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The Need v. The Reality

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ABSTRACT

The lockdown imposed due to Covid-19 has had severe after effects. India faces a steep downfall in the economy, and a surge in unemployment which is at its highest in many years. To counter this situation several states promulgated ordinances which seek to suspend most of the Labour laws.

This paper discusses the economic and legal aspects of these ordinances. The government used the pandemic as an opportunity to remove these laws which from the industrialists' perspective are the most desirable of laws to get away with.This action of the state exhibits its inability to interpret their duty to safeguard the rights of labour, who are the most vulnerable in this pandemic.

This paper discusses the economic aspects of this step, why there was a need to bring these changes, what changes the government brought in and whether or not they are suitable for the situation to be tackled. The articles shows that the objectives these steps seek to achieve would not have the impact as intended.

This paper further discusses the legal aspects of these changes and how they violate the fundamental rights of the labourers. The labour law were brought in after years of struggle and have been removal by a single step of the state. This article argues how DPSPs must be regarded as equally fundamental in interpretation of meaning and content of fundamental rights and enlightens how right to work is deeply ingrained in the right to livelihood thereby right to life.

This article shows precipitous nature of state's action, which is evidently violating the DPSPs and other fundamental rights of labour. So, it is profoundly recommended that replacement of rights should be implemented rather than removal of rights which would lead to injustice.

I. INTRODUCTION

Amid this pandemic Covid -19 we are facing another imminent danger looms large over us in the form of an economic crisis.

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The severity of this crisis is unknown for now but the prediction and possibilities continue to worsen by the day. With an aim to put the economy back on track and slow down the downfall, the government of different made major changes to the labour law of their states, U.P., M.P., Gujarat being some of them. The changes in labour laws of U.P., Gujarat, were particularly shocking considering how all the labour laws except a few have been removed.

The government claims to be taken these steps in view of the falling economy and is looking for investments. While these steps may or may not guarantee investments or a revival of our economy, what is clear here is that the labourers are not being considered to be a part of this economy, rather they are a resource which has been made free to be exploited without any control measures.

II. ECONOMIC ASPECTS OF THESE ORDINANCES

(A) THE NEED

State governments are now concerned with the revival of economy and due to this lockdown there is spike surge in unemployment rate shot up to 27.1% in the week ended May 3.According to data released by the Centre for Monitoring Indian Economy(CMIE). This data shows us that it might get worse as this lockdown continues to get prolonged, initially it hurts the most vulnerable labour that is informally employed in unorganized sectors but now it is hitting the most secured jobs also. The start-ups have already announced the lay-offs and industry associations have warned about job losses.These are nowmore than mere warnings as it is now palpable.

(B) THE GOVERNMENT'S ANSWER TO THE NEED

Under the compulsion of stabilizing the falling economy, Uttar Pradesh government promulgated an Ordinance "Uttar Pradesh Temporary Exemption from Certain Labour Laws Ordinance,2020". This ordinance seeks to suspend allcentral labour laws except Bonded Labour System (Abolition) Act, 1976, Employee Compensation Act,1923 (statutory liability upon an employer to discharge his moral obligation towards employees when they suffer from physical disabilities or diseases, in hazardous working conditions), Building and Other Construction Workers Act,1996 and Section 5 of Payment of Wages Act, 1936 (ensure timely payment of daily wages). The ordinance seeks to attract more Foreign Direct Investments, benefit the existing industries and factories and one of the crucial is to provide new job opportunities to the migrant workers who have migrated back to their states during this pandemic. It has been argued that this ordinance would provide flexibility to the existing industries and also enthuse new domestic investors in the market.

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This ordinance has been promulgated not just to overcome these pandemic caused situations but also as a good opportunity to entice the US,UK based firms which seek to move out of China.Since India has one of the cheapest labours, it would be a better substitute for the relocation of these firms. To woo these firms, the state has suspended these laws.

(C) DOES THE GOVERNMENTS ACT REALLY ANSWER THE NEED?

A World Bank survey in 2014[3]mentioned that one of the primary factors that impede investments include restrictive labour laws, absence of state-centre co-ordination, lack of institutional reforms, land acquisitions and environmental clearances. The variability in labour laws across states leaves a high degree of discretion for interpreting these laws. These leads to corruption and "Inspector-Raj" because of which owners of firms become the vulnerable targets. The state governments seek to remove these impediments.

