



# **REFORMATION OR JUST RECKLESS DILUTION OF LABOUR LAWS?**

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## **ABSTRACT**

As the COVID-19 pandemic continues to wreak havoc on the world, the migrant workers, the labour class, and the poor, in general, are undeniably the most impacted ones. While some of us wait for the restaurants and shopping complexes to reopen, unemployment has forced the migrant workers and labourers to walk towards their homes, miles away from their places of earning. Amidst all of this, various states of the country have diluted the existing labour laws. This paper discusses the changes that have been introduced to the existing labour laws by the state governments in their respective states. This paper aims at examining the proposed changes in light of various constitutional rights guaranteed to the workers by the Indian Constitution, international obligations, and the economic slowdown caused by COVID-19 pandemic and the subsequent lockdown. This paper also presents arguments cited by the state legislature to relax the existing labour laws and goes on to analyse the impact of this step on the labour class of India. Lastly, based on reports of the International Labour Organisation and secondary sources, the paper attempts at recommending probable solutions to cater to the problem.

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**INTRODUCTION**

COVID- 19 is a virulent disease and hence, highly transmittable in nature. The disease emerged in Wuhan, China, and spread across the globe. It was soon declared a 'pandemic' by the World Health Organisation. COVID-19 brought countries with the best health care facilities to their knees. Researchers, doctors, and medical specialists across the world have been trying, but we do not yet have a vaccine for COVID-19.

Keeping in view the transmittable nature of the disease, the population density, the medical infrastructure, and the economy of the country, the Indian Government concluded that it would be best to prevent the spread of the disease at an initial stage. The Prime Minister, Shri Narendra Modi, said, "social distancing is the only way to break the chain." Therefore, a nationwide lockdown was imposed from midnight on March 24, 2020. Since then, several subsequent lockdowns have followed, each with its own modifications.

Amidst all of this, the economy of the country has been facing a financial crisis. This crisis has impacted every person in some way or the other. However, with the factories closed, constructions put on halt, and shops shut down, the labour class of the country has been affected beyond adversely. We say so because poor people hardly have any savings to survive themselves in times like these. They do not have job stability either.

When the poor and under-privileged were expecting relief measures from the central and the state governments, various state governments introduced changes to the existing labour laws by severely diluting the existing laws. The idea of dilution of labour laws, specifically, of the laws that were drafted to protect the health, welfare, and safety of the workers, to acknowledge the constitutional rights of the workers and to fulfill the international obligations of the country, came as a shock. The state governments have introduced the changes with the objective of encouraging the investors and promoting the industries in their respective states. However, most of the amendments do not seem to be in line with the said objective as the said amendments are likely to deprive the labour class of their constitutional rights and are also inconsonant with the international obligations of India.

## **BACKGROUND TO THE ONGOING CONTROVERSY REGARDING LABOUR LAW REFORMS**

'Labour' forms a part of the Concurrent List of the Constitution of India, 1949 (hereinafter referred to as 'the Constitution'). Article 246 of the Constitution empowers both parliament and the state legislature to make law on subject-matter enlisted in List III of the seventh schedule. Entry 22, Entry 23, and Entry 24 of the Concurrent List enable both central and State governments to legislate on subject matters like industrial and labour disputes, trade unions, social security, insurance, employment, unemployment, and welfare of the labour class.<sup>1</sup> However, there are certain specific areas that form a part of the Union List, which means only the Central Government can enact legislation with respect to the same. These include areas like regulation of labour and safety in mines and oil fields (Entry 55), industrial disputes concerning Union employees (Entry 61), and Union agencies and institutions for vocational training (Entry 65).<sup>2</sup> This has resulted in a plethora of Central and State legislation regulating the labour market. Currently, our country has over a hundred state legislation, and nearly 50 central legislations classified as 'labour laws.' To name a few, Industrial Disputes Act, 1947, Employees' Insurance Act, 1948, Factories Act, 1948, and Contract Labour (Regulation and Abolition) Act, 1970, are some of the many such legislations.<sup>3</sup>

In exercise of the afore-mentioned powers under the Concurrent List of the Constitution, many state governments have proposed reformation of the labour laws.<sup>4</sup> There is no doubt regarding the fact that the existing labour laws are archaic and rigid. Hence, the current situation asks for reformation. However, there has been a buzz around the changes proposed by states like Uttar Pradesh, Madhya Pradesh, Himachal Pradesh, Rajasthan, Gujarat, and Karnataka.<sup>5</sup>

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<sup>1</sup> India Const. Seventh Schedule, List III.

