, 1948²¹ which allows the government's to exempt factories from the provisions of the act during public emergencies. However, the notifications or ordinances promulgated in this regard violate the cardinal principle of labour laws under the Indian Jurisprudence and India's international obligations under the various conventions of International Labour Organisation. The change in daily and weekly limits on maximum work hours is as follows:

¹² International Labour Organisation, ILO Monitor: COVID-19 and the world of work, (5th edition, International Labour Organisation, 2020) <https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/briefingnote/wcms_749399.pdf> accessed Dec 03 2020

¹³ P. Ramachandran, M. Singh, and A. Kapoor, *Population Growth: Trends, Projections, Challenges and Opportunities*, (Working paper, Planning commission of India, 2000) 5.

¹⁴ Aggarwal, Rishi, Chikermane, Gautam, COVID-19: Yogi Adityanath attempts reforms, delivers regulatory chaos in Uttar Pradesh, (ORF, 2020) < <https://www.orfonline.org/expert-speak/covid19-yogi-adityanath-attempts-reforms-delivers-regulatory-chaos-uttar-pradesh-65918/>> accessed Dec 03 2020

¹⁵ Suyash Tiwari and Anya Bharat Ram, *State Legislative Brief*, (PRS Legislative Research, Institute for Policy Research Studies, 2020) <https://prsindia.org/acts_bills/bills_state/LAWS%20OF%20INDIA/Gujarat/2020/Bills/State%20Brief%20-%20Relaxation%20of%20Labour%20Laws.pdf> accessed Dec 03 2020

¹⁶ Factories Act, 1948, No. 63, Acts of Parliament, 1948 (India) <<https://labour.gov.in/sites/default/files/TheFactoriesAct1948.pdf>> accessed Dec 03 2020

¹⁷ Ibid. (n 16)

¹⁸ The Occupational Safety, Health and working Conditions Code, 2020, No.37, , Acts of Parliament, 1948 (India) <<http://dgms.gov.in/writereaddata/UploadFile/Occupational%20Safety%20Health%20Code%20Act%202020%20as%20assented%20by%20the%20President%20of%20India6373708494550871.pdf>> accessed Dec 03 2020

¹⁹ Ibid. (n 15)

²⁰ Ibid. (n 15)

²¹ Ibid. (n 16)



Table 1: State-wise changes to work hours²²

State	Establishments	Maximum weekly work hours	Maximum daily work hours	Overtime Pay (2x ordinary wages)
Gujarat ²³	All factories	Increased from 48 hours to 72 hours	Increased from 9 hours to 12 hours	Not required
Himachal Pradesh ²⁴	All factories	Increased from 48 hours to 72 hours	Increased from 9 hours to 12 hours	Required
Rajasthan ²⁵	All factories distributing essential goods and manufacturing essential goods and food	Increased from 48 hours to 72 hours	Increased from 9 hours to 12 hours	Required
Haryana ²⁶	All factories	Not specified	Increased from 9 hours to 12 hours	Required
Uttar Pradesh ²⁷	All factories	Increased from 48 hours to 72 hours	Increased from 9 hours to 12 hours	Not required

²² Anya Bharat Ram, Relaxation of Labour laws Across States, PRS Legislative Research, 2020 <<https://www.prsindia.org/theprsblog/relaxation-labour-laws-across-states>> accessed Dec 06 2020.

²³ Labour and Employment Department, Notification No. LL2-FE-0003-20202716/LESI, Labour And Employment Department, Government Of Gujarat, 2020 <https://prsindia.org/files/covid19/notifications/3373.GJ_Lockdown_Relaxations_Factories_Apr%2017.pdf> accessed Dec 06 2020

²⁴ Labour and Employment Department, Notification No. LL2-FE-0032-20202716/LESI, Labour And Employment Department, Government Of Himachal Pradesh, 2020. <https://prsindia.org/files/covid19/notifications/4997.HP_factories_rules_apr_21.pdf> accessed Dec 06 2020

²⁵ Factories and Boilers Inspection Department, Notification No. LL2-FE-0507-20202716/FBID, Factories and Boilers Inspection Department,, Government Of Rajasthan, 2020. <https://prsindia.org/files/covid19/notifications/6078.RJ_Withdrawal_Factory_Working_Hrs_May%2024.pdf> accessed Dec 06 2020

