# LABOUR RIGHTS OR WRONGS?

## Covid-19 is Leading to Dilution of Labour Laws

**K.R. Shyam Sundar***



PHOTO CREDIT: Paranjoy Guha Thakurta

*Migrant workers congregate at the Anand Vihar Interstate Bus Terminal on the border of Delhi and Uttar Pradesh during the lockdown in late-March, waiting for buses to their hometowns.*

"…Until recently, one of the peculiarities about Indian migration was that you saw migrants everywhere except in the data collected by the Census and National Sample Surveys. … As a result, migration escaped the attention of policymakers under incorrect assumptions of low spatial mobility in India." writes Ahmedabad-based scholar Chinmay Tumbe, in his seminal book *India Moving: A History of Migration*.

The country's economy largely stands on the shoulders of this invisible workforce --- the migrant labourer. But the coronavirus pandemic and its corollary, the 2020 lockdown, has suddenly swung a wrecking ball through the Indian labour market and set in motion a domino effect in the statutory framework around labour.

### Labour Law Disruptions

COVID-19 has disrupted the labour market by complete and partial lockdowns during March-June. Later, the problem was compounded by micro lockdowns and even stop-start-stop kind of lockdowns at the local level. What was the cumulative effect? Incredible uncertainty on the part of both employers and workers. The order of the Ministry of Home Affairs (MHA) regarding compulsory payment of full wages was withdrawn from May 18 onwards, although we had witnessed its ineffectiveness.

The current situation is pretty dire. Industries in some regions face labour shortages. At the same time, urban unemployment peaked in April and May and later plateaued stubbornly. Workers receive wages erratically and if they are lucky, partial or full payment in some months. The net outcome: a great economic distress, poised to cause national income to grow negatively.

In this calamitous environment state governments have resorted to three types of changes in labour laws, *viz.* extension of maximum hours of work, a package of changes in several labour laws, and changing the thresholds of labour laws.

#### 1. Extension of Maximum Hours of Work

The state governments have introduced changes in the central labour laws of varying magnitudes on three grounds. One, labour shortages hurt businesses and labour supply can be augmented in two ways. One is to increase the quantity of labour and another, to increase the work hours expended by the existing labourers. Several state governments preferred the latter. A little more than a dozen state governments amended the Factories Act to extend the maximum hours of work from the current eight hours in a day and 48 hours in a week to

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10-12 hours in a day and 60-72 hours in a week respectively. The amended overtime compensation ranges from 1.5 times to twice the wage rate (the latter is per the law).

This is in contravention of the Hours of Work (Industry) Convention, 1919 (C001) of the International Labour Organization (ILO), which India ratified. It provides for eight hours of work in a day and 48 hours in a week. In fact, the primary crusade of the May Day struggle was for the implementation of the eight-hour work day. This right was achieved after nearly seven decades in 1948 after the first Factories Act (FA) was enacted in 1881.

There's no doubt that 12 hours of work in a day translates into greater scope for workers' fatigue, rising potential for unsafe work, drop in productive efficiency, discouraging women workers' participation in work, among others. Recently, to the queries made by the Parliamentary Standing Committee (PSC) with regard to these amendments, the Labour Ministry averred that the amendments conflict with the ILO Convention and the increase in hours need to be compensated with overtime pay or leaves. However, Gujarat has extended the increase in hours of work promulgated by an Ordinance for April 20 to July 19, 2020 for another three months till October 19, 2020.

**2. Package of Changes in Several Laws**

Two states --- Madhya Pradesh (MP) and Uttar Pradesh (UP) --- as well as reportedly Gujarat have introduced wide-ranging changes in labour laws. MP has retained only the clauses relating to regulation of retrenchment and closure in Chapter V-B in the Industrial Disputes Act, 1947 (IDA). It has left out the rest, relating to raising of industrial disputes, access to conciliation and compulsory adjudication, strike conduct, works committee, grievance redressal committee, etc. This is applicable to new factories to be registered in the next 1,000 days. It has retained clauses in the Factories Act relating to safety and hazardous processes and left out clauses relating to health, welfare, major provisions of hours of work, inspection, etc. This will be applicable to all the registered factories for the next 1,000 days.

UP has suspended 34 labour laws like the Trade Unions Act, 1926, the IDA, Industrial Employment (Standing Orders) Act, 1946 (IESOA), etc. It has retained the provisions in Factories Act and Building and Other Constructions Workers (Regulation of Employment and Conditions of Service) Act, 1996 (BOCWA) relating only to safety. In addition, it has protected payment of minimum wages (while omitting complementary clauses like hours of work, overtime payment, claims process, etc.) in the Minimum Wages Act 1948, ensured payment of compensation as provided for in the Employees Compensation Act, 1923 and protected the provisions relating to women and children, among others.