<sup>2</sup> India Const. Seventh Schedule, List I.

<sup>3</sup>Sulekha Kaul, *India: A Brief Guide to Labour and Industrial Laws of India*, MONDAQ (September 22, 2017), <https://www.mondaq.com/india/employee-rights-labour-relations/631074/a-brief-guide-to-labour-and-industrial-laws-of-india>.

<sup>4</sup> Faraz Khan and Kashif Mansoor, *COVID- 19 impact: Informal economy workers excluded from most govt. measures, be it cash transfers or tax benefits*, FIRSTPOST (May 11, 2020, 9:13 AM), <https://www.firstpost.com/business/covid-19-impact-informal-economy-workers-excluded-from-most-govt-measures-be-it-cash-transfers-or-tax-benefits-8354051.html>.

<sup>5</sup>Prabhaskar K Dutta, *Coronavirus lockdown and a tale of labour reforms sans labourers*, INDIA TODAY, May 15, 2020, 12:48 PM, <https://www.indiatoday.in/news-analysis/story/coronavirus-lockdown-labour-reforms-migrant-workers-1678324-2020-05-15>.

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Out of all the states, the most dramatic move has been made by the Uttar Pradesh government as it proposed to suspend almost all the labour laws for a period of three years. The changes introduced by other state governments are comparatively detailed. The changes include increasing working hours up to 72 hours a week, doing away with laws regarding maintaining hygienic conditions for workers, exemption from maintaining registers, etc.<sup>6</sup>

Responding to the dilution of labour laws, eight political parties wrote a letter to the President opposing the dilution. According to the letter, the dilution is in violation of the constitutional rights guaranteed to the workers.<sup>7</sup> According to the recent development, the labour ministry has also shown concern over the changes introduced by various states in the labour laws. According to the ministry, the changes are not in accordance with the labour law codes proposed by the Centre. After ten central trade unions together complained to the International Labour Organisation (hereafter referred to as "ILO") about the changes introduced, ILO assured that it has appealed to the Central and to the State governments to uphold the country's international commitments.<sup>8</sup>

### **RELAXATIONS INTRODUCED BY DIFFERENT STATE GOVERNMENTS.**

To begin with, Uttar Pradesh's government brought the Uttar Pradesh Temporary Exemption from Labour laws Ordinance, 2020 (hereinafter referred to as "the ordinance") on May 8, 2020. The Uttar Pradesh cabinet has approved the said ordinance. By virtue of the ordinance, the state government intends to amend the existing labour law in order to exempt all factories and establishments engaged in manufacturing processes from the operation of all labour laws for a period of three years, subject to the fulfillment of certain conditions.<sup>9</sup> The conditions laid down in Section 3 of the ordinance are as follows: -

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<sup>6</sup>Surojit Gupta, *Three states to ease labour laws to boost investment, jobs*, TIMES OF INDIA, May 9, 2020, 11:58 AM, <https://timesofindia.indiatimes.com/india/three-states-ease-labour-laws-to-boost-investment-jobs/articleshow/75638527.cms>.

<sup>7</sup> Prashant K. Nanda, *ILO, expresses 'deep concern' over labour law changes, appeals to PM Narendra Modi*, LIVEMINT, May 25, 2020, 02:15 PM, <https://www.livemint.com/news/india/ilo-expresses-deep-concern-over-labour-law-changes-appeals-to-pm-narendra-modi-11590394493866.html>.

<sup>8</sup> Shankar Arnimesh, *Modi govt. Says suspension of labour laws, not reform, raises concern over State changing laws*, THE PRINT (May 27, 2020, 11:03 AM), <https://theprint.in/india/modi-govt-says-suspension-of-labour-laws-not-reform-raises-concern-over-states-changing-laws/429644/>.

<sup>9</sup> Anya Bharat Ram, *Relaxation of labour laws across states*, PRS INDIA, (May 12, 2020), <https://www.prsindia.org/theprsblog/relaxation-labour-laws-across-states>.

