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“Dharma is to protect the Needy”

Article on
LABOUR RIGHTS AND EFFECT OF COVID-19 PANDEMIC

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Abstract-

Labour rights or worker's rights are human rights as well as legal rights which shows interrelation between employer and employee. In a traditional sense, these labor rights impact the working conditions and environment in relation to employment. No one, especially the employers, are allowed to exploit the workers in any way or other, or just to get out of a more profitable or successful business. Thus, we have a responsibility, morally and legally, to preserve them.

The foremost responsibility of the Ministry of Labour & Employment is to defend and secure the interest of the laborers and to provide them with a healthy working environment, just to create a sense of higher production and productivity. And to coordinate the skills, knowledge and services.

In compliance with privatization and liberalization, the ministry's motive is to promote welfare and provide laborers with social and health security in both sectors, formal and informal. These aims can only be achieved by the proper and adequate implementation and functioning of several labour laws, which connect with the wants and demands of the labour sector.

Accordingly, the Ministry has constituted a board, named National Social Security Board, which suggests the formulation of social security policies and schemes respecting life and disability, old age protection, health benefits, economical assurances, maternity reliefs and benefits, etc. The Ministry also aims at eradicating child labor throughout the country, as it is a black mark on our nation.

Labour, being a subject matter of concurrent list under the Constitution of India, is authorizing both Central and State governments to enact legislations, for their growth and development. During the period of COVID-19, many states have revised their labor laws to provide better governance and proper follow up of social distancing policy.

In this article, we will talk about the background of labor legislation and rights of labor given to him under the Constitution and other statutes. Then, how COVID impacted laborers and their families. And various orders and notifications announced by the State government during this period for the safety and security of the workers.

Labour Rights and Effect of COVID-19 Pandemic

Labour is the precious, valuable and useful asset of every organisation whose rights should be secured and preserved. Labour laws are implemented to ensure protection of their rights.

Labour laws are the ones that synchronize the attitude of the employers towards the treatment of the labour force at the place of work.

The law also deals with matters of employment, industrial relations, trade unions, work conditions, wages, etc. In a broad sense, the term includes both social security and health security.

Under the Constitution of India, labour falls within the concurrent list which means both central and state governments have been given the power to make laws on the labour subject. The Ministry of Labour and Employment works for the safety and security of the interest of the workers in general, and the poor, deprived and disadvantaged sections of the society. The Ministry focuses on creating a healthy working environment to enhance production and productivity and to develop and unite ability, guidance and employment.

In India, Labour laws are continuously evolving and aim to sort out the long-term problems, plus to reshape the changing necessities and requirements of labour markets. For instance, earlier the labour law comprises only the most developing and important industries, and afterwards the scope of labour law was elongated to involve other small undertakings, handicrafts, rural industries, agriculture, etc. Also, The 2019 Code on Social Security, incorporates a new category of workers, named Gig and Platform workers, which means someone who takes on hourly and part-time jobs, who were not embraced in any earlier labour legislation.

The International Labor Organisation (ILO) is an agency of the United Nations whose decree is to strengthen social and economic justice by way of situating international labor standards. The organisation truly promotes justice and recognizes human and labor rights internationally, following its founding mission that labour peace is essential to prosperity. The ILO helps in encouraging the formation of decent work and the economic and working conditions that give the working class or business holders a stake in long-lasting peace, security, progress, and prosperity.

The rights of a labour covers a broad dimension, which provides them security against social disruption, economic loss, and political disturbance, etc. that includes:

1. **Freedom to work** - The right to freedom of work portrays the right to be employed, and which also implies the right not to be destitute of employment unreasonably. The laborers have been given the right to be employed in any profession or occupation they wish to, unless given a fair reason as to why they cannot. They can as well choose the place of work, as per their fulfilment of responsibilities and duties.
2. **Freedom to initiate autonomous employment or business** - Article 19(1)(g) of the Indian Constitution, which is a fundamental right, grants upon the citizens the right to make use of any profession, can continue any occupation, trade or business. Means every person can start up any business, occupation and profession of his choice. But this right is not an absolute one, it is limited with some reasonable restrictions imposed by the state.
3. **Right to earn a living** - The right to earn a living is every citizen's right, to fulfill all his basic needs and demands and of his family also. "Earning a living" is a direct sort of "survival". Each person has a right to get free employment service, in which he gets fit for the purpose of higher production and productivity.
4. **Right to safe and healthy working conditions and environment** - In respecting to the right to safe and healthy working conditions, the employer should take up all the essentials to reduce the number of risk of accidents, injury and death, come up with vital protective equipment to ensure safety, provide measures to deal with emergencies, supply adequate sanitary facilities including first-aid arrangements, take remedial measures to prevent laborers from unsafe and unhealthy activities at the workplace.
5. **Right to rest, leisure and reasonable working hours** - In the 19th century, there was a recognition that working excessive hours posed a danger to worker's health and to their families. Rest is as important as work for the overall growth of a person. Reasonable working hours, leisure time and the time to take rest helps in self-development. It is requisite for both the body and mind.
6. **Right to promotion** - Right to be considered for the promotion is the labor's fundamental right, if he passes all the eligibility criteria to be suitable for promotion against any vacancy, if available.
7. **Right not to be arbitrarily dismissed** - Unfair dismissal is an act of employment termination made without good reason or contrary to the country's specific legislation. There are many situations where the employer fires the laborer without any reasonable

