

## A FAUSTIAN BARGAIN: A CRITICAL ANALYSIS OF THE 2020 LABOUR LAWS ORDINANCES

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In early 2020, as India found itself in the grip of an unprecedented humanitarian and health crisis, nearly a dozen states decided to relax labour laws, ostensibly to spur economic growth and attract investments.<sup>i</sup> The relaxations fell in broadly two categories: (i) an increase in the maximum daily work hours, and (ii) exemptions from certain labour laws.<sup>ii</sup> Several states increased the maximum weekly work hours to 72 hours and maximum daily work hours to 12. Although quashed by the Supreme Court later<sup>iii</sup>, the Gujarat Notification went as far as to suspend the requirement of paying overtime as mandated by the Factories Act, 1948<sup>iv</sup>.

The Madhya Pradesh Labour Laws (Amendment) Ordinance, 2020 ('MP Ordinance') empowered the state government to exempt establishments from regulations such as the Madhya Pradesh Shram Kalyan Nidhi Adhiniyam, 1982, which promotes social security for laborers by requiring employers to contribute into a Fund at the measly rate of three rupees per worker every six months.<sup>v</sup> The requirement of adhering to the Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961, that regulates the conditions of employment of workers, was also done away with for establishments with less than a 100 workers. Moreover, all new factories were spared from having to comply with provisions of the Industrial Disputes Act, 1947 pertaining to unfair labour practices, collective bargaining, industrial dispute resolution and so on for the first thousand days since the start of production. The most atrocious move was perhaps the provision which at a time of a public health emergency, released factories from having to comply with regulations concerning drinking water, disposal of wastes, washrooms, crèches, lighting, and ventilation, and dangerous operations for a period of three months.

The Uttar Pradesh Temporary Exemption from Certain Labour Laws Ordinance, 2020 ('UP Ordinance') on the other hand, suspended most labour laws for three years save for the Bonded Labour Act, 1976, Employee Compensation Act, 1923, Building and Other Construction

Workers' Act, 1996 and a few other laws applicable to women and children. The most damaging aspect of the Ordinance, which has been approved by the state cabinet, lay in those matters on which it chose to be silent. The Ordinance did not define the term "labour laws" or specify which exact provisions of the Factories Act, 1948 relating to the safety and security of workers would continue to be applicable, leaving it open for possibly fallacious and harmful interpretation.

The Factories Act, 1948 ("Act") under Sections 5 and 65 allows state governments to prolong work hours for three months if there is a "public emergency" such as war, external aggression, or internal disturbance, or if factories are faced with an exceptional amount of work. Many states such as Gujarat, Uttar Pradesh, Karnataka, Odisha and so on conveniently equated the COVID- 19 pandemic to a "public emergency" under the Act and used it to extend the maximum daily work hours to twelve- far exceeding the nine hours mandated by the Hours of Work (Industry) Convention, 1919 adopted by the General Conference of the International Labour Organization, which India has ratified.<sup>vi</sup> The "public emergency" rationale was also demolished by the Supreme Court in *Gujarat Mazdoor Sabha v. The State of Gujarat*<sup>vii</sup>. The court, quashing the Gujarat Notifications that relaxed labour laws, held that in the absence of a grave emergency that threatens the security of the state, the economic losses brought on by the COVID- 19 pandemic did not constitute a "public emergency" under the Factories Act, 1948 and could not be used to deny basic, fundamental rights to a working class which was already facing extreme hardships due a harsh lockdown. The Gujarat Notification, and by extension, most other state regulations that grossly extended work hours, did not fulfill the principle of *proportionality*<sup>viii</sup> which requires that any state action infringing on fundamental rights must have a legitimate aim and a rational connection to the objectives sought to be achieved.<sup>ix</sup>