- A. Regarding wages: All the workers must be paid wages prescribed by the Uttar Pradesh government. The ordinance also specifies that the wages should be paid within the time specified in the Payment of Wages Act, 1936. As per Section 5 of the Payment of Wages Act, 1936 any factory or establishment with less than one thousand workers should pay its workers before the expiry of the seventh day, after the last day of the wage period and other factories and establishment shall be paid before the expiry of the tenth day, after the last day of the wage period in respect of which the wages are payable. In addition to this, wages shall be paid only in the bank accounts of the workers.
- B. Applicability of provisions of certain acts: As per the ordinance, provisions of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 and Factories Act, 1948 concerning safety and security of workers shall remain applicable on the impugned factories and establishments. These provisions regulate the usage of dangerous machinery, inspections, and maintenance of factories, amongst others.<sup>10</sup>
- C. Regarding working hours: The ordinance specifies that no worker is allowed or required to work for more than eleven hours per day. The spread over of the work shall not be more than twelve hours per day. However, this provision was withdrawn after notice from the Allahabad High Court.<sup>11</sup>
- D. Compensation for death or disability: According to the ordinance, the compensation for any death or disability in the course of employment shall be paid as per the Employees Compensation Act, 1923.
- E. Applicability of certain acts: Ordinance specifies that the various provisions related to the employment of women and children and Bonded labour law shall remain applicable.

The ordinance has also laid down the consequence for the breach of conditions of exemptions provided by the ordinance. As per Section 4 of the ordinance, actions will be taken as per the

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<sup>10</sup> Anya Bharat Ram, *Relaxation of labour laws across states*, PRS INDIA, (May 12, 2020), <https://www.prsindia.org/theprsblog/relaxation-labour-laws-across-states>.

<sup>11</sup>Yogima Seth Sharma, *Uttar Pradesh govt withdraws controversial order of 12-hour shifts for workers in industrial units*, THE ECONOMIC TIMES, (May 16, 2020, 12:54 PM), <https://economictimes.indiatimes.com/news/politics-and-nation/uttar-pradesh-govt-withdraws-controversial-order-of-12-hour-shifts-for-workers-in-industrial-units/articleshow/75772375.cms?from=mdr>.

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provisions of existing acts in case of any breach of conditions provided under Section 3 of the ordinance.

Madhya Pradesh's government on May 6, 2020, promulgated the Madhya Pradesh Labour Law (Amendment) ordinance, 2020 (hereafter mentioned as "Madhya Pradesh Ordinance"). By virtue of the Madhya Pradesh ordinance, the Madhya Pradesh government intends to amend the Madhya Pradesh Industrial Employment (Standing orders) Act, 1961 and the Madhya Pradesh Shram Kalyan Nidhi Adhiniyam, 1983. The Madhya Pradesh ordinance by its Section 3 has substituted words "more than fifty" with "more than hundred" in Section 2(1) of Madhya Pradesh Industrial Employment (Standing orders) Act, 1961. As a consequence of this, the 1961 act, which regulates the condition of employment of workers, will no longer apply to establishments with the number of workers between fifty to hundred. The Madhya Pradesh Ordinance by Section 4 has also added sub-section 3 to Section 28 of the Madhya Pradesh Shram Kalyan Nidhi Adhiniyam, 1983. By the addition of sub-section 3 to Section 28 of the 1983 act, the state government is empowered to exempt any establishment or any category of establishment from any or all the provision of the 1983 act through notification.

In addition to this, the Madhya Pradesh government has also exercised its power under Section 35B of the Industrial Disputed Act, 1947 and exempted industries from the application of its provisions for a period of thousand days from the date of publication of the notification.<sup>12</sup> However, lay-off, retrenchment (Chapter V-A), conditions precedent to retrenchment of workmen (Section 25-N), Procedure for closing down an undertaking (Section 25-O), Special provision as to restarting of undertakings closed down before commencement of the Industrial Disputes (Amendment) Act, 1976 (Section 25-P), Penalty for lay-off and retrenchment without previous permission (Section 25-Q), and the Penalty for closure (Section 25-R) will continue to apply. The other provisions of the Act, such as those related to the resolution of industrial disputes, strikes, and lockouts, and trade unions, will not apply.