Whether the labour laws are an impediment to the progress of the industries, the answer to this is "indecisive" because research studies on each sides which vindicates that the employers did not rate labour law regulations as [among] the top five or ten impediments. Rather availability of workforce of skilled labour and cooperative labour-management alliance were far more imperative than resilient labour laws. So the profound innuendo of these labour laws (changes) is that it will create industrial dissatisfaction, unrest in labours, which would smother any idea of achieving the planned industrial targets.

As we know that these states remain, what economists call, labour surplus states. These labour surplus states should have to protect the labours rights instead of suspending them because at the end of labour spectrum where education is not a primary requirement, usually there is surplus supply of labour which provides more haggling power and exploiting opportunities to employers. So its obligatory on behalf of the state to safeguard the interests of the already exploited labour through legislation because the market does not give them the necessary protection. Instead the states are making efforts to take away the bare minimum protection that the labours are getting from the statute. This visualizes the arbitrary and unreasonable exercise of discretion while promulgating the ordinance. In Onkar Lal Bajaj v. Union of India, "it has been stated that the fundamental principle of governance in a civilized society is based on rule of law, which should be tested on the touchstone of justice, equity and fair play and must create an impression that the decision making was motivated by the consideration of probity. If the decision making is not based on justice, equity and fair play

[3] World bank survey 2014

then that decision cannot be allowed to operate." [4]

The argument that these laws act as constraints to the economic growth of the industries cannot be given weight because the employers will always want to have a loose hand in administering labor alliances, setting up wages, conditions and so forth. That is similitude of how capital-labour relations work, that's why state has obligation to provide equal opportunity and regulate as no injustice could be done.

The answer to the question whether the measures will be beneficial cannot be ascertained currently. "The well-known things that act as constraints on job creation [include] the overall health of the economy, the level of demand in the economy, people's purchasing power, increment in wages, stability of the business climate, export conditions, consistent government policies,whether the state can be trusted by businesses to deliver on its promises? All of these macro policies, industrial policies, trade policies govern the climate of job creation, in addition to the overall health of the economy. If none of that is in place, a simple tweaking of the labour laws basically worsens working conditions and doesn't achieve much."[5]

Diversity of employers is also a fundamental issue, where we differentiate among large industries, MSME's and very small workshops. They all experience labour regime differently and there are possibilities that because of the loopholes in laws bribes have been extracted and this makes the life difficult of employers but that doesn't mean that state would withdraw all basic rights of the labours. They need to change the procedural way of inspection and should come down on them on some pretext or other.

All these laws are only applicable to formal organized sectors which are registered.Around 90% of Indian labour are working in informal unorganized sector and these laws do not effect these people in anyway.The act of the states goes against the Basic Structure of our constitution which says that ours is a 'SOCIALIST' country and this move of state governments is against the very soul of our constitution. There has to be a more profound understanding of barriers of labour laws and what can government do to solve and simplify the intricacies of the law, while not going beyond a non-negotiable floor.

III. DENYING OF THE RIGHT TO LIFE

The workers have been ditched by their own employers, contractors and by the state itself. Revival of businesses is indeed a key objective to be achieved, however it is amoral and

[4] Onkar Lal Bajaj v. Union of India, (2003) 2 SCC 673 (India)
[5] Sheshadri Suresh, Are India's labour laws too restrictive?, THE HINDU, May 15, 2020, at 9.

unethical on the part of these states to exempt from some of fundamental labour laws which are direly needed by them (labourers) during this time of crisis where market is necessarily not in a position to protect them.

(A) Is There A Right To Work?

Though right to work was not declared a fundamental right due to economic constraints, right to work for a worker is a means to development and source to earn livelihood. "After an appointment to a post or an office, be it under state, its agency, instrumentality, juristic person or private entrepreneur, it is required to be dealt as per public element and to act per public element and to act in public interest and assuring equality, which is genus of article 14 and all other concomitant rights emanating therefrom are species to make their right to life and dignity of person real and meaningful. In a socialistic democracy governed by the rule of law, right of the citizen to development and his right to employment and his entitlement for employment to the labour, would all harmoniously be blended to serve larger social interest and public purpose."[6] By infringing the right to work of labour by the state concomitantly violating the right to life, which is fundamental right provided in our constitution.