²⁶ Labour Department, Notification No. LL2-FE-0203-20202716/LD, Labour And Employment Department, Government of Haryana, 2020. <https://prsindia.org/files/covid19/notifications/5154.HR_working_hours_apr_29.pdf> accessed Dec 06 2020

²⁷ Labour Department, Notification No. LL2-FE-0003-20202716/LESI, Labour Department, Government of Uttar Pradesh, 2020. <https://prsindia.org/files/covid19/notifications/5249.UP_Labour%20Change%20in%20Work%20Hours_May%2008.pdf> accessed Dec 06 2020



Uttarakhand ²⁸	All factories and continuous process industries that are allowed to function by government	Maximum 6 days of work a week	Two shifts of 12 hours each.	Required
Assam ²⁹	All factories	Not specified	Increased from 9 hours to 12 hours	Required
Goa ³⁰	All factories	Not specified	Increased from 9 hours to 12 hours	Required
Madhya Pradesh ³¹	All factories	Not specified	Not specified	Not specified

LABOUR RIGHTS IN INDIAN JURISPRUDENCE

‘Labour’ is a subject under the Entry 55, 61 and 65 of the Union List and in Entry 22, 23, 24 and 25 of the Concurrent List under the Seventh Schedule³² of the Indian Constitution. Therefore, in accordance with Article 246 of the Constitution of India, both the Union and States have the right to frame laws on the subject of Labour. The State law, if incompatible with the central laws, has to seek assent of the President³³. India’s Constitution guarantees certain labour rights and there exist upwards of 150 separate pieces of labour legislation arising from central and state government authorities³⁴. However, this has culminated into a system of labour laws is very extensive and

²⁸ Labour Department, *Notification No. LL2-FE-0003-20202716/LESI*, Labour Department, Government of Uttarakhand, 2020. <
https://prsindia.org/files/covid19/notifications/5181.UK_Factories_Notification_dt._28_April,_2020.pdf>
accessed Dec 06 2020

²⁹ Labour Welfare Department, *Notification No. LL2-FE-0003-20202716/LESI*, Labour Welfare Department, Government of Assam, 2020. <
https://prsindia.org/files/covid19/notifications/5739.AS_workers_12_hours_may_8.pdf> accessed Dec 06 2020

³⁰ Labour Department, *Notification No. LL2-FE-0003-20202716/LESI*, Labour Department, Government of Goa, 2020. <
https://prsindia.org/files/covid19/notifications/5803.GA_Factories_Work_Hours_May%208.pdf>
accessed Dec 06 2020

³¹ Labour Department, *Notification No. LL2-FE-0003-20202716/LESI*, Labour Department, Government of Madhya Pradesh, 2020. <
https://prsindia.org/files/covid19/notifications/4989.MP_exemptions%20under%20labour%20laws_May05.pdf>
accessed Dec 06 2020

³² Constitution of India, Seventh Schedule

³³ Constitution of India, Art. 254

³⁴ Richard Mitchell, Petra Mahy and Peter Gahan, *The Evolution of Labour Law in India: An Overview and Commentary on Regulatory Objectives and Development*, 2014, Asian Journal of Law and Society, 413



dauntingly complex³⁵. These plethora of laws are not effectively implemented³⁶, and are therefore unable to achieve the intended outcome.

INTERNATIONAL OBLIGATIONS

India was one of the founding member of the International Labour Organisation in 1919³⁷. India has ratified 47 Conventions and 1 Protocol³⁸ of International Labour Organisation and this has helped in development of Labour laws in India³⁹. The Hours of Work (Industry) Convention, 1919 has been ratified by India⁴⁰ and according to Article 2 of the Convention the maximum work hours in an industrial undertaking should not exceed eight hours a day and forty eight hours a week⁴¹. The Article 4 prescribes a maximum limit for fifty-six hours if the nature of work has to be carried out continuously by succession of shifts.⁴² The notifications/ordinances by the various state governments are in violation of the Article 2 and Article 4 of this convention and violate India's international obligation under International Labour Organisation. Further, the ordinance promulgated by the Uttar Pradesh government also suspends The Child Adolescent Labour (Prohibition and Regulation) Act, 1986⁴³ which prohibits the employment of children in all occupations and adolescents in hazardous occupation⁴⁴. This would be in violation of Article 2 of