Madhya Pradesh government has also exercised power conferred by Section 5 of the Factories Act, 1948 and has exempted all factories which are registered under the Factories Act, 1948 from applicability of all the provisions of the factories Act and Madhya Pradesh

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<sup>12</sup>Labour Law Amendment Ordinance, 2020, Madhya Pradesh Gazette (May 6, 2020), <http://govtpressmp.nic.in/pdf/extra/2020-05-06-Ex-166.PDF>.

factories Rules, 1962 except for chapter 4 (safety), and Sections 6, 7, 8, 5, 9, 65, 66, 67, 79, 88 and 112 of the Factories Act, 1948.

On April 17, 2020, the Gujarat government exercised its power under Section 5 of the Factories Act, 1948, and exempted factories registered under the Factories from various provisions of the Act subject to certain restrictions.<sup>13</sup> Even the Rajasthan government has extended the working hours to 12 hours per day for three months.<sup>14</sup> Changes to labour laws introduced in Haryana, Uttarakhand, Himachal Pradesh Assam are also on similar lines.<sup>15</sup>

Since labour is a subject of the Concurrent List, states can frame their own laws. However, the states need the approval of the Centre to enforce these changes. Therefore, the ordinance will also be sent to the Central Government for approval. The Uttar Pradesh government has introduced the changes via an ordinance called. The Adityanath government has approved of the ordinance. However, the ordinance is yet to receive the President's assent. Following the footsteps of the Government of UP, the Government of M.P. also proposed changes via an ordinance. However, the proposed changes have not been approved by the state government. Other states have introduced changes via notifications.

### **THE RATIONALE BEHIND CONCESSION IN LABOUR LAWS**

By dilution of various labour laws, the states intend to incentivise economic activities in their respective states. Uttar Pradesh Labour Minister Swamy Prasad Maurya stated that migrant workers are worst hit by the COVID-19 pandemic, and changes brought in the labour laws will create employment opportunities across the sectors for the workers who would otherwise migrate to other states to find work. Notably, Chief Minister of Uttar Pradesh Yogi Adityanath wants to ensure that new and existing factories and establishments flourish and do not get caught in any legal tangles.<sup>16</sup> Chief Minister of Madhya Pradesh, Shivraj Singh

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<sup>13</sup> Notification No. GHR/2020/56/FAC/142020/346/M3, Labour and Employment Department (May 17, 2020), [https://prsindia.org/files/covid19/notifications/3373.GJ\\_Lockdown\\_Relaxations\\_Factories\\_Apr%2017.pdf](https://prsindia.org/files/covid19/notifications/3373.GJ_Lockdown_Relaxations_Factories_Apr%2017.pdf).

<sup>14</sup> Government of Rajasthan Factories and Boilers Inspection Department Order, Department of Labour (May 11, 2020) <http://labour.rajasthan.gov.in/Notification.aspx>.

<sup>15</sup> Anya Bharat Ram, *Relaxation of labour laws across states*, PRS INDIA (May 12, 2020), <https://www.prsindia.org/theprsblog/relaxation-labour-laws-across-states>.

<sup>16</sup> Munish Pandey & Nelanshu Shukla, *UP govt exempts industries from the majority of labour laws for 1,000 days in a bid to attract investment*, INDIA TODAY, (May 8, 2020, 07:17 AM), <https://www.indiatoday.in/india/story/up-govt-exempts-industries-from-majority-of-labour-laws-for-1-000-days-in-bid-to-attract-investment-1675562-2020-05-08>.

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Chouhan, has also cited the reason for attracting investment to the State in the next 1000 days for such concessions in the application of the labour laws. <sup>17</sup>

### **ECONOMIC GROWTH AT THE COST OF CONSTITUTIONAL ETHOS?**

Labour laws in India find their roots in the Indian Constitution. The importance and dignity of human labour are enshrined in Chapter III (Fundamental Rights) and Chapter IV (Directive Principles of State Policy) of the Indian Constitution. According to the Supreme Court, the principle of 'equal work, equal pay' is a constitutional goal under Article 14, 16, and 39(c) of the Constitution of India.<sup>18</sup> Article 19(1)(c) talks about the 'right to form associations and unions.' Being a part of Article 19, this right comes with some reasonable restrictions under Clause 4 of Article 19 and can be curtailed in the interest of public order, morality, sovereignty or integrity of India. The right to form trade unions is included in Article 19(1)(c).<sup>19</sup>In the *pavement dwellers case*<sup>20</sup> the Apex Court held that 'right to life' under Article 21 of the Constitution also includes 'right to livelihood' because no person can live sans means of livelihood. Additionally, Articles, 21, 23, 24, 38, 39, 39-A, 41, 43, 43-A, and 47 give an idea of under what conditions workers can be made to work and also of Government's responsibility towards them.