grounds or where the termination is irrational or blurred. Personal bias and grounds related to motherhood and pregnancy can be a cause of illegal removal of employment.

8. **Right to be secured against unemployment** - Right to be secured against unemployment explains the duty of the state to manage continuous efforts to ensure full employment. It is the duty of the government to assure that no one dies because of hunger, whose ultimate determinate would be unemployment.
9. **Right to protection against exploitation** - The right to protection against exploitation is enshrined under Article 23 and Article 24 of the Constitution of India, which undertakes the pride, dignity, integrity and protection against any form of exploitation. Article 23 proscribes trafficking in human beings and forced labour. One cannot be forced to recruit in labour without the will of the person, even if the consideration has been given. Article 24 prohibits employment of children in factories and other hazardous industries or mines.
10. **Right to be informed** - The laborers have the right to information about what kind of work they would be involved in. They should have been given the opportunity to take part in the decision making process for the benefit of the business or regarding the business policies. They should have given the information about the particulars and details of the firm or company for the better functioning and coordination.
11. **Right to get proper assistance and guidance** - The employer must give the proper assistance and guidance to the labor, so that they can make good use of the machines and techniques, which results in higher productivity. The guidance has to be provided in a regional or spoken language, so the laborers can understand it easily.
12. **Right to compensation** - The compensation has to be given to the laborers in case of any injury caused to him at the workplace. Firstly, the employer has to keep a check on the activities and functions of the worker and ensure that no one gets into harm of any kind. And if they have to suffer at any point of time because of any injury, they are entitled to compensation by the employer only. The Workmen's Compensation Act, 1923 requires that compensation is paid if workers are injured in the course of employment for injuries, or benefits to dependents. This Act aims at providing financial assistance to the laborers in case of any accidental injury caused to him.
13. **Right to have access to technical and educational training** - Technical and Educational training shall be made generally available to the laborers, which helps them in creating a high standard of thoughts and higher standard of living. This not only helps

laborers but their families as well. All laborers should have equal access to the facilities and training provided to them. The government has to conduct many policies and programs to train the laborers in their field of work.

14. **Right to be included in government policies and programmes** - All the laborers have given the moment to take part in all these government policies. They should have been given a fair chance to indulge in all these workshops and seminars. This practical knowledge and experience is a must for their overall development and which eventually helps in resulting a good output of their knowledge.
15. **Right to equality of treatment and non-discrimination** - The principle of equal treatment is based on to ensure all employees have the right to receive the same treatment and not to be discriminated regardless of a worker's position, age, disability, sex, race and religion. Discrimination based on all these factors can create crucial barricades in the active coordination among the labor force and obtaining suitable work opportunities. However, we all know that equality is not absolute, but here equality means equal treatment of workers at the same position discharging the same duties and functions. Employers are bound by the law to make this equal treatment of workers obligatory in the enterprise or industry. With respecting to the breaking down of these discriminatory hurdles, commence strong non-discriminatory policies and ensure their implementation, accompany with raising awareness and equal access to education and technology, in such a way that no employer or co-worker try to practice discrimination. There should be strict penal consequences for the same.
16. **Right to health security and social security** - Social security is a sound instrument to combat discrimination and an essential tool for reducing poverty and supporting social inclusion. It aims to provide income security and support at every stage of life for everyone, with particular attention to the most marginalized section. Social security plays an important role in reducing and alleviating poverty, preventing social exclusion and promoting social inclusion.

According to the Occupational Safety, Health and Working Conditions Code, 2019, every director or manager of laborers shall warrant that the workplace is free from any menace which causes or is likely to cause injury, hurt or disease to the employees. It is statutory for the employers to make it establish that all the provisions and clauses are duly fulfilled and working of the systems and plants are safe and without any threat.