The suspension of the Industrial Disputes Act, 1947 by U.P. ordinance, would allow employers to recruit or fire employees at their will, however, even now employers are allowed to give "fixed term" jobs without any limit on the number of renewals. Hence firms will hardly face any problem in dealing with workforce. Thus, after an organized abandonment ofunorganized workforce, this will lead to informal indenture labour workforce, and it will not provide the labours equal platform to negotiate with the employers as it was stated in "Glaxo Laboratories v. The Presiding Officer, Labour (1983)[7] the developing notions of social justice and the expanding horizon of socio-economic justice necessitated statutory protection to the unequal partner in the industry namely, those who invest blood and flesh against those who bring in capital. The movement was from status to contract, it being not left to negotiated by two unequal persons but statutorily imposed." [8]

It is not only the when the satisfaction of physical needs but the demands of spirit coexists then only there will be true efflorescence of the human personality. When the constitution assures dignity and right to livelihood the exercise of the power by the executive should be cushioned with safeguards for the rights of the employees against any arbitrary and capricious use of those powers. The right to life comprehends something more than mere

[6] Air India v. United Union Labour, (1997) 9 SCC 377 (India)
[7] Glaxo Laboratories v. The Presiding Officer, Labour, (1984) 1 SCC 1 (India)
[8] Vaigai R. and Mathew Anna, Stop the return to laissez-faire, THE HINDU, May 15, 2020, at 9.

animal existence i.e. dignity of the individual. The right to life also includes right to livelihood, so it cannot be left on to the fancies of authorities. " Income is the foundation of many fundamental rights and when work is the sole source of income, the right to work becomes as much fundamental. Therefore before depriving an employee of the means of livelihood to himself and his dependants, the procedure prescribed for such deprivation must be just, fair and reasonable but not fanciful, oppressive or at vagary under article 21 and 14."[9] If employers will get the authority to "hire and fire" without any prevention to the employees, from the State, it'll be on whimsical arbitrariness of employers in firing or hiring them and this would violate the right to life of laborers and their dependants, because earning of the labor includes and affects the lives of dependants thereby right too. It is an affirmative obligation of the state to protect the fundamental rights of the individuals.

(B) MINIMUM WAGES

Additionally the U.P. ordinance has exempted the employers from the Minimum Wages Act, 1948. Minimum Wages Act regulates the minimum wage below which it is not possible to subsist in day to day life. Minimum Wages Act is further enactment of Directive Principles of State Policies and prevent the right to life and the right against exploitation under article 21 and 23. Suspension of this law shows precipitous nature of state which is evidently violating the Directive principles and other fundamental rights.

The Code on Wages Act, 2019 introduced by the Ministry of Labour and Employment, has made a distinction between national minimum wage(NMW) and national floor wage(NFW). The bill ensures that an unskilled labour would be provided with national floor wage for "any employment other than that covered in the Schedule of Minimum Wages Act". This was done on purpose because when NMW in 2018 was 375 per day, NFW was just 176 per day. However, state governments were directed in Code Wages Act, to impose minimum wages above NFW only. Thus states which are enticing the private investments and FDI's would obviously use the NFW and it would lead to dilution of the idea of National minimum wage and deprive them from employment in sufficient conditions. This would completely infringe the right to life enshrined in article 21 and also goes against the directive principles in article 38, 41 and 43 which insists state to secure a living wage and a decent standard of life to all workers. As it was stated in Olga Tellis v. Bombay Municipal Corporation, "the principles contained in article 39(a) and 41 must be regarded as equally fundamental in interpretation of meaning and content of Fundamental rights.If there is an obligation upon the state to provide

[9] DTC v. Mazdoor Congress (1991) 1 Supp. 600 (India)

an adequate means of livelihood and right to work, it would be sheer pedantry to exclude the right to livelihood from the context of the right to life. But, if any person, deprived of his livelihood except according to the "just and fair" procedure established by law, can challenge the deprivation as under article 21".[10]

(C) HINTS OF BONDED LABOUR?

