

Employment of Workers Health and Securities in India

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Abstract: The brief of this paper is to analyze the impact of COVID-19 on the workforce of the Indian economy. It, therefore, conceptualizes the notion of labour and probes into labour's substantive and significant role in the functioning of an economy. After reviewing the labour-centric legislations in India (pre-and post-Independence) the paper searches for the common thread that should run through the chronological varied legislations. The paper engages with the anticipated crises that COVID-19 is expected to unleash on the labour force. The paper winds up with the writer's inferences and suggestions.

Keywords: legislation, conceptualizes, labour force, functioning, workforce.

1. Introduction

Labour is not only a primary factor of production but, it is required to activate all other factors of production. The term 'labour' is of wide connotation, for, it not only includes the numbers of people available for or engaged in, the production of goods or services, but, also their physical and intellectual skills, and effort.

The total number of people in a country who are either at work or unemployed but, looking for work, constitute the labour force.

Generally, the labour force could be classified as that section of the people who fall within the age group of 18 to 60 years.

The advent of Covid-19 has irreversibly impacted the lives of all human beings across the globe, and discernibly, the worst being affected by its aftermath is the labour force. Its most recent repercussions are the promulgation of "Uttar Pradesh Temporary Exemption from Certain Labour Laws Ordinance, 2020" introduced under the caption of 'reforms' to exempt all establishments, factories, and businesses from the purview of all but, four labour laws, for three years. Simultaneously, Gujarat and Madhya Pradesh, followed by Karnataka, too introduced ordinances on similar lines.

The justification for suspension is to attract investment and promote ease of doing business.

Soon thereafter, under an Order passed by the Hon'ble Allahabad High Court on a Petition filed before it, the UP Government revoked its notification relaxing certain labour law regulations concerning working hours, rest periods, and overtimes.

The adverse impact of the imposition of nationwide,

worldwide lockdown, could have been anticipated by any person with an ordinary grasp of Economics or world affairs. However, the fundamental question that one could think of, is whether such an ordinance suspending labour laws, leaving the labour force with no security of employment and remuneration is justified by any standard?

It could be argued that due to the force majeure situation, production has come to a standstill, and therefore, suspension of labour laws is inevitable. However, it could also be counter-argued that the situation is temporary and is certain to pass sooner or later. Therefore, the so-called 'reforms' that were otherwise been tabled for a while by the Government, have been introduced with immediate effect as a *carpe diem* opportunity.

The Preamble to the Constitution of India lays down the goals of politico-socioeconomic democracy for the citizens of India.

The framers of the Constitution were conscious of the fact that in a poor country such as India, political democracy would be useless without economic democracy.

Therefore, borrowing the idea from the Irish Constitution, 'Directive Principles of State Policy' were introduced into the Indian Constitution to achieve the amelioration of the socio-economic condition of the masses.

The Directive Principles contained under Articles 36 to 51 lay down-certain socio-economic goals which the State Governments have to strive to achieve; the underlying idea being to usher in social and economic democracy in the country.10 Articles 42 and 43 are labour welfare-oriented. Article 42 requires the State to make provision for securing just and humane conditions of work and, for maternity relief.

Whereas, Article 43 provides that the "State shall endeavor to secure, by suitable legislation or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavor to promote cottage industries on an individual or cooperative basis in rural areas."

Given the aforesaid, this paper, in obiter argues that the move to suspend labour laws is vehemently unconstitutional, apart from being inhumane. An overview of the principles of the Indian labour-centric legislations: Based on the legal principles of welfare orientation of any Constitution, the writer has

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identified the following aspects of work and law, that need to be synchronized.

To work in a conducive work environment, with adequate safety and protective measures, to receive remuneration for services rendered, and compensation in matters of death or injury as a result of the employment, etc., are 'basic human rights, and therefore, The Human Rights Act, 1993 is blanket legislation for human rights violations. Needless to say, notwithstanding, in matters of specific violations, the relevant law would apply.

Remuneration: This refers to the principle of fairness in remunerating the workers for the efforts rendered to generate saleable value.

The Payment of Wages Act, 1936, as its nomenclature suggests, is a statute for ensuring payment of wages by employers to employees within the prescribed time, for, fair remuneration in exchange for the services rendered is a right of an employee and, not an ex-gratia payment that may be expended at the whims of an employer.

The Indian Constitution enshrines precise protections protecting citizens' (and other individuals') rights, as well as the "Directive Principles of State Policy," which states must follow in the country's governance. These Directive Principles aim to protect the health of employees, both men and women, by ensuring that children are not abused when they are young, and that people are not forced to work in occupations that are not suitable to their age or strength due to economic need.

India, like most other countries, attempts to strengthen occupational health and safety (OHS) by enacting legislation that governs the steps that businesses must take. These Acts provide very basic minimum requirements in order to ensure a suitable level of OHS throughout the country. Differences in the administration of the Act between states can be minimised in this way. Another goal of these specific requirements is to simplify the task of inspectors who must inspect factory working conditions, assuming that inspectors have extensive knowledge of the issue.