17. **Right to form associations and unions** - Article 19(1)(c) of the Indian Constitution proclaims that all citizens shall have the freedom to form associations or unions for a lawful person. And as we discussed earlier, it is also not an absolute right, but limited with certain reasonable restrictions. This right certifies that every individual is at liberty to arrange or organize or create or take part in any group or gathering, whether it be formal or informal.

Freedom of association is a very important right of a worker to shield their interests, for the target of negotiating salaries, policies, benefits, schemes, and other conditions of work. It is considered a fundamental right because it depicts the democratic nature of our government and its governance.

Now, as we all are aware about the fact that COVID-19 has attacked all of our lives in every possible sphere. India is a country where the workers or laborers dispense their services and earn a living out of it. COVID-19 has affected these labors to the worst. Not only India, even other nations have seen a downward graph in representing the laborers in the industries and factories. Indian laborers have faced multiple hardships during this heavy period of time.

Millions of laborers had to deal with the loss of income, shortage of food and uncertainty about their future and families, due to the shutdown of the industries and factories with the imposition of lockdown all over the country.

The COVID-19 pandemic and the related policies of confinement such as curfews and weekend detention expresses our poor economic, social and political policies. Our nation is supposed to eradicate poverty throughout the nation while confronting this ongoing pandemic. But all regulations and policies have faced a slipping chart.

The outbreak has dangerously hit the laborers, specifically those who are employing in the informal sector, which pretty much govern like 85% of the total laborers or workforce. However, the government is implementing every possible means to remove this evil of poverty, even in the COVID times. The government has undertaken so many plans and schemes to provide earning to these laborers, so that they can eat and live. The government is taking care of all the basic needs of a common man.

In addition to the laborers, migrant laborers are also facing so many difficulties and challenges during this period. Migrant laborers are the unpretentious and unskilled workers, who provide their services on a temporary and seasonal basis, moving from one place to another in search of work. The United Nations Convention on the Protection of the Rights of All Migrant

Workers and Members of their Families defines a migrant worker as a person who is engaged in a remunerated activity in a state of which he or she is not a citizen.¹

According to the World Economic Forum, there are an estimated 139 million migrants in the country.² It was stated that the migration for work is higher among the inter-state migrants- 50% of male and 5% of females. Movement of females for work is recorded due to family reasons.³

To resolve the grievances of migrant laborers or workers during lockdown, the Ministry of Labour & Employment had set up Control Rooms all over the country. During lockdown, more than 15,000 complaints of the workers were resolved through these Control Rooms and due to the intervention of Ministry of Labour & Employment more than two lakh workers were paid their due wages amounting to about Rs. 295 crores. Per day wages under MGNREGA have been raised from Rs. 182 to Rs. 202.⁴

While the Central Government is engaging in promoting the poverty-ridden nation and even in COVID times, the central government is encouraging the rights of the workers by providing them with all the terms and policies.

Several states in India issued various notifications and ordinances including dispensation from compliance with certain labour rights and laws, to stimulate the growth of the economy amidst the ongoing pandemic.

Rajasthan:-

The Rajasthan State has promulgated a notification for elongating the maximum daily working hours from 9 hours to 12 hours, which implies the maximum weekly work hours has increased from 48 hours to 72 hours, for the period of three months from the date of the issuance of the order, dated April 11, 2020. Certain relaxations have been granted to factories producing essential goods and grocery supplies, so to turn down the requirements of manpower, the

¹ Usher E. Migration and labour. In: Usher E, editor. Essentials of migration management: a guide for policy makers and practitioners. Geneva: United Nations Publications; 2004.

² Sharma, Krishnavatar (2017). World Economic Forum.

³ Report of Working Group on Migration, Ministry of Housing and Urban Poverty Alleviation, January 2017, <http://mohua.gov.in/upload/uploadfiles/files/1566.pdf>.

⁴ PIB Delhi (2020). Ministry of Labour & Employment. <https://pib.gov.in/PressReleasePage.aspx?PRID=1654819>

Rajasthan Government has discharged the provisions of working hours of adults under the Factories Act, 1948, and conditions were also laid down. Additional four hours per day shall be required to get an overtime pay.

Gujarat:-

The State of Gujarat has issued a notification exempting all factories under Factories Act, 1948, from several provisions, such as no adult worker is allowed to work in the factory for more than 12 hours, which is earlier than 9 hours, that means 72 hours in a week. Wages shall be in proportion of the existing wages. No female worker is required to work between 7 pm to 6 am, in a factory. The time period is three months, with effect from April 20, 2020.