If you assimilate the consequences of all the moves, you would analyze that while the state is keeping the Bonded Labour Act, they have exempted the Minimum Wages Act.The rationale behind keeping the Bonded Labour Act would be futile. Hypothetically, if an employer gives Rs.100 per day for eight hours of work according the Act and if the Act will not be there, what will hinder the employer from giving only Rs. 50 per day and also there will also be no countermeasure provided by the law. The ramifications of suspending Minimum Wages would absolutely lead into situation of bonded labour. Jurisprudence of India recognizes that any payment lower than minimum wages would amount to a situation of bondage. In judgement of Supreme court on bonded labour , the Bandhua Mukti Morcha v. UOI, " judgment of 1984 says that any payment below the nominal wages amounts to a situation of bondage"[11] and what surprises most of all that this bondage situation is created by the State. The only remedy labour had was that they could register a complaint against the employers and would had been got ten times the amount if his minimum wage was denied, now all that seems to be erased by suspension of Minimum Wages Act.

It is a matter of fact that after this economic crisis, most of the workers of unorganized workforce would be truly content to work at any price provided to them. This is because these people are of the fourth spectrum, who work to provide food to himself and people dependent on him and not to maintain their living standards. But the matter of the fact is that this is a mass exploitation of laborers organized by State, which has an obligation to safeguard their rights and also provide them the adequate means of life and livelihood.

(D) DIRECTIVE PRINCIPLES OF STATE POLICY

The removal of these laws is violative of almost all the Directive principle in the constitution. The directive principle which have been violated are: the right to livelihood, to prevent concentration of wealth, equal pay for men and women, preserve the health and strength of workers in wake of economic necessity, right to work, right for just and humane conditions for working, maternity relief and right to living wage.

[10]Olga Tellis v. Bombay Municipal Corporation (1985) 3 SCC 545 (India)
[11]Bandhua Mukti Morcha v. Union of India, (1991) 4 SCC 174 (India)

The Supreme Court held in Y.A. Mamarde v. Authority under the Minimum wages act that "The object of the act as stated in the preamble is to provide for fixing minimum rates of wages in certain employments and this seems to be clearly directed against exploitation of the ignorant less organized and less privileged members of the society by the capitalist class."[12] The removal of laws which are directed against exploitation is nothing but an act that aids exploitation itself.

About equal pay for equal work, the Supreme Court held in State of Punjab v. Jagjit Singh that "An employee engaged for the same work cannot be paid less than another who performs the same duties and responsibility. Such an action besides being demeaning, strikes at the very foundation of human dignity."[13]

By removing these laws the government is undoing years of work that the labourers fought for. It is true that the directive principles are not enforceable but undoing years of work and working exactly opposite to these principles cannot be considered constitutional.

Removal of labour inspection laws

Amongst the removed laws is the Factories act,1948. This law deals with the approval, licensing and registration of factories. The job is done on the ground by labour inspectors, conditions of whose appointment, duties and powers are given in the act. The act ensures the basic requirements of working conditions that the factories are supposed to follow. These include conditions for health, cleanliness,ventilation, temperature, overcrowding, lighting, drinking water, and safety. The removal of laws as basic as these show how arbitrary an action this is.

Why and how has such a need arisen that the government have to fear and outright remove the licensing and inspection laws of the working conditions. The government claims this to be a step towards the end of "inspector raj".

The *inspector raj* that the government seeks to remove is so badly afflicted and indulged in corruption that the simple existence has become a trouble for industries. But instead of putting appropriate checks at place , the government has eased and removed the labour inspection laws (inspection to be made in 3 months instead of every month) to such a extent that their existence has become pointless.

Increase in working hours

The governments of Uttar Pradesh, Madhya Pradesh and Gujarat formulated a plan to give

[12] Y.A. Mamarde v. Authority, (1992) 2 SCC 108 (India)
[13] State of Punjab v. Jagjit Singh, (2017) 1 SCC 148 (India)

impending force to businesses and industries by authorizing them to embark the work without many requirements of the Factories Act, working hours had been extended to 12 hours, instead of 8 hours and weekly duty up to 72 hours. It has been argued that this would address the problem of labour shortages. While working hours had been increased, no provision for the overtime wages had been prescribed by MP and Gujarat (although such provision are there in several other states). This was challenged in the Allahabad High Court by a petition from U.P. Workers Front. Considering the negligible chances of this move not being declared unconstitutional, the U.P. government informed the court that the notification to increase working hours had been withdrawn.

Taking advantage of the health crisis

The central government had been hinting the need for the changes in labour laws for the past 6 years citing that the laws were antique and a hindrance to the economic growth of the country. The health crisis has been used as an excuse to bring forward the measures in one go. The trade unions were not able to gather laborers due to lockdown to protest and the mainstream media has also been passive about these measures. These measures were what the employers association had been dreaming for years. They have been given the license to do whatever they want to. They do not have any obligation to pay the laborers anything more than the minimum wages. They don't need to adhere to the wage related obligations under the existing collective agreements. They don't need to adhere to social security obligations.