³⁵ Ibid. (n 34)

³⁶ Ibid. (n 34)

³⁷ Hussain, Zafar, Wani, M. Afzal, *APPLICATION AND ENFORCEMENT OF INTERNATIONAL LABOUR STANDARDS IN INDIA: A CRITIQUE*, 2011, Volume 53, Journal of the Indian Law Institute, <https://www.researchgate.net/publication/343319909_APPLICATION_AND_ENFORCEMENT_OF_INTERNATIONAL_LABOUR_STANDARDS_IN_INDIA_A_CRITIQUE> accessed Dec 03 2020

³⁸ Ministry of Labour and Employment, India and ILO, Government of India, 2019 <<https://labour.gov.in/lcandilasdivision/india-ilo#:~:text=There%20are%2047%20ILO%20conventions,been%20denounced%3B%20%20instruments%20abrogated.>> accessed Dec 03 2020

³⁹ Amit Singh, *Impact of ILO on Indian Labor Laws*, 2014, volume 1, International Journal of Research in Management & Business Studies, <https://www.researchgate.net/publication/293517743_Impact_of_ILO_on_Indian_Labor_Laws> accessed Dec 03 2020

⁴⁰ International Labour Organisation, Hours of Work (Industry) Convention, 1919, (No.1) <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::p11300_instrument_id:312146> accessed Dec 06 2020

⁴¹ International Labour Organisation, Hours of Work (Industry) Convention, 1919, (No.1) < International Labour Organisation. Hours of Work (Industry) Convention, 1919, (No.1) <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::p11300_instrument_id:312146> accessed Dec 06 2020

⁴² Ibid. (n 28) above

⁴³ The Child Adolescent Labour (Prohibition and Regulation) Act, 1986, No. 63, Acts of Parliament, 1948 (India), <https://labour.gov.in/sites/default/files/The_Child_and_Adolescent.pdf> accessed Dec 10 2020.

⁴⁴ Ibid. at 43



the International Labour Organisation's Minimum Age (Industry) Convention, 1919⁴⁵ which has been ratified by India and forbids children below the age of fourteen from any kind of employment. Therefore, the International Labour Organisation can be approached by any worker/trade union under Article 24 of the International Labour Organisation's Constitution for breach of conventions India has ratified.

MUNICIPAL RIGHTS

The Constitution of India provides for minimum rights at workplace⁴⁶ and a decent standard of living. The **Preamble** of the Constitution envisages the people of India have resolved to create India into a socialist republic⁴⁷ which would culminate into greater redistribution of wealth⁴⁸ and better living conditions for everyone. In **Kesavananda Bharati Sripadagalvaru V. State of Kerala**⁴⁹ it was held that the Preamble represents objectives of the constitution. Therefore, the primordial Constitution of India has contemplated the creation of an impartial society and has been a guiding source to the Indian courts and the lawmakers.

The **Article 14** of the Constitution guarantees equality before law and equal protection of law⁵⁰ which permits different classes of persons to be treated differently⁵¹ according to their standing in the society. The Supreme Court in **Delhi Transport Corporation vs D.T.C. Mazdoor Congress**⁵² held that a termination of service of employees without any modicum of procedure of representation⁵³ in violative of Article 14 of the Constitution. The Supreme Court in **Srinivasa Theatre and Ors. vs Government Of Tamil Nadu**⁵⁴ held that equality before law can be meaningfully realised in a society contemplated under **Article 38** of the Constitution⁵⁵. The **Article 38** envisages a welfare state which minimises inequality in income based in gender, status, facilities

⁴⁵ International Labour Organisation, Minimum Age (Industry) Convention, 1919, (No.5) <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312150:NO> accessed Dec 10 2020.