National authorities do not formulate OHS and environmental policies, priorities, or strategies on their own; they work with social partners, such as employees' organisations, employers' organisations, autonomous and voluntary organisations, the public, and others, to ensure that the set goals/objectives are met. The Indian government is convinced that social justice cannot be accomplished without safe and healthy working conditions, and that achieving safety and health at work is critical to economic progress.

The health, safety, and welfare category of labour law includes general matters such as occupational health and accident prevention regulations and services; special regulations for hazardous occupations such as mining, construction, and dock work; and provisions concerning health and safety risks such as poisons, dangerous machinery, dust, noise, vibration, and radiation. The efforts of organized safety movements and the advancement of occupational medicine have resulted in comprehensive occupational health and accident-prevention services and regulations that cover the full range of dangers posed by modern industrial processes, rather

than just a few particularly acute risks. Increased worry about the widespread use of chemicals, as well as increased provision for welfare amenities associated to employment, such as food, rest, recreation, and transportation, are two major trends.

A. COVID-19 on the Labour Community and Survival

The lockdown has led to revenue and job losses as several small and medium enterprises are on the verge of shutting down. However, work-from-home compulsion has benefitted several sectors viz., healthcare providers, pharmaceutical and medical equipment start-ups, messaging platforms, edtech companies, tech-based start-ups, digital start-ups.

Although India has several labour-centric legislations in place, one wonders whether it will withstand the barrage that has been unleashed by the Covid-19 pandemic. The crises that are unfolding are lockdowns causing the substantive reduction in revenue flow across all companies; the consequent laying off of workers which further aggravates the lack of demand revenue for companies; the phenomena of returned migration which will not compel the states to which these migrants have returned to make arrangement for productive employment. The recently announced special economic Covid-19 package by the Union Government has been critically reviewed by social activist Harsh Mander and economists Dr. Prabhat Patnaik and Dr. Jayati Ghosh. According to them since the package is driven by credit (with a 100% GoI backing) to the Micro, Small, and Medium Enterprises (MSMEs) and street vendors, accessing credit would be a cumbersome process and if it is not obtained, businesses will not start and the entire set of labour legislations mentioned above would be infructuous for the working class [1]. If the package were cash-based, then, there would have been an immediate restarting of businesses resulting in continuity of employment of usual or alternative employment. In this scenario, the working class would benefit from the provision of the labour laws. Pratap Bhanu Mehta (2020) echoes a similar sentiment, that the Government should invest in regulating basic necessities such as environment protection, worker safety, hazardous industrial activities, and basic rights. Labour laws should protect the core interests of workers, respect their bargaining power, and at the same time rescue distortions in capital allocation [2]. No country can develop [if it] does not invest in the human capital of its citizens, [if it] does not increase the share of labour in the country's wealth, and does not get the balance between capital and labour right.

B. Code on Occupational Safety, Health and Working Conditions, 2020

1) Hours of work and working conditions

Daily work hour limit: The 2019 Bill gave the competent government the authority to notify workers of their maximum daily work hours. The maximum restriction is set at eight hours each day in the 2020 Bill.

Women's employment: The 2019 Bill gave the competent authorities the power to prohibit the hiring of women for harmful operations. The 2020 Bill stipulates that women will be permitted to work in all businesses and in all types of jobs. It further states that if they are obliged to work in hazardous or

risky operations, the government may order the company to establish necessary precautions before hiring them.

2. Criticism

For the promotion and protection of employees' welfare, India has adopted a vast number of labour laws. Most of these labour regulations, however, simply appear to be beneficial on paper because neither employees nor their representative unions are fully aware of their implications or take use of them. As a result, despite thorough legislation, India has a high rate of accidents. One of the reasons for this failure is a lack of enforcement; any law would be ineffective in such a situation. It has also been noted that the number of health and industry inspectors in India is insufficient. Regular visits to organizations/companies are unable to perform due to a lack of staff. Furthermore, inspectors only respond when complaints are filed or incidents are reported. In addition, the inspectors are ill-equipped to deal with a complaint or an accident.

The inapplicability of centrally designed regulations to local settings is another important reason for industrial OHS levels that are unsatisfactory. Legislation is either unconnected to the threat or fails to account for unique work settings. Workplaces obviously differ from one another. Legislation that ignores these variances puts exorbitant expenses on some workplaces, while others, despite meeting the rules, remain dangerous. Furthermore, the sanctions imposed are insignificant. Inspectors are torn between being overly soft on businesses and causing them to fail. The inspector would assess not only the health of the employers, but also the security of their workplaces, especially in poor areas where unemployment is a major factor. As a result, the estimated costs of noncompliance with the law (the product of the fine and the likelihood of being convicted) would be minor in comparison to the costs of changing working conditions.