Given the current crisis caused by the pandemic, reforms are inevitable. However, changes brought against one or more of the afore-mentioned principles enshrined in the Constitution cannot be labeled as 'reform.' Indian states are desperately trying to mitigate the impact the pandemic has had on the economy. In the process, certain changes to the existing labour laws have been proposed. However, some of the proposed changes threaten the rights guaranteed to the labour class by the Indian Constitution.

One such example is of the Uttar Pradesh Government. The Government has proposed to suspend all labour laws with the exception of the Bonded Labour System (Abolition) Act, 1976, the Employees Compensation Act 1923, Section 5 of Payment of Wages Act, 1936

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<sup>17</sup> Milind Ghatwai, *MP, proposes labour reforms to attract investment*, THE INDIAN EXPRESS (May 6, 2020, 08:57 AM), <https://indianexpress.com/article/cities/bhopal/mp-proposes-labour-reforms-to-attract-investment-6396123/>.

<sup>18</sup> *Randhir Singh v. Union of India*, AIR 1997 SC 3014 (India).

<sup>19</sup> *Kulkarni v. State of Bombay*, AIR 1931 Bom 105 (India).

<sup>20</sup> *Olga Tellis v. Bombay Municipal Corporation*, AIR 1986 SC 180 (India).

(relating to the timely payment of wages) and some provisions of the Factories Act, 1948 and the Building and Other Construction Workers Act, 1996 concerning 'safety and security'<sup>21</sup> Implementation of the proposed changes will take away the 'right to form associations' guaranteed under Article 19(1)(c) of the Constitution as the Trade Unions Act, 1926, would remain suspended. It was held in the case of *Raj Kulkarni v. State of Bombay*,<sup>22</sup> Article 19(1)(c) encompasses the right to form trade unions. Rights guaranteed under Article 19 are subject to the restrictions provided under Article 19(4) that can be imposed on the grounds of public order, morality, sovereignty, and integrity of India.<sup>23</sup> However, there is a need to find a middle ground to prevent the oppression of the workers.<sup>24</sup>

Article 21 of the Indian Constitution guarantees the right to life for every person. The right to life is an inherent right that every person has by virtue of being a human being. As explained by the Supreme Court of India in *Francis Coralie v. Administrator, Union Territory of Delhi & Ors.*,<sup>25</sup> The right to life guaranteed under Article 21 does not mean mere animal existence but also encompasses the right to live with human dignity. Suspension of the provisions relating to cleanliness, ventilation, overcrowding, drinking water, latrines, urinals, and hazardous processes in the times of a pandemic like COVID 19 and of legislations like Minimum Wages Act, 1948 that ensure a certain minimum income for the employees not just attacks every employee's right to live with human dignity but also takes away right to livelihood guaranteed to every person under Article 21 of the Indian Constitution. Although the ordinance approved by the Government of Uttar Pradesh specifies that the workers shall not be paid less than what is prescribed by the Government of Uttar Pradesh, the existing minimum wages are already minimal and reducing it further would be equivalent to bonded labour. Moreover, the right to health of workmen has been recognised by the Apex Court as a subset of right to life guaranteed under Article 21 of the Constitution.<sup>26</sup> The Supreme Court has also opined that law protecting contract labour and inter-state migrant workmen intends

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<sup>21</sup>Uttar Pradesh Temporary Exemption from Certain Laws Ordinance, 2020 (May 6, 2020), <http://information.up.nic.in/attachments/CabinetDecisionfile/7c223b50d3fdc5a2c4a53863012ed0b0.pdf>.

<sup>22</sup> AIR 1953 SC 73 (India).

<sup>23</sup>INDIA CONST. Art. 19, cl. 4.