The removal of the labour laws also means that the laws which were as basic as providing basic amenities like their safety, pure drinking water, washrooms etc will become dysfunctional as well. The employers are under no obligation to provide these basic amenities.

The flexibility that the employers have got due to these changes mean that they can hire and fire the workers at will and can engage contract workers for any kind of work to run their establishments.

The changes mean that the laborers do not have access to any redresal mechanism if there rights are violated. No new trade unions can be formed for the next 3 years.

IV. COMPARATIVE STUDY OF LAWS

Measures taken by other countries

Governments of different countries are trying to give stimulus to the companies to soften the impact of the economic downfall. U.K. rolled a job retention scheme in which the

government would pay 80% of a worker's salary upto 2500 pounds per month, hence shielding the companies from the economic shock and thereby allowing them to retain their workers. A similar scheme has been introduced by Ireland and Denmark by paying upto 75% of the wage bill.

While measures like these are difficult to be rolled out in India, it's the attitude that needs being pointed here. The state governments are doing quite the opposite of helping workers, rather they are facilitating the environment for the companies to fire the workers at their will.

Brazil, which has more similitude to India in labour conditions and laws and also regarded as a labour surplus country like ours, has made some changes in regard of Covid-19. The Senate of Brazil has assented to a bill which dispenses for the granting of an aid of US$ 116 to workers of informal sector and US$ 232 to mothers, who are responsible for supporting their family. Consequently this would cost them around US$ 8.5 billion, which can be regarded as a respectable grant by the, economically weaker country, Brazil. They have come up with a provisions like the proportional reduction of working hours and wages and temporary suspension of employment contract. In the event of proportionate reduction of working hours and wages will be paid by the federal resources under The Emergency Employment and Income Preservation Benefit.

This study helps us to understand that even the approach of our government is not leaned towards the amelioration of conditions of labourers in this financial and health crisis, where they are most vulnerable in the spectrum of the society.

V. CONCLUSION

It cannot be denied how changes as massive as these have been downplayed by the media and the respective governments. Being brought while the nation and the world faces the coronavirus has kept it away from attention it deserved. The changes were abrupt and no public discussion prior to their announcement had taken place. The changes are heavily tilted in the favour of the industries and employers and stands in violation of the basic rights of the labourers.

REMOVAL OF LAWS INSTEAD OF REPLACEMENT

The arguments which were put forward by the state governments were the rampant corruption in labour inspection and the laws being an impediment to the growth of industries. The arguments undoubtedly are correct, but removal of almost all the laws to counter corruption shows how these governments have acted as a novice in handling this situation. If

the aim is to bring in investments into the state, the government should try making better laws or put more focus on a better implementation (placing checks in place to remove corruption in labour inspection). The outright removal of those laws can only result in anarchy.

NEGOTIATIONS WITH TRADE UNIONS`

The trade unions reacted heavily to these changes by requesting ILO (International Labour Organization) to intervene in the matter. India, being a signatory to ILO's convention, has to fulfil there obligations. Given the scale of these changes, the trade unions should have been taken into confidence and tripartite consultations should have taken place. An agreement over many things could have been discussed be it concession in terms of deferring increments, wages to be paid for overtime or maybe even a structured lay off system. Had things gone wayward and trade unions refused and there had been unreasonable demands then maybe a few actions could have been taken.

BASIC AMENITIES AND RIGHT TO DIGNITY

The government is acting like the laws were providing some sort of luxury to the labourers that the state can no longer afford but these laws are the most basic needs. The removal of these laws may make the utopian dreams of the investors true but it only means dystopia to the labourers.Its high time that the basic amenities of the laborers be considered an indispensable right that cannot be ignored or mishandled. How can the state think that laws ensuring safe and healthy working condition for the laborers are an impediment to the growth of industries, Enforcing these laws protects the right to dignity of laborers.

SETTING UP A COMMISSION TO RECOMMEND THESE CHANGES

The changes were abrupt and arbitrary and seek to remove an impediment that does not exist or the size of which has been misjudged. A commission is required to be setup to ascertain what inhibits the growth of industries and how do the labour laws affect this growth.

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