

THE CONUNDRUM SURROUNDING THE LABOUR LAWS IN UTTAR PRADESH

By Aman Kumar Yadav¹

“Should any political party attempt to abolish social security, unemployment insurance, and eliminate labor laws and farm programs, you would not hear of that party again in our political history.”

- Dwight D. Eisenhower

INTRODUCTION

The Government of Uttar Pradesh has stirred up the whole legal fraternity after its proposed Uttar Pradesh Temporary Exemption from Certain Labour Laws Ordinance, 2020 (‘Ordinance’)² which seeks to suspend all labour laws in the state but three, Building and Other Construction Workers Act,³ Workmen’s Compensation Act,⁴ and Bonded Labour System (Abolition) Act.⁵ Also, it proposes to suspend all the provisions of the Payment of Wages Act⁶ except Section 5. The Constitution of India provides for the matter related to Labour laws in List III under Schedule VII thereby any proposed change needs President’s assent.

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IS THE USE OF ORDINANCE ULTRA VIRES?

Ordinance making power:

Ordinance making power of the Governor under Article 213 of the Indian Constitution (‘the Constitution’)⁷ is an extraordinary law making power which should be used judiciously. It empowers the State’s executive head to legislate in time of assembly’s break. The apex court in

¹ IIIrd year student, National Law Institute University, Bhopal.

² Uttar Pradesh Temporary Exemption from Certain Labour Laws Ordinance, 2020 (May 6, 2020).

³ Building and Other Construction Workers Act, 1996.

⁴ Workmen’s Compensation Act, 1923.

⁵ Bonded Labour System (Abolition) Act, 1976.

⁶ Payment of Wages Act, 1936, § 5.

⁷ Constitution of India 1950, Article 213

Krishna Kumar Singh v. State of Bihar held that, ordinance don't create enduring rights and in order to promulgate one, the Governor must be satisfied that action required is immediate.¹ Here, during the pandemic, when the government should be taking pro labourer and workers measures, it is trying to bypass the principles laid down by the apex court under the garb of reviving the economy post the COVID-19 crisis.

Directive Principle of State Policy:

The apex court has time and again reiterated that although Directive Principles of State Policy ('DPSP') are unenforceable in a court of law, where legislation is already enacted by the state providing basic requirements to the workmen, then the State can certainly be obligated to ensure observance of such legislation. Non implementation of such laws would amount to a denial of the right to live with human dignity as enshrined in Article 21.² Since the DPSPs are enshrined in the Constitution under Arts. 39(e), 39(f), 41 and 42 for providing safeguards to the workers and labourers, the act of the executive's head is said to be ultra vires as, instead of preserving the already provided rights, it is superseding the existing laws.

POOR IMPLEMENTATION AND SUSPENSION OF VARIOUS ACTS

In the present crisis, the migrant workers have suffered the most. States have no record of the number of migrant workers. The Interstate Migrant Workers Act,³ that requires registration of migrant workers when they go from their home state to a destination state, would have made it much easier had it been implemented properly. The states could have reached out to them, helped them and transported them back to their home states. This clearly shows how poorly the laws are implemented on the ground level.

What happens when the applicable laws are suspended

¹ Krishna Kumar Singh v. State of Bihar, 2017 (2) SCJ 136.

² Bandhua Mukti Morcha v. Union of India, AIR 1984 SC 802.

³ Interstate Migrant Workers Act, 1979.

The Trade Unions Act¹ provides for the registration and protection of the Trade Unions in India. In a country like India where the employer is always at the driving position, we cannot take away the protection provided to the Trade Unions. They used to stand for the basic rights of the workers and bargain on their behalf. Suspension of this act will take away their bargaining shield from them.

The most important of all, the Industrial Disputes Actⁱ that governs the field of employment and termination of workers will also be suspended. Its suspension would lead to complete arbitrariness, employers will be at full liberty to hire and fire workers at their whims and fancies, job security will be a thing of the past. In India, the payment below minimum wages amounts to a situation of bondage. Now the government has also suspended the Minimum Wages Act² by an ordinance, the employers cannot be questioned for a wage below the prescribed amount. The whole rationale of the Bonded Labour Act will be defeated as the worker won't have any remedy to go to a court of law even when they are underpaid, indirectly resulting in bonded labour.

The current situation is so desperate that the labourers will work for any amount of money. On one hand, the government is keeping the Bonded Labour Act to show that they are not forcing labourers into a situation of bondage, but on the other, the government is increasing exploitation of the labourer by exempting employers from paying minimum wages. The Factories Act which provided for the safety of workers in the establishments, for potable water, electricity, and other necessary facilities also stands suspended. Now the employer won't be bound to provide for any essentials. The government is planning to suspend labour laws to focus on industrial growth. It has always been contended that we have too many labour laws that have barred industrial growth. But the question that comes up is, can any healthy democracy focus on industrial growth at the cost of exploitation of labourers?

The Bonded Labour System (Abolition) Act, the Contract Labour (Regulation and Abolition) Act and the Interstate Migrant Labour Workmen Act are interconnected laws. One cannot be repealed without affecting the other. The term 'Migrant Worker' is associated with the concepts of contract labour and bonded labour. The Inter-State Migrant Workers form a large part of contract labour with the additional and aggravating character of having come from another state.

¹ Trade Unions Act, 1926.

² Industrial Disputes Act, 1947.

In its turn, contract labour is by and large bonded labour. Contract and migrant labour, sub-species of bonded labour are peculiar in Indian industries. All three share some commonality among themselves. The Compact Committee Report of 1977, after examining the case of the Dadan labour (Inter-state migrant labour of Orissa), observed that the characteristics of the Dadan labour systems resembled in some cases to bonded labour system. The statesman stated that the acts related to women and children will continue to prevail. However, it has not been made clear that what all laws will come within the purview of women and children related acts.

In one blow, the government has removed almost all the labour laws, putting the labourers in a very perilous state. The nation as a whole has already made them suffer a lot by the poor implementation of these laws, and now this ordinance only adds to their suffering.

It will (a) take away their job security, employers can hire and fire them at their will, (b) suspend the minimum wages law, which will force workers into bondage, and (c) will waive off all the laws mandating statutory requirements for worker health and safety. Those people cannot be said to have dignified life guaranteed under the Constitution. Deliberately or not, the State of UP also invoked the Essential Services Maintenance Act (ESMA), 1968, thereby banning strikes in all corporations and departments under it for six months. Under this, the police authority has the power to arrest anybody without a warrant if they are found violating the provisions of the Act.

CONCLUSION

No matter how noble the intention of the government is, it cannot encourage exploitation of labourers, that too when you are a labour-intensive economy. This is surely an abuse of the power given to the Governor for filling up the legislative gaps in time of need. It will not only increase the hardships suffered by the workers, but also the practice of hiring and firing. This step was a drastic measure whereby the government of other states including the like of Madhya Pradesh, Gujarat, Rajasthan etc. also went on to provide certain relaxations in the applicable labour laws in the state. The ordinance violates the boundaries set by the Constitution of India. It has not yet been approved by the President and it is expected from the executive head of the nation to protect the rights of the labourers who are at their most vulnerable state.