⁴⁶ Ibid. (n 6)

⁴⁷ Constitution of India, Preamble

⁴⁸ Andrew Roberts, The State of Socialism: A Note on Terminology, (Cambridge University Press, 2004) vol. 63, <<https://www.jstor.org/stable/3185732>> accessed Dec 03 2020

⁴⁹ AIR1973 SC 1461

⁵⁰ Constitution of India, Art. 14

⁵¹ The State Of West Bengal vs Anwar Ali Sarkar: AIR 1952 SC 75

⁵² 1991 AIR 101

⁵³ Delhi Transport Corporation vs D.T.C. Mazdoor Congress: 1991 AIR 101

⁵⁴ 1992 AIR 999

⁵⁵ Srinivasa Theatre and Ors. vs Government Of Tamil Nadu: 1992 AIR 999



and opportunities⁵⁶. Therefore, the Article 14 of the Constitution encompasses within itself a society where material resources are distributed⁵⁷ in a way which advocates an equal and just society which includes the employment terms and conditions of workers.

The Supreme Court in **Air India Statutory Corporation v. United Labour Union**⁵⁸, held that the Directive Principles of the Constitution were elevated to being inalienable human rights and every individual is entitled to them. The **Article 39, Article 42 and Article 43** endeavour to promote just and humane conditions of work⁵⁹ and employment. Further, The **Article 41** obliges the State to provide a right to work and education⁶⁰. Furthermore, the State must provide assistance to individuals in case of unemployment, old age, sickness, and in other cases of undeserved want⁶¹. Therefore, the Indian Courts have laid down the foundation for elevating labour rights to the level of human rights.

The **Article 23** prohibits forced labour⁶² and **Article 24** prohibits employment of children in factories or in any other hazardous employment⁶³. The Supreme Court in **Bandua Mukti Morcha v. Union Of India & Ors.**⁶⁴ held that the if a labourer is forced to provide forced labour, a presumption would exist that he is a bonded labourer⁶⁵. Further, it was held in **People Union For Democratic Rights v. Union Of India & Ors.**⁶⁶ that it is the constitutional obligation of the State to take steps to prevent the violation of Article 23 and Article 24 of the Constitution. The arbitrary suspension of labour laws in the notifications/ordinances passed by the state governments would deteriorate the working conditions of the workers to the extent that they could be regarded as bonded labourers under Article 23 of the Constitution and would be in violation of Article 23 of the Constitution and the notifications/ordinances are thus unconstitutional.

⁵⁶ Constitution of India, Art. 38

⁵⁷ Constitution of India, Art. 38

⁵⁸ AIR 1997 SC 645

⁵⁹ Constitution of India, Art. 42

⁶⁰ Constitution of India, Art. 41

⁶¹ Ibid. (n 60)

⁶² Constitution of India, Art. 23

⁶³ Constitution of India, Art. 24

⁶⁴ 1984 AIR 802

⁶⁵ Bandua Mukti Morcha vs Union Of India & Ors: 1984 AIR 802

⁶⁶ 1982 AIR 1473



The **Article 16** of the Constitution provides for equality of opportunity in matters of public employment⁶⁷. Thus, the scheme of Indian constitution has been to establish a welfare state and minimise inequality that existed at the time of the formation of the constitution. Further, it endeavours to provide equal opportunity to every individual in every field. The **Article 19 (1)** of the Constitution guarantees a fundamental right to form unions or associations⁶⁸, assemble peacefully⁶⁹ and move freely throughout India⁷⁰. The Supreme Court in **Kameshwar Prasad v State of Bihar**⁷¹, held that there exists fundamental right to hold peaceful demonstrations under Article 19 (1) (a) and Article 19 (1) (b) of the constitution. However, there exist no fundamental right to go on a strike⁷².

The **Article 21** of the Constitution guarantees a right to life and liberty⁷³ for any person. The Supreme Court has charitably construed this article and in **Maneka Gandhi vs Union of India**⁷⁴, it was held that the procedure laid down in a law cannot be “arbitrary, fanciful and oppressive”⁷⁵ which deprives an individual of his/her life or liberty and is encompassed in Article 21 read with Article 19 read with Article 14 of the Constitution. Further, it was held that every individual is entitled to a life with dignity. Thus, procedural due process was incorporated in the Indian jurisprudence and in **Bandua Mukti Morcha v. Union Of India & Ors.**⁷⁶ it was held that Article 21 includes protection of the health of workers⁷⁷ so that he/she can live a life of dignity. In **Olga Tellis & Ors. vs Bombay Municipal Corporation and Ors.**⁷⁸ it was held that right to life cannot be denied directly or indirectly and includes right to livelihood⁷⁹.