The UP Ordinance is just a two-page document. It is an incomplete and vague instrument which will give rise to a lot of complications with respect to both the labour rights it seeks to protect and even abrogate. For instance, the safety of workers depends on their health, inspection, welfare and hours of work. How can safety be compartmentalised and separated from the other components listed above? The central government has sought clarification from UP and Gujarat as to which of the laws they seek to exempt by their ordinances.

These sweeping changes can be read as virtual demolition of historically constructed and Constitution-provided labour rights like trade unions, collective bargaining, raising industrial disputes, strikes, access



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to conciliation, compulsory adjudication, protection from unfair dismissal, standard employment conditions, bonus, gratuity, etc. States cannot suspend labour laws and substantive rights using the excuse that labour falls in the Concurrent List.

### 3. Changing the Thresholds of Selected Labour Laws

The central government has reportedly written to state governments to introduce reforms like Fixed Term Employment (FTE) and changes in the thresholds of selected labour laws. This is intended to afford labour flexibility to businesses. In recent weeks, following the pre-COVID-19 pattern, states like Tripura, Goa and Bihar increased the threshold for application of Contract Labour (Regulation & Abolition) Act, 1970 (CLRAA) from 20 to 50. Himachal Pradesh (HP) increased it from 20 to 30. Bihar and Gujarat have increased the threshold of Chapter V-B of IDA from 100 to 300 and HP from 100 to 200. HP has increased the retrenchment and closure compensation from 15 days to 60 days. The conditions for striking under S.22 in the IDA are so tough that they render legal strikes well-nigh impossible. They have been applicable to "public utility services." Now they apply to "non-public utility services" as well. Bihar, Assam, Gujarat and HP have increased the thresholds of FA from 10 to 20 (those using power) and 20 to 40 (not using power). It may be recalled that several states, starting with Rajasthan, carried out similar changes immediately after the assumption of power by the NDA government at the Centre in 2014. The changes will be applicable for a period ranging from six months to nearly three years. Karnataka has introduced fixed term workmen (FTW) by amending the Karnataka Industrial Employment (Standing Orders) Rules 1961, offering flexibility to the industry to hire and fire easily.

Increase in the thresholds means one thing: More workers and more establishments/contractors are removed from the purview of the concerned laws. Gradually many states have amended Chapter V-B threshold from 100 to 300 (or 200), as has been demanded by the employers. This, along with extension of thresholds for CLRAA and FTE, provide substantial labour market flexibility to employers and extend opportunities to reduce regular workers' appointments.

The above review of labour law reforms and changes clearly shows that the state is finding clever routes in these inconvenient times to effect changes in labour laws and governance systems. It is an attempt to afford labour flexibility to businesses at the expense of labour rights. What is more galling is that the labour rights, which are historically constructed (since 1881), constitutionally guaranteed and in alignment with ILO treaties are being diluted in a myopic and unscientific quest for capital.

Not surprisingly, the states have become convenient venues to implement the four waves of reforms/changes because the unity of political parties and trade unions are weaker at the regional levels, as opposed to the national level. Social dialogue is conspicuous by its absence in states. There's frequent resort

to ordinances and government orders bypass legislatures. In the process they have ignored the social dialogue which India is committed to. This includes both bypassing the legislatures and the country's ratification of the Tripartite Consultation (International Labour Standards) Convention, 1976 (C.144).

Further, state governments ushering in labour reforms introduces competitive federalism in India. Due to competitive changes in labour laws we are moving away from "national law-making" to "regional law-making" centres, from legislatures to the Governor's office, from pluralistic social dialogue to unilateralism and from the Constitution to market forces. We are moving away from national labour market governance, which provides a host of labour market securities to regional models of labour market flexibilities. Further, the states are muzzling inter-state migrant workers' rights by legislating job-reservations to the local (read regional) workers.

The regional labour reforms also seriously question the national law-making processes via labour codes. Hence, the Parliamentary Standing Committee has posed tough questions to the states. However, the latter are in no mood to listen. They seem to be encouraged by the Union Labour Ministry, which has sent out letters urging them to introduce reforms to afford labour flexibility to businesses.

In the next section, we will look at how the labour market got affected once the virus started making its way to India from different geographies.

