



COVID 19:AN ANALYSIS WITH REFERENCE TO MULTIDIMENSIONAL APPROACH OF SOCIO-LEGAL SYSTEM

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ABSTRACT

The Indian authorities need to adopt measures to protect the country's poorest and most vulnerable people if COVID measures prove to be inadequate in nature .The lockdown by the order had hurt already disproportionately a lot of marginalized communities due to loss of livelihood and lack of food ,shelter, health and other basic needs. The government does have a sole responsibility to protect the health and well-being of the population , but some of these steps have left tens of thousands of out of work migrant workers stranded and left , with rail and bus services shut down. The blanket and sudden closing of state borders have caused disruption in the supply of essential goods, leading to inflation and fear of shortages. Thousands of homeless people are in need of protection. Police and prosecution actions to punish those violating orders have reportedly resulted in abuses against people in need.¹But in accordance with these the sole aim of the My dissertation is also to do the opposite analysis of the concerned topic,i.e.the whole topic completely revolves around both the sides of the concerned topic as well as it is in the sole aim of doing its analysis of the concerned topic with reference to multidimensional approach of socio-legal system.

¹ <https://www.hrw.org/news/2020/03/27/india-covid-19-lockdown-puts-poor-risk> accessed 9 June,2020.

A.THE MHA ORDER DATED 29.03.2020 IS ARBITRARY IN NATURE

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As we basically know , that due to the worldwide influence of COVID-19 the Indian authorities need to adopt measures to protect the country's poorest and most vulnerable people if COVID measures proves to be inadequate in nature .The lockdown by the order had hurt already disproportionately marginalized communities due to loss of livelihood and lack of food ,shelter, health and other basic needs. The government does have a sole responsibility to protect the health and well-being of the population , but some of these steps have left tens of thousands of out of work migrant workers stranded and left , with rail and bus services shut down. The blanket closing of state borders have caused disruption in the supply of essential goods, leading to inflation and fear of shortages. Thousands of homeless people are in need of protection. Police and prosecution actions to punish those violating orders have reportedly resulted in abuses against people in need.³

B.Order of Ministry of Home Affairs on 29th March 2020:As well as Writ Petitions was also filed by the Karnataka based Company challenging the Constitutional Validity of order dated 29.09.2020 by the Ministry of Home Affairs : The Ministry of Home Affairs then issued a government order dated March 29th invoking its powers under the Disaster Management Act, 2005 stating that all employers whether in factories or in shops or in any form of commercial establishments will have to pay wages to their workers on the due date and amount cannot have any reduction owing to the closure of the workplace. The Order further directs the States / UTs to take necessary action for the violation of the Said Order.

The Petitioner is a company engaged in the business of packaging for several essential items such as pharmaceuticals, food products etc with 11 factories spread across 7 States, and had employed 176 permanent workers and 939 contract workers in all its factories. The Petitioner has already paid the wages to all workers including contractual workers for the month of March 2020, and has been permitted to operate during the lockdown period in terms of guidelines by Ministry of Home Affairs. The operations are however limited only to support production of some essential.

According to the petitioner, there are many workers who are not reporting to work hoping that they will continue to get wages for lockdown period in terms of impugned notifications, as the notifications do not differentiate between the workers who report to work and the workers who refuse to work, when it comes to entitlement for wages for lock down period as concerned, thereby being contrary to the principle of “Equal Work Equal Pay”.

The petition has been filed challenging the notifications on the following grounds:

² <https://www.mha.gov.in> accessed 9 June,2020.

³ <https://www.hrw.org/news/2020/03/27/india-covid-19-lockdown-puts-poor-risk> accessed 9 June,2020.

Notifications are arbitrary and illegal: Because of the impugned notifications, an otherwise stable and solvent industrial establishment, especially an MSME establishment, can be forced into insolvency and loss of control of business, making arbitrary, illegal, irrational, unreasonable and contrary to provisions of law.

1. FROM THE VIEWPOINT OF PRIVATE ESTABLISHMENTS:

In the Case of Tekonomin Construction Limited v Union of India & Ors. the main contentions of the Petitioner were that ,they stated that the impugned notifications merely ordered by the Ministry of Home Affairs are arbitrary, illegal , irrational , unreasonable and contrary to the provisions of the law including Article 14 and Article 19(1)(g) of the Constitution of India. And is ipso facto reason to strike down the impugned notifications. By way of the impugned notifications, an otherwise stable and solvent industry could be forced into insolvency. Consequently, the very notifications issued for the benefit of the workers would in fact adversely impact those workers in the long term, who would be rendered unemployed. Because the Central Government in terms of Section 46 of DMA 2005 has the power to constitute National Disaster Response Fund towards meeting the expenses for emergency response, relief and rehabilitation. Similarly, Section 47 of DMA 2005, empowers the Central Government has the power to constitute National Disaster Mitigation Fund for the purpose of mitigation. Even though the Central government has the power to allocate fund for emergency response, relief, rehabilitation, mitigation of disasters under DMA 2005 it cannot enforce financial obligations upon the Private Establishments.

THE DETENTION OF MIGRANT WORKERS IN PURSUANCE OF ORDER DATED 29.03.2020 AMOUNTS TO VIOLATION OF THEIR FUNDAMENTAL RIGHTS

A.FROM THE VIEWPOINTS OF LABOUR & MIGRANT WORKERS:

The lockdown by the order had hurt already a lot of disproportionately marginalized communities due to loss of livelihood and lack of food ,shelter, health and other basic needs. The government does have a sole responsibility to protect the health and well-being of the population , but some of these steps have left lockdown by the order had hurt already disproportionately marginalized communities due to loss of livelihood and lack of food ,shelter, health and other basic needs. The government does have a responsibility to protect the health and well-being of the population , but some of these steps have left. The Most important thing is the due to the order dated 29.03.2020 the laborer and the migrant workers were confined at one place , wherever they went for their livelihood and survival. So it became the prior duty of the government to arrange vehicles and transports so that they can be shifted to their homes prior to the notification of the order dated 29.03.2020 by the Ministry of Home Affairs, so that their livelihood does not get affected. This particular action of the government via order is the significant example of arbitrariness highlighting on the aspect that order dated 29.03.2020 is arbitrary in nature.

B.FROM THE VIEWPOINT OF VIOLATION OF FUNDAMENTAL RIGHTS OF MIGRANT WORKERS.

First of all it is extremely correct Opinion that Order Dated 29.03.2020 is in the violation of the Fundamental Rights of the Migrant Workers. First of all due to the sudden lockdown and stoppage of the transport facilities extremely affected the migrant workers. Secondly they were also confined at one place without the essential supplies of life such as Food , Shelter ,Medicines etc. Their restriction to access the transport does the violation of their Fundamental Right