⁶⁷ Constitution of India, Art. 16

⁶⁸ Constitution of India, Art. 19 (1) (c)

⁶⁹ Constitution of India, Art. 19 (1) (b)

⁷⁰ Constitution of India, Art. 19 (1) (d)

⁷¹ 1962 AIR 1166

⁷² Kameshwar Prasad v State of Bihar: 1962 AIR 1166

⁷³ Constitution of India, Art. 21

⁷⁴ 1978 AIR 597

⁷⁵ Maneka Gandhi vs Union Of India: 1978 AIR 597

⁷⁶ 1984 AIR 802

⁷⁷ Ibid. 29

⁷⁸ 1986 AIR 180

⁷⁹ Olga Tellis & Ors. vs Bombay Municipal Corporation and Ors.: 1986 AIR 180



Further, In **Justice K.S. Puttaswamy (Retd.) vs Union Of India**⁸⁰ the concept of ‘manifest arbitrariness’⁸¹ or substantive due process was incorporated in the Indian jurisprudence. It was held that a law which is manifestly arbitrary would violate right to equality⁸². The significance of this judgment lies in the fact that the State can no longer introduce arbitrary legislations which could violate the fundamental rights of an individual/worker and gives extraordinary power to court to strike down such legislation as unconstitutional. Therefore, the arbitrary and oppressive suspension of labour laws in various states is unconstitutional as it is manifestly arbitrary. The ordinances or notifications promulgated by the various State governments which suspend the inalienable human rights of the workers and are inhumane and unconstitutional. Further, it denies an individual an right to live a life with dignity as it precludes basic health protection to the workers and indirectly denies the right to livelihood to the individuals working in the various industries.

In **Bhikusa Yamasa Kshatriya Ltd. vs. Union of India**⁸³, it was held that adequate safeguards need to be provided for the health and safety of the workers and the “State has a vital concern in preventing exploitation of labour”⁸⁴. Further, in *Y A Mamarde vs. Authority under the Minimum Wages Act*⁸⁵ it was held that the double rate of wages for overtime work is the “minimum rate of work for overtime work”⁸⁶. Thus, the ordinances/notifications violate the cardinal principle in the Indian jurisprudence in labour law and various provisions of the Constitution and the Statutory Legislations which ensure a life with dignity and the well being of the workers.

In **Gujarat Mazdoor Sabha & Anr. V. The State of Gujarat**⁸⁷, the notification issued by the government of Gujarat during Covid-19 under Section 5 of the Factories Act, 1948 was challenged before the Supreme Court. It was held that public emergency is quintessential for exercise of power under Section 5 of the Factories Act and it guarantees health and safety of the workers. It was held that the coronavirus pandemic has brought the economic activities to a standstill but has not

⁸⁰ 2017 10 SCC 1

⁸¹ Justice K.S. Puttaswamy (Retd) vs Union Of India.: 2017 10 SCC 1

⁸² Ibid. (n 81)

⁸³ AIR 1963 SC 1591

⁸⁴ Bhikusa Yamasa Kshatriya (P) Ltd. vs. Union of India: AIR 1963 SC 1591

⁸⁵ (1972) 2 SCC 108

⁸⁶ Y A Mamarde vs. Authority under the Minimum Wages Act: (1972) 2 SCC 108

⁸⁷ Writ Petition (Civil) No. 708 of 2020



affected the security of India in a way that causes threat to the integrity of India⁸⁸. Therefore, there exists no justification for evoking the extraordinary powers under the Section 5 of the Factories Act and financial losses cannot be compensated at the expense of the health, safety, security of the labouring worker. The Court allowed the overtime wages to be paid in accordance with Section 59 of the Factories Act.

Therefore, the Supreme Court has liberally interpreted the Part III and Part IV of the Constitution along with other Statutory Legislations in the interest of upholding the fundamental rights of workers and ensuring humane conditions for the workers in the industries. However, there exists a need to elevate labour laws to the level of human right so as to ensure that the workers do not become the scapegoat to problems which underscores the government's own failure and mediocrity in dealing with various issues.