## How the Migrant Crisis Unfolded: COVID-19 and the Labour Market

The pre-COVID-19 labour market was already fragile. The virus has further shaken it up and brought into sharp relief shocking aspects of the malfunctioning labour market governance. The exodus stories of migrant labourers have been heartrending. Lakhs of migrant workers lost their jobs and/or sources of livelihood.

The relief offered to the working class by the central government was paltry and ill-conceived although in some senses it was effective. The Labour Ministry was largely missing from the site of action, save for issuing inconsequential advisories to the employers. These included not to retrench workers and pay up their wages as well as float a partial survey of job losses in the central sphere. The rebellious and the spontaneous episodes of flight by imperilled migrant workers led the MHA to issue a directive on March 29, 2020. This required the factories, shops and establishments to pay full wages on time at the worksite till the lockdown. The ILO estimated that 400 million workers were rendered vulnerable by COVID-19 shocks. Eventually the MHA order was challenged in the Supreme Court by employers and the Court left the wage payment issues to be sorted out by direct negotiations between employers and workers, and for conciliation should the former fail. In the case of travel and livelihoods of migrant workers, the Court woke up rather late to take cognisance. By that time much damage had been done as state governments showed apathy and shifted the burden of relief on the workers.

Despite the Inter-State Migrant Workmen Act, 1979 (ISMWA), the government unabashedly threw up contrasting and often fantastic statistics of migrant workers. The central government's Solicitor General submitted to the Supreme Court that close to10 million migrants returned home while the Labour Ministry's figures stood at 2.62 million! While announcing the AtmaNirbhar package on May 16, the Finance Minister mentioned 80 million migrant workers. The World Bank and the experts estimate the number of migrant workers to be anything between 40 million and 100 million. The RTI query regarding the data base on the migrant workers at the Central Labour Commissioner drew an indifferent response as there was no data. None of the state governments could show data despite the elaborate administrative procedures contemplated under the ISMWA and BOCWA. Employers then complain of these as "drags on efficiency of firms."

The sequence of events exposed the huge void in labour administration and the so-called strong labour laws become incredulous. Statistically the migrant workers do not exist. Legally they do not exist as they are not registered under the ISMWA. Politically they are disenfranchised as they lack residential validation documents, do not often get their electoral registrations and hence cannot cast their votes.

The Finance Minister's package for migrant workers provides little relief while the state governments have made ad hoc noises about setting up Migration Commissions (without revealing its composition), registration of workers and extending some meagre sums as social security. The Finance Minister, under the AtmaNirbhar package, provided 5 Kg of food grains to an estimated 80 million migrant workers who are not covered by the National Food Security Act, 2013. The problem in the delivery of this measure is the "identification" of the faceless migrant workers which the government has admitted. The government has also announced the launch of affordable rental housing complexes for migrant workers/urban poor under the Pradhan Mantri Awas Yojana. Then, it has set the deadline for its well-meant "One Nation One Ration Card" as March 2021. The Finance Minister has also offered ₹10,000 as special credit facility to 50 lakh street vendors who could also be migrant workers. Thus, we see the government, in pursuit of the misguided and ill-placed notion of self-reliance, offered liquidity and cheaper loans and short-term work under schemes and some meagre cash transfers in some states to uprooted migrant workers. Meanwhile, it completely refused to implement what the academics and activists, and even employers cried out in a collective voice: direct benefit transfer to all poor people in an encompassing manner.

It's a known fact that construction workers constitute another class of the vulnerable workforce. An expansive legal framework exists for this sector, offering a social security net through the creation of a welfare fund sustained by levying cess on employers. It is shocking to note that millions of rupees in the construction workers' cess fund remained unutilised or mis-utilised. Even after a federal directive to provide cash and other benefits to the construction workers, of the estimated ₹31,000 crore available funds, 16% has been spent on 19.91 million workers, according to official data. Less than half (46.85%) of the estimated 55 million workers in the construction sector 2017-18 are registered under the BOCWA (Data from the Labour Ministry, GoI). This is another gaping hole in the labour administration.

## Labour Rights: A History

Labour rights in a pluralistic and democratic country such as India

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are derived from two primary sources, *viz.* the Constitution and international treaties. In the case of labour, the instruments of the United Nations and those of the ILO, *viz.* the Conventions and Recommendations, are the relevant international treaties. Article 253 empowers Parliament to make any law, for the whole or any part of the territory of India, for implementing "any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body."