Madhya Pradesh:-

The government of Madhya Pradesh has, likewise, also amended Madhya Pradesh Labour Laws Ordinance, 2020. The Ordinance elaborates the suspension of provisions of the Industrial Dispute Act, 1947. The exemption is pertinent for a period of 1000 days, subject to the conditions applied.

Moreover, the notification excused or exempted the factories from the provisions of the Factories Act, 1948 and MP Factories Rules, 1962 for a period of three months from the issuance of the order.

Himachal Pradesh:-

Himachal Pradesh has announced on April 21, 2020, to exempt all factories registered under the Factories Act, 1948 from provisions relating to weekly, daily, spread hours and interval of rest until the period of three months starting from the announcement of the notification, respecting certain conditions. Increment in working hours for the adult workers from 9 hours to 12 hours, means from 48 hours to 72 hours in weekly working hours. Wages shall be given to workers in proportion to the existing minimum wages decided under the Minimum Wages Act, 1948, by the government of Himachal Pradesh. The worker is not allowed to work for more than 6 hours before he has had an interval for rest for half an hour. And female workers should not be allowed to work in any factory between the times of 7 pm to 6 am. Overtime pay shall continually be applicable for earning overtime wages, without any change in this respect.

Kerala:-

Kerala Government has declared another possible modus operandi to boost the economy of its state. The payment of wages of contractual, casual, daily emolument and outsourced staff were extended till May 17th, 2020. The new factory setups would be furnished only with their Industry License which should be issued within a week's time.

Uttar Pradesh:-

The government of Uttar Pradesh has suspended nearly all labour laws and rules under the State, for all factories and establishments engaged in the manufacturing process, for a period of three years. The Ordinance named as The Uttar Pradesh Temporary Exemption from Certain Labour Laws Ordinance, 2020. It also increased the daily work hours for adults from 9 hours to 12 hours, which suggests the maximum weekly working hours as 72 hours from 48 hours.

Whereas, exemptions are yet put through various conditions which are as follows:-

- No laborer shall be paid any less than minimum wage as prescribed by the UP Government.
- The salary or wages to the workers shall only be given in their bank accounts.
- The provisions of the Factories Act, 1948 and the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 relating to safety and security of workers shall remain applicable.
- The Workmen Compensation Act, 1923 still applicable, which means compensation shall be given to the employees, for any death, injury, harm or disability because of an accident arising out of or in the course of employment, by the employer.
- The provisions of the various labour laws relating to the employment of women and children shall abide by the State, even in the pandemic times.
- The provisions for abolition of Bonded Labour System Act, 1976 shall remain applicable.

Uttarakhand:-

The Government of Uttarakhand has also relaxed some labour laws. All the factories in the state are exempted from the Factories Act, 1948, for a period of three months with effect from April 21, 2020. The industries and factories are allowed to perform its functions during the lockdown, but will have to undertake strict rules regarding sanitization and social distancing, and other safety precautions. They should function in two shifts of 11 hours each with a gap of one hour between the shifts. Maximum 6 days of work in a week. Overtime of 3 hours shall be

allowed and payment for overtime shall be made as per existing rules. And production units are allowed to perform functions in non-continuous process, shall work in two shifts of 12 hours each with an overtime of 4 hours.

Haryana:-

The government of Haryana exempted all factories under the Factories Act, allowing some conditions for a period of two months. They have increased maximum working hours per day from 9 hours to 12 hours. The overtime wages shall be paid under the Factories Act itself. The State has issued instructions for strict adherence to the notification issued by Central and State government regarding COVID-19 including social distancing, sanitization etc. in compliance with working hours.

Punjab:-

The State of Punjab was the first one who put up a contrary order, by declaring a hoist in minimum wages to each worker. In order to overcome the crisis, the state government has to invalidate the order over demands from industries and factories. Then, the State has revealed that all the factories registered under Factories Act, shall be exempted, subjected with conditions for a period of two months. The daily working hours of workers have been increased to 12 hours from 9 hours. The payment of overtime wages shall be paid under the Factories Act.

This renovation of these labour legislations have seriously urged the factories and industries to back up with their functions but with various conditions applied to them. They must ensure the proper sanitization and social distancing rules and precautions, for the safety and security of the laborers. They are subjected to their wages and salaries along with the compensation as well, according to the orders of the Central and State Government. The orders given by the government are highly criticized by the trade unions and other production companies, who say that these laws are against the standards of labour legislations. But on the other side, these are necessary for the nation's economy, wealth, functioning, growth and governance. If they don't follow these rules, the situation would get worse as they would not be left with any other option and their life and safety would be at risk.