Finally, enacting legislation in response to rapidly evolving technologies takes time. Laws are only enacted when serious safety issues have arisen. As a result, they are always a few years behind when hazards materialise. Because the organised sector employs just a tiny portion of the Indian labour, the legislation does not necessarily apply to a greater portion of the workforce. Perhaps, in the context of Indian settings, OHS risks can be addressed by financial incentives. In this area, economic incentives have significant advantages over restrictions.

1. Firstly, it takes time to adapt the laws to new dangers. Economic incentives apply to both new and existing hazards.
2. Second, economic incentives focus on the end of OHS rather than the process. Regulations outline specific methods that are meant to be effective.
3. In countries like India, where existing labour rules are not strictly enforced, businesses often disregard OHS regulations. Market signals must be taken seriously [3].

A. Key Issues in the Industrial Relations Code, 2020

1) Strikes and lock-outs may become difficult for all establishments

The 2020 Bill mandates that all parties give 14 days' notice

prior to a strike or lockout. This notice has a maximum validity of 60 days. Strikes and lockouts are also prohibited under the bill: I during and up to seven days after a conciliation hearing, and (ii) during and up to sixty days after tribunal proceedings. This could affect workers' capacity to strike and employers' ability to lock out workers [4].

Before a strike or lockout, the Bill mandates advance notification, which must be sent to the conciliation officer within five days. Strikes or lockouts will be outlawed throughout the conciliation process, which will begin immediately. If the conciliation fails and either party files an application with the Tribunal, the strike or lockout restriction period would be prolonged further. This period of time could extend beyond the notice's 60-day validity period. As a result, these limitations may limit the ability of a strike or lockout to take place on the specified day in the notification.

2) Power to government to modify or reject tribunal awards

To resolve disputes under the 2020 Bill, Industrial Tribunals and a National Industrial Tribunal would be established. It indicates that a Tribunal's decisions are enforceable after 30 days have passed. The government, on the other hand, has the authority to postpone the award's execution in certain circumstances, such as when it affects the national economy or social justice.

3) Provisions on fixed term employment

Fixed-term employment is addressed in the 2020 Bill. Fixed-term employment refers to workers who are hired for a set period of time under the terms of a contract signed by the employee and the employer. In 2018, provisions for fixed-term employment were made for establishments in the central sphere. The benefits and drawbacks of establishing fixed-term employment are discussed below [5].

Fixed-term employment may give firms the freedom to recruit workers for a specific period of time and for work that isn't necessarily permanent. Fixed-term contracts also eliminate the need for a mediator such as an agency or contractor because they are negotiated directly between the employer and the employee. They may also benefit the employee because the Code provides fixed-term employees with the same benefits (such as medical insurance and pensions) and working conditions as permanent employees. This may help to enhance the working circumstances of temporary workers, as opposed to contract workers who may not be eligible for such benefits.

4) Certain terms not defined in the code

Any person who works for hire or reward is defined as a "worker" in the 2020 Bill. Persons earning more than Rs 18,000 in a managerial or administrative position, or in a supervisory capacity, are excluded. However, the terms 'manager' and 'supervisor' are not defined in this context. The remaining three labour Codes, covering Occupational Safety and Health, Wages, and Social Security, likewise utilize this terminology. The Standing Committee that looked into the OSH Code advised that the terms 'supervisor' and 'manager' be defined clearly in the Bill because they determine which types of people are excluded from the definition of 'employees.'

Organizations can lessen the risk of accidents at the workplace by recognizing the level of risk, transforming the

already existing policy, and executing it effectively. For this, it needs to outline proper and efficient management programs to improve the physical environment, employee assistance programs to help them diagnose and treat their stress-related problems. In addition to it, the employee safety programs can result in substantial cost savings, increased productivity, and establishing harmonious relations with workers. An employer/occupier must ensure the provision and maintenance of plants and systems of work that are safe and without health risks. Arrangements should be made to rectify risks involved in the use, handling, storage, and transport of articles and substances.

3. Conclusion

Supervisors and managers should also be trained to recognize and correct unsafe behaviour's that can lead to injuries, including rushing, frustration, complacency, and fatigue.

Once a year a team should review all incidents from the prior year to see whether there are any patterns in the accidents and,

if so, how to address the problems identified.

Each work site should confer with its fire and police departments and hospital about plans for all potential emergencies, including fire, explosion, accident, severe weather, loss of power, and violence. Emergency drills should be used to ensure that employees know what to do and to assess the effectiveness of emergency plans.

Depending on the size and nature of your business, you may want to have employees on each work shift trained by qualified Red Cross instructors to provide first aid and CPR. Someone should be designated to keep first aid kits stocked and accessible.

References

- [1] www.ani2020/fc.in
- [2] www.ombartlabour.pdf
- [3] www.keyfacto/labour.pdf
- [4] IR code 2020
- [5] IR Code 2018