<sup>24</sup> Winy Daigavane and Pavan Belmannu, *Impact of the Global Pandemic on Indian Labour Laws*, JURIST (May 20, 2020, 06:05 PM), <https://www.jurist.org/commentary/2020/05/daigavane-belmannu-labor-law-suspensions-india/>.

<sup>25</sup> (1981) 1 SCC 608 (India).

<sup>26</sup> Occupational Health and Safety Association of India vs. UOI, (2014) 3 SCC 547 (India).

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to ensure basic human dignity and violation of these laws violate the right to life guaranteed under Article 21 of the Indian Constitution.<sup>27</sup>

The changes to the labour laws proposed by states like Uttar Pradesh and Madhya Pradesh, if implemented, would also take away the redressal mechanism provided under the Industrial Disputes Act, 1947. Here, it is important to note that in *Anita Kushwaha v. Pushap Sadan*,<sup>28</sup> the Apex Court recognised ‘access to justice’ as a fundamental right.<sup>29</sup>

Are these changes exploitation in the name of the pandemic? Article 23 of the Indian Constitution ensures the right to protection from exploitation of every person. It has been held in *Sanjit Roy v. State of Rajasthan*,<sup>30</sup> that the State shall not pay a wage less than the minimum wage to a person who is affected by the conditions of drought and scarcity as it would lead to violation of Article 23 of the Constitution. It would not be wrong to say that migrant workers, specifically and the poor, in general, are the most affected by the current crisis. In situations like these, their rights and interests require protection. Suspension of legislations like the Minimum Wages Act, 1948, would not just add to their misery but would also take away the fundamental rights guaranteed to them by the Constitution.

Apart from being violative of fundamental rights guaranteed under Part III of the Constitution, the changes proposed by states are also inconsonant with the DPSPs (Part IV, The Constitution of India, 1949). Unlike Part III of the Constitution that guarantees fundamental rights to the citizens, Part IV of the Constitution confers some duties upon the State. Despite being unenforceable in the court of law, DPSPs should be considered as guiding norms to the government activities<sup>31</sup> as Part IV of the Constitution is fundamental in the governance of the country.<sup>32</sup>

Article 38 of the Constitution obligates the State to secure social, economic, and political justice and to minimize inequalities in income, status, and opportunities. Article 39 confers upon the State, the duty to secure adequate means of livelihood for all citizens, promote equitable distribution of resources, and prevent the concentration of wealth. Similarly, Article

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<sup>27</sup> People’s Union for Democratic Rights and others v. Union of India & Ors, 1982 AIR 1473.

<sup>28</sup> (2016) 8 SCC 509 (India).

<sup>29</sup> Winy Daigavane and Pavan Belmannu, *Impact of the Global Pandemic on Indian Labour Laws*, JURIST (May 20, 2020, 06:05 PM), <https://www.jurist.org/commentary/2020/05/daigavane-belmannu-labor-law-suspensions-india/>.

<sup>30</sup> (1983) 1 SCC 525 (India).

<sup>31</sup> AUSTIN GRANVILLE, *THE INDIAN CONSTITUTION: CORNER STONE OF NATION* 50-51 (Oxford 1967).

<sup>32</sup> 3 H.M. SEERVAI, *CONSTITUTIONAL LAW OF INDIA*, 2943 (4th ed. 2010), *see also* *Olga Tellis v. Bombay Municipal Corporation*, (1985) 3 SCC (India).

41 obligates the State to secure to its citizens the right to work, and Article 43 requires the State to secure a minimum standard of living to its citizens. By suspending the provisions that ensure safe and hygienic working conditions, dispute redressal mechanism, minimum pay, etc. the states are miserably failing in giving effect to the duties conferred upon by Part IV of the Indian Constitution.