NEW LABOUR CODES

The COVID-19 pandemic has highlighted the complex relationship that exists between the government, labour rights and industrial ease. The complexity makes the task to introduce labour 'reforms' an arduous task and that is visible in the new labour codes. In the Section 77 (1) read with Section 80 (1) of The Industrial Relation Code, 2020⁸⁹ where the threshold for minimum number of employees for retrenchment and closure of an undertaking has been raised from one hundred to three hundred⁹⁰. The rationale given by the government is that it could lead to increased investments and big factories which employ more workers and was backed by the findings in Economic Survey on India⁹¹ for 2018-19. Further, sixteen states have already applied this standard⁹². In Economic Survey on India for 2018-19, it was observed that states which transitioned towards more flexible labour laws were 25.4 more productive than their counterparts⁹³. Rajasthan was cited as an example as it observed significant increase in factories employing more than hundred workers⁹⁴ after providing relaxation in labour laws in 2015. Further,

⁸⁸ Gujarat Mazdoor Sabha & Anr. V. The State of Gujarat: Writ Petition (Civil) No. 708 of 2020

⁸⁹ Ibid. (n 9)

⁹⁰ Ibid. (n 9) Art. 77) (1)

⁹¹ Ministry of Finance, *Economic Survey 2019-20*, (volume 1, Ministry of Finance, Government of India, 2019) <<file:///Users/amansharma/Downloads/Economic%20Survey%20Volume%20I%20Complete%20PDF.pdf>> accessed Dec 10 2020

⁹² Ibid. 91

⁹³ Ibid. 91

⁹⁴ Ibid. 91



multiple restrictions have been imposed for conducting lawful strikes under Section 62 (1) of The Industrial Relation Code, 2020⁹⁵.

The allied concerns that have arisen with the Industrial Relation Code, 2020 is that it may lead to increased exploitation of workers employed in a undertaking. However, under Chapter Seven of the Industrial Relation Code, 2020 the mechanism for dispute resolution has been simplified and the hierarchy of adjudicatory forums have been decreased from five to two⁹⁶ which could result in swift disposal of disputes. Further, The Code of Social Security, 2020⁹⁷ ensures social security for all sections of unorganised, gig and platform workers⁹⁸ under its Chapter Nine. The aggregator must pay one to two percent of his turnover for social security of these workers under Section 114 (4) Code of Social Security, 2020⁹⁹ which is a positive step that ensures social security to the marginalised sections of the workforce.

The most important factor that the government has to ensure is a balance between industrial interests and workers interest. The ordinances/notification promulgated by the state governments violate all principle of natural justice and the cardinal principles of labour laws. They completely tilt the balance in favour of industrial interests and are unconstitutional/illegal. However, the new labour codes do a better job in balancing the interest of industries and workers.

CONCLUSION

Labourers is a class of individuals which have historically been exploited and discriminated against. After centuries of hardships and human rights violations the social political relationship changed between the employer and the employee. It was altered from master-servant to co-shares in parentship working for the development of the enterprise. The march of human rights in the 20th and 21st century has radically altered the relationship between the employer and employee. However, during COVID-19 pandemic, it was observed that stronger socio-political position of

⁹⁵ Ibid. (n 9) Art. 62 (1)

⁹⁶ Ibid. (n 9) Chapter VII

⁹⁷ The Code of Social Security, 2020, No. 36, Acts of Parliament, 1926 (India)

< https://labour.gov.in/sites/default/files/SS_Code_Gazette.pdf > accessed Dec 10 2020

⁹⁸ Ibid. (n 98)

⁹⁹ Ibid. (n 98)



employer affords him a certain degree of protection which is still absent for the employee. It is suggested that this could be addressed by elevating the labours laws to the level of human rights law i.e., which are inherent, universal and inalienable¹⁰⁰. The Courts in India have liberally interpreted the Constitution and Statuary enactments to protect the rights of the workforce. The government has also taken multiple steps which are in consonance with the ‘welfare state’ ideal of the Constitution and the new labour codes are a step in the right direction. Therefore, it is time to alleviate the suffering of our workers and elevate labour right to the level of human rights.

REFERENCE: [HTTPS://LEXFORTI.COM/LEGAL-NEWS/](https://lexforti.com/legal-news/)

¹⁰⁰ Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) Preamble