

CONTRACTUAL LABOUR AND COVID-19

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The Covid-19 pandemic has affected approx. 2.84 million people around the globe directly and innumerable others indirectly. The virus has the potential to infect more than half of the world's population and has already caused the death of around 2 lakh people.

The virus has impacted all spheres of peoples' lives including their economic status. It led to a severe labour market shock disrupting the supply and demand chain worldwide, beginning largely in Asia in turn affecting the international supply and production chain. No business has been spared, the aviation industry, hospitality industry, big and small enterprises, are all facing challenges at this stage. Many businesses have suffered significant losses and insolvency having to let a number of their employees go. Sustainability of the functioning of businesses has been particularly difficult for Small and Medium Enterprise owners because of the uncertain travel bans, border closures and quarantine measures. A majority of workers are unable to commute to their places of employment or carry out their jobs, which has drastically affected their incomes, particularly for informal, daily-wage and casually employed workers.

The beginning of May brought in exemptions in businesses by the Uttar Pradesh government from the application of all labour and employee welfare laws for the next three years in hopes of inviting investments. This order left an exception of a total of four laws that businesses are still under the scope of namely the Bonded Labour Act, Section 5 of Payment of Wages Act, Workmen Compensation Act and Building and Other Construction Workers Act. The Madhya Pradesh government, in furtherance of the same, has made an exemption from inspections by the department of labour, maintenance of registers and permitted flexibility in extending the time of shifts of workers from 48 to 72 hours a week making them work for up to 12 hours a day. A minimum of 7 states have followed in the footsteps of the UP and MP, implementing similar plans. Moreover, due to the strict quarantine guidelines, consumers in many states are

unable to or reluctant to shop for goods and services. Enterprises are likely to delay investments, purchases of goods and the hiring of workers in the current environment of uncertainty and fear. Even recent college graduates who had been offered jobs by the Big Four firms and top-notch MNCs are now facing an unsure future as their offers have been revoked or joining dates postponed indefinitely.

Daily wage labourers belong to the hand to mouth category of living, a majority of whom moved to metropolitan cities far away from their hometowns in search of work. A number of such labourers do not have places to stay or money to pay the rent, buy ration or pay for other necessities due to the lack of employment as most factories had to be temporarily shut down in the beginning of the lockdown. To further make matters contentious, the Madhya Pradesh government has exempted employers from various obligations under the Industrial Relations Act, Industrial Disputes Act and Contract Labour Act for 1,000 days which gives employers the freedom to hire and fire workers at their convenience. The implementation of such exemptions is favourable to the government's intention to boost production; however it comes as a major setback to the government's plans to codify the labour laws as per the Code of Wages, 2019.

Many young migrant labourers are stranded in locations that they are barely familiar with and no means to travel to or contact their families back home. Though the government has taken the initiative to provide for food and free ration to all those in need, the circumstances make it difficult for the labourers to travel to such places and gather goods as not all localities can possibly be covered with the limited resources available to such organisations and workers-volunteers. Considering one procures said free ration, due to the minimal to no money left with such workers, they are unable to buy gas to actually cook a meal. The world is together in this crisis, yet the poor take the burden. The strain in incomes affects those the most who are below the poverty line. This situation has put in action the seemingly offhand clause of "*force majeure*" which is usually mentioned at the end of all contracts, as companies are being unable to fulfil their contractual obligations due to lack of workforce and other governmental lockdown rules. Major manufacturing companies acquire parts and raw material from factories around the world, majorly from China, due to the pandemic all such commercial activities have been suspended which has further affected the labour workforce everywhere. Although, in India, the doctrine of *force majeure* finds its essence in S.56 of the Indian Contract Act, 1872

which allows for temporary suspension of the contractual obligations of either party on the ground of impossibility of performance,¹ the applicability of the principle varies situationally. The applicability of the principle in the case of a pandemic such as Covid-19 depends upon the definition of the principle and the jurisprudential understanding of the circumstances beyond the reasonable control and expectation of the parties in accordance with the contract and the obligations of each party as per the contract. The claiming party has to, in general practice, prove the interference caused in performing their duties by such 'act of god'. However, the pertinence of the clause shall be assessed individually in due course when it comes to litigation.

The rigid interference of the Covid-19 pandemic has been apparent globally, this scenario demands organised social security measures especially for the informal labour class who are not protected by the corporate leave structures and employee benefit structures. While various giants such as Tata Steel and Twitter have initiated fully paid leaves, work from home with full salary even for interns and hourly employees, the same security is not available to informal labourers.

Especially with the relaxation in labour laws in the nation, employers, though have been advised and suggested to refrain from deducting salaries and maintain the pay for all employees, many employers are exploiting these relaxations by only paying minimum wage without any overtime and even reducing benefits of their labour. E-commerce companies providing deliveries of essential items and services have increased remote working amongst their delivery agents with proper precautions. Though these employees are provided with benefits and protection from the company, their pay depends upon the number of customers they serve in a particular period of time which has been affected due to the pandemic in multiple facets.

Nonetheless, the Government has requested all companies to not terminate the contract of their workers and all workers, especially contractual labourers, salaries not to be deducted who are unable to work due to the pandemic considering them to be 'on duty'. As per a labour minister, this would safeguard the worker's entitlement to benefits and wages. The Government of India has also directed all employers to pay the wages/ salaries on the due date without any deductions until the national lockdown remains. Yet these measures shall not cover a majority of the unorganised labour sector failing to aid them. However, the Industrial Dispute Act, 1947 provides for remedies in case any worker is wrongfully terminated during this period on unfair

grounds, standing as a ray of hope for the 500 million approx. workers who are the backbone of the economy. The need of the hour in these uncertain and testing times is for employers to celebrate, innovate and adopt dynamic measures to find equilibrium between the legitimate interests of the employers, and wellbeing and protection of the workers so as to effectively guarantee that the interests of either of the parties are not jeopardized. The facilitation of work from home initiatives and social distancing norms shall lead the world to a metamorphosed and healthier environment.

REFERENCE

ⁱ Parker v. Arthur Murray Inc. 10 Ill. App.3d 1000 (1973) 295 N.E.2d 487