When examined even superficially, most regulations that have been suspended fail to fulfill any economic or social objective at all. States contend that the temporary relaxations would spur investment and innovation. However, it takes several months, if not years to set up factories and begin operations. The three- month exemptions offered by several states under the Factories Act, 1948, would therefore unlikely attract any investors since the changes would last for a limited period of time only. They would, however, certainly have increased the miseries of factory workers. It is likely that the suspension of regulations concerning drinking water, disposal of wastes, washrooms, ventilation, and so on would have contributed to COVID

outbreaks and other health problems, placing further stress on an overburdened health infrastructure. It was also in violation of the Supreme Court's ruling in *Consumer Education and Research Centre vs Union of India*<sup>x</sup> which recognized that a worker had the right to protect her health and vitality at the workplace as a fundamental right under Article 21 of the Constitution. Besides, even the National Commission on Labour (2002) stressed on the fact that squarely placing the blame of poor foreign direct investments and the sluggish growth of the manufacturing sector on labour laws is a fallacy. Several other factors such as development of adequate infrastructure, access to credit and the availability of cheap electricity, raw materials and water played a far more important role in attracting investments.

It is also distressing that the MP Ordinance exempted industries such as textiles, iron and steel, sugar, and chemicals from all provisions of the Madhya Pradesh Industrial Relations Act, 1960.<sup>xi</sup> In the absence of a mechanism to regulate employer- employee relations and settle industrial disputes, the balance of power is skewed grossly in favor of the employer the subjugation of the worker finds further legitimacy. The new Ordinances also tramples on the right to collective bargaining which has been recognized under the 1998 Declaration on Fundamental Principles and Rights at Work and several Supreme Court judgements<sup>xii</sup> as an important element to secure dignity of labour.<sup>xiii</sup>

In the post- liberalization era, the spectacular economic successes of countries like China, that have built their manufacturing prowess by trampling on workers' rights, have fanned the flames of a renewed disdain for labour rights in India. From a nation that began its journey as an idealistic socialist- welfarist state in 1947, India has now arrived at a juncture where despite our colonial experience, we are witnessing increasingly sinister attempts at dismantling important protections for the working class, for the sole benefit of crony capitalists. We are yet again at time in history when like the early 20<sup>th</sup> century, the richest 1 per cent hold a ridiculously large share of the national income and workers' rights are increasingly coming under attack. Such economic conditions in the past have led to the rise of fascist and authoritarian regimes that rode to power on the back of popular discontent with labour conditions and persistent inequality. The experience of the east Asian economies and the post- World War II development of the western bloc has shown that compassionate economic policies that prioritize economic redistribution, welfare and dignified labour policies can and do lead to national prosperity. Will we heed to the lessons of history? Only time will tell.

## ENDNOTES

- <sup>i</sup> Notification No. 958-02-2020-A-16, Labour Department, Government of Madhya Pradesh, May 5, 2020, [https://prsindia.org/files/covid19/notifications/4989.MP\\_exemptions\\_under\\_labour\\_laws\\_May05.pdf](https://prsindia.org/files/covid19/notifications/4989.MP_exemptions_under_labour_laws_May05.pdf)
- <sup>ii</sup> The Madhya Pradesh Labour Laws (Amendment) Ordinance, 2020, State Legislative Brief PRS LEGISLATIVE RESEARCH (29 March 29, 2022), <https://prsindia.org/bills/states/the-madhya-pradesh-labour-laws-amendment-ordinance-2020>
- <sup>iii</sup> *Gujarat Mazdoor Sabha & Anr. v. The State of Gujarat* WP (Civil) No. 708 of 2020.
- <sup>iv</sup> Sections 51 and 54.
- <sup>v</sup> *Supra* note 2.
- <sup>vi</sup> *Id.*
- <sup>vii</sup> *Supra* note 3.
- <sup>viii</sup> *Justice K.S. Puttaswamy and Anr. vs. Union of India* (2017) 10 SCC 1.
- <sup>ix</sup> *Supra* note 3 at 10.
- <sup>x</sup> 1995 SCC (3) 42.
- <sup>xi</sup> *Supra* note 2.
- <sup>xii</sup> *State of Bombay v. The Hospital Mazdoor Sabha* AIR 1960 SC 610; *Rohtas Industries v. Union* (1976) 2 SCC 82.
- <sup>xiii</sup> *Supra* note 2.