Article 51 of the Constitution bestows upon the State, the duty to abide by the international treaties and obligations. By enforcing the proposed changes, the state governments would also be acting in violation of the ILO Convention. India is not just a signatory to nearly 47 conventions of ILO, but it has also ratified six out of eight major conventions of the ILO: Forced Labour Convention, 1930, Abolition of forced labour convention 1957, Equal Remuneration Convention, 1951, Discrimination (Employment and Occupation) Convention, 1951, Minimum Age Convention, 1973 and Worst Forms of Child Labour Convention, 1999.<sup>33</sup> It is also one of the founding members of the ILO that came into existence in 1919. Therefore, India is bound to adhere to its standards. Abrogation of laws like the Trade Union Act, 1926, and Industrial Disputes Act, even temporarily, would lead to violation of the international convention. In a recent incident, some trade unions collectively wrote a letter addressed to the ILO, mentioning the changes to the labour laws proposed by the state governments. Responding to the letter, the international organisation expressed its deep concern and assured that it has appealed to the Prime Minister to remind the state governments of their obligation to uphold the international commitments of the country.<sup>34</sup>

### **IMPACT OF INTRODUCING RELAXATION UPON THE LABOUR CLASS OF THE NATION**

It is debatable whether the proposed changes will act as a catalyst in the process of achieving the intended result. Apart from violations of various rights guaranteed under the Indian Constitution, many other facets need to be looked upon. The response of the ruling class over the workers is utterly apathetic. By exempting factories and establishments from various

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<sup>33</sup>Aiman Hashmin, *What removing labour protections will mean for India's Workers*, THE WIRE, (May 25, 2020), <https://thewire.in/labour/labour-law-reform-worker-protection>.

<sup>34</sup>ILO 'expresses concern' at labour law changes in India, asks PM to intervene, THE INDIAN EXPRESS (May 25, 2020, 08:07 PM), <https://indianexpress.com/article/india/ilo-expresses-concern-at-labour-law-changes-in-india-6426909/>.

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provisions of labour laws related to the settlement of the dispute, health and working conditions of workers and trade unions, contract workers, the state government has given the power to the employer to hire and fire the employees without attracting any punitive measures from the labour department up to a certain limit.<sup>35</sup> It is pertinent to note here that workers wouldn't have any rights to protest employer decisions related to retrenchment, payment of overtime wages, nor would be able to set up/join labour unions.<sup>36</sup> Workers will be deprived of any redressal mechanisms to address their grievances.

Even the provisions of the Factories Act related to maintenance of health and hygiene, provision of basic amenities and labour inspection will not be made applicable.<sup>37</sup> The desperation of the state governments to promote the industries and incentive investment can be understood. However, relieving factories and the establishment of even their elementary duties as ensuring portable water, first aid kit, basic cleanliness, toilets, crèches cannot be justified. There has to be a difference in the elimination of the over-intrusive labour laws to achieve the objective and suspending the laws relating to the rights and welfare of the labour class in entirety. Activists even claim that there will be a severe impact on children and adolescents of such dilution of laws as there will be an increase in hazardous work.<sup>38</sup> ILO and UNICEF have also warned of this outcome as family income has dropped globally. They have also highlighted that the pandemic threatens to reverse the development made to decrease child labour by 94 million in the last 20 years.<sup>39</sup>

### **CLEAR-SIGHTED REFORMATION IS ALL THAT WE NEED**

While there is dire need to bring reform in the archaic labour law, there are certain constitutional mandates that need to be followed. Some of the existing labour laws are extremely intrusive and only promote license-inspector raj and rent-seeking and should be

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<sup>35</sup> Ahlawat & Associates, *Changes in Labour Laws to reduce COVID- 19 impact*, INTERNATIONAL LAWYERS NETWORK (May 8, 2020), <https://www.ilntoday.com/2020/05/changes-in-labour-laws-to-reduce-covid-19-impact/>.

<sup>36</sup> M Saraswathi, *Does India need industries to restart at the cost of diluted labour laws?*, MONEY CONTROL (May 9, 2020, 10:43 AM), <https://www.moneycontrol.com/news/business/economy/does-india-need-industries-to-restart-at-the-cost-of-diluted-labour-laws-5244351.html>.

<sup>37</sup> Ramapriya Gopala krishnan, *Changes in Labour Laws will turn the clock back by over a century*, THE WIRE, (May 20,2020), <https://thewire.in/labour/labour-laws-changes-turning-clock-back>.

<sup>38</sup> Jagrati Chandra, *Dilution of labour laws puts children at risk: activists*, THE HINDU, (June 15,2020), <https://www.thehindu.com/news/national/dilution-of-labour-laws-puts-children-at-risk-activists/article31836497.ece>.