ILO's Conventions and Recommendations form the "international labour standards" (ILS) framework. The objective of ILS is to promote "opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and dignity." Till date the ILO has adopted 190 Conventions and 206 Recommendations. India has ratified 47, of which 39 Conventions are in force. India has not yet ratified two of the eight Core Labour Standards, *viz.* Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and Right to Organise

and Collective Bargaining Convention, 1949 (No. 98).

## Labour Rights: The Beginning

A series of versions of Factories Act since 1881 were enacted, which initially, were largely concerned with regulation of juvenile workers and women. Later, owing to powerful and spontaneous representations made by socialist-minded leaders like Narayan Meghaji Lokhande and S.S. Bengalee, who were instrumental in mobilising inchoate workers' organisations and opinions, the government started to guarantee workers' rights for weekly off, rest hours during the day, among other things.

## Legal Framework in Independent India

Soon after independence the Constitution of India was framed. It envisages a socialist, secular and democratic republic and holds that society must be founded on the principles of justice, fraternity, and liberty. The law and policy makers preferred state intervention to pluralistic voluntarism to govern the Industrial Relations System (IRS). The legal framework governing the IRS and labour market comprised central and state labour laws and other regulations. The central labour laws could be classified under five subjects, *viz*. Generic Laws providing for registration and also regulating conditions of work, including safety and health; Industrial Relations; Wages; Social Security; Special Categories of Workers. Generic Laws comprise Factories Act, 1948, Plantations Labour Act, 1951, Mines Act, 1952, etc. Industrial Relations laws include the Trade Unions Act, 1926, the Industrial Employment (Standing Orders) Act, 1946 (IESOA), and the Industrial Disputes Act, 1947. Wages laws include Minimum Wages Act, 1948, Payment of Wages Act, 1936, the Payment of Bonus Act, 1965 and Equal Remuneration Act, 1976. The Social Security laws include Employees' Provident Fund Act, 1952, the Employees' State Insurance Act, 1948, the Payment of Gratuity Act, 1972 and the Maternity Benefit Act, 1961. The laws under 'Special Categories of Workers' include the CLRAA, Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, the ISMWA and the BOCWA.

The colonial institutions of tripartite social dialogue (Indian Labour Conference, ILC) and Labour Ministers' Conference have been continued in independent India.

The exploitative practices relating to the migrant workers in several parts of the country and especially in Odisha led to the enactment of ISMWA in 1979. The law requires formalisation of ISMW in terms of registration of enterprises using them and contractors securing their labour services. It provides for equal pay for equal work, safe working conditions, shelter, travelling and return journey allowances unconnected with regular wage payments, etc. Though it provides for registration of principal employers and the contractors through license system, it does not explicitly provide for registration of ISMW.

Though not belonging to the command economy but during the infancy of the neo-liberal period, 1991+, another important legislation concerning construction workers was enacted. The central government, in pursuance of the 41st Labour Ministers' Conference in 1995, enacted two laws, *viz*. BOCWA and the Building and Other Construction Workers' Welfare Cess Act, 1996, to address the conditions of work and welfare of millions of workers in the largely unorganised construction industry.

## Labour Law and Governance Reforms During the LPG (Liberalisation, Privatisation, and Globalisation) Period

Even though reforms started taking place since the mid-1980s (e.g. turning the policy attention on exports) concrete reforms began to be introduced since 1991, as the new economic policy was introduced in June 1991. Then, over the decades, wide ranging economic reforms

took place --- to liberalise the product market internally (e.g. removing industrial license system, scrapping monopoly regulation laws, greater play for the market forces, etc.), privatise the economy (by reducing the space for public sector, privatising public sector enterprises or disinvesting shares in them, etc.) and open the economy for free trade, investment, technology, etc.

## Neo-Liberal Reforms Agenda and Labour Rights

There are three major reforms with respect to labour laws. One, labour laws must be modernised, rationalised and amalgamated in the form of Codes. Two, laws provide for rigorous and intrusive labour inspection system (pejoratively called as "Inspector-Raj") and this has to be liberalised. Three, restrictive labour laws and clauses need to be liberalised. These are the major demands, and all of them abridge and even dilute labour rights.

## Laws for Unorganised Workers – A Blip in the Dark Sky

The enactment of the two laws concerning the BOCWA galvanised the mobilisation efforts of workers in the unorganised sector. It came into the spotlight and made an entry into the labour law reforms debate arena.

The labour law reforms took a positive turn as the government, especially UPA-1, academics as well as the labour movement (civil society organisations, new forms of labour organisations like the National Centre for Labour, among others) lobbied for legislation for unorganised workers. As a result, though circumscribed by conservative fiscal politics and neoliberal concerns, the eventual defective law, the Unorganised Workers' Social Security Act (UWSSA) was passed in 2008. It provides for registration and delivery of portable smart identity cards which will facilitate receipt of social security benefits conceived under the Act. Simultaneously, other segments of unorganised workers --- domestic workers, home-based workers and street vendors --- were demanding national policies and laws on their rights, social security and the right to vend, among others. After much struggle by street vendors, with international solidarity and litigation, the central government enacted the Street Vendor (Protection and Regulation of Street Vending) Act 2014.

## Labour Law and Governance Reforms in the Post-Reform Period

There have been four waves of labour law and governance reforms and these occurred largely since 2000. The first wave started with the amendment of the CLRAA by the then Andhra Pradesh (AP) government in

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2003. This allowed contract labour employment in non-core and even in core economic activities under some conditions. However, despite the pressure exerted by the employers' associations in other states to "imitate" the "AP Model," no reforms took place. Meanwhile, Karnataka, in a bid to facilitate the ease of doing business, rationalised bureaucratic procedures concerning starting of business, including those related to labour. Punjab, Gujarat and Maharashtra introduced the 'Self-certification' system, under which, firms can opt for self-declaration of compliance of labour laws. This particular category of businesses will be inspected once in five years.

Substantial liberalisation of labour inspection and simplification of labour bureaucracy measures were introduced in special economic zones (SEZs), information technology (IT) and IT-enabled Services (ITeS) and bio-tech industries in many states. Several declared them as "public utility services" under the IDA which

made legal striking virtually impossible. Thus, the first wave of reforms signalled that "regional spaces" will be major sites of reforms.

The NDA-2 government, under the leadership of Narendra Modi, came to power in 2014. The industry was buoyed with a huge anticipation of labour law reforms. It has not been disappointed though the reforms process has not been as smooth as was expected.

The second wave of reforms again took place at the regional spaces. The Rajasthan government kickstarted the 'hard' reforms --- affording labour flexibility (hire and fire) and removing many small establishments and contractors from the purview of labour laws, as the Factories Act, the CLRAA and the IDA were amended. Several states imitated Rajasthan, referring to the reforms process as the 'Rajasthan Model.' Several state governments, such as Haryana, Assam and Jharkhand, have carried out reforms either partially or like Rajasthan.

The Third Wave of reforms have been taking place at the national level, though haltingly. The central government has initiated some innocuous reforms of registration procedures and firm compliances in the central sphere (Shram Suvidha Portal) and has randomised the inspection system in it. On the other hand, since April 2015, the Government of India has been preoccupied with the Codification of the so-called numerous central labour laws into four Codes, *viz*. Code on Wages, Code on Industrial Relations (CIR), Code on Occupational Safety, Health and Working Conditions (OSHWC) and Code on Social Security (CSS). The Parliamentary Standing Committee (PSC) has submitted its Reports on CIR and OSHWC while its report on CSS is pending. The Code on Wages was gazetted in August 2019 but the Rules under it are still pending. Hence this Code has not come into effect at the time of writing (July 2020).

Despite a plethora of labour laws and regulations as well as a robust institutional framework to govern the IRS and the labour market, things don't seem to look very upbeat for the worker. Either these laws cover few workers or even if they do, they are not effective.

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Today, the world is battling one of the worst pandemics in history. Simultaneously, the COVID-19 virus has exposed extreme vulnerabilities of many labour laws and administrative systems, especially related to precariously placed workers like migrant labourers across multiple sectors and daily wagers.

Make no mistake. Social security for unorganised workers, unemployment allowance/ insurance, right to work in both rural and urban spaces, among other rights, are the need of the hour. In fact, the best reform right now is to implement the unfulfilled labour laws, rather than bring in massive relaxations in that domain.




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# THE HEAVY BURDEN OF MIGRATION

When the lockdown was announced on March 24 to prevent the spread of the coronavirus, migrant workers in towns and cities across India saw their lives upended.



The loss of livelihoods loomed large, as did mounting food insecurity. Home, in distant villages, seemed the only way out of a life suspended in the thin air of grave uncertainty and biting hunger pangs. So, they began their long journeys, frequently on foot, and occasionally by any vehicle that came their way, to destinations that lay hundreds of kilometres away.

With mountains of luggage on their heads, men, women and children trudged through highways, braving adversities of nature and fate.

Here are a few snapshots of those moving feet --- on the roadsides of Faridabad and at a bus stand in Agra--- telling stories of deep distress and anguish.

Photographs courtesy: Amitesh Kumar/The Lallantop