<sup>39</sup> *Id.*

done away with. However, reckless liberalisation of labour laws leading to oppression of the workers can never be the way out of the current crisis caused by chains of lockdown. One can infer from the proposed changes that as per the state legislature, increasing the working hours with minimum applicability of labour laws is the solution to the problem. The objective behind labour laws is to ensure the social welfare of the workers by looking into matters like employment, remuneration, working conditions, resolution of industrial disputes, representation through trade unions, etc. The pandemic has already created panic amongst the labour class. The subsequent lockdown has resulted in the shut down of industries. Concession in labour laws will worsen the conditions for the labourers.

International Labour organisation has recommended public employment programs as measures and has emphasised on support for employment and social protection.<sup>40</sup> India's step in the opposite direction is likely to aggravate human rights concerns. The matter is just not limited to human rights concerns or violations of fundamental rights. The question that one needs to ask is whether relaxation in labour law is the solution to cater to the economic slowdown caused due to COVID-19? A study by the International Labour organisation shows that deregulation is associated with a fall in employment rates.<sup>41</sup> At this point in time, when unemployment is already its peak, India cannot afford to make such a drastic and abrupt move, which might have a negative impact in the long run.

## CONCLUSION

It is an undisputed fact that the outbreak of COVID-19 has created an economic slowdown not only in the Indian market but worldwide. Various state governments have introduced changes to the existing labour laws with the intent of improving the condition of industries in their respective states and kick start the economy. The proposed changes have stirred controversy as these changes happen to be against the international obligations of the country and are also likely to violate the constitutional rights of the workers. The fact that labour law of the nation is the result of various International Law obligations of India, constitutional

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<sup>40</sup> International Labour Organisation, *Pillar 1: Stimulating the economy and employment*, May 18, 2020, [https://www.ilo.org/global/topics/coronavirus/impacts-and-responses/WCMS\\_739048/lang--en/index.htm](https://www.ilo.org/global/topics/coronavirus/impacts-and-responses/WCMS_739048/lang--en/index.htm).

<sup>41</sup> Dragos Adascalitei and Clemente PignattiMorano, *Labour market reforms since the crisis: Drivers and consequence*, INTERNATIONAL LABOUR ORGANISATION, (Oct. 2015)[https://www.ilo.org/wcmsp5/groups/public/---dgreports/---inst/documents/publication/wcms\\_414588.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---inst/documents/publication/wcms_414588.pdf).

## REFORMATION OR JUST RECKLESS DILUTION OF LABOUR LAWS?

rights of the worker class, and the hard struggle of the labour class, it should not be brushed off by this abrupt relaxation in the labour law. It is debatable that the proposed changes are proportional to the objective intended to be achieved by the states. Based on the reports of the International Labour Organisation and other secondary sources, it is observed that the reforms are not in consonance with the objective intended to be achieved. Moreover, the latest amendments are likely to take away the fundamental rights guaranteed to the workers by the Indian Constitution, such as the right to form associations guaranteed under Article 19(1)(c), right to live with human dignity and right to livelihood guaranteed under Article 21. Further, Part IV of the Constitution casts several obligations upon the State, which includes an obligation to secure social, economic, and political justice and to minimize inequalities in income, status, and opportunities,<sup>42</sup> to secure adequate means of livelihood for all citizens, promote equitable distribution of resources, and prevent the concentration of wealth,<sup>43</sup> to secure to its citizens the right to work,<sup>44</sup> to secure a minimum standard of living to its citizens and to foster respect to its international obligations under various conventions.<sup>45</sup> Abrogation of laws like the Trade Union Act, 1926, and Industrial Disputes Act, even temporarily, would lead to violation of the international conventions.

It is agreed that the labour laws in India are excessively rigid and archaic. Hence, liberalisation becomes a necessity. However, suspension of welfare laws is not equivalent to reformation and shall not benefit the states in any possible way. ILO has emphasised public employment programs as a solution to cater to the problem. But India's answer to the situation created by the pandemic is in the exact opposite direction.

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<sup>42</sup>INDIA CONST. Art. 38.

<sup>43</sup>INDIA CONST. Art. 39.

<sup>44</sup>INDIA CONST. Art. 41.

<sup>45</sup>INDIA CONST. Art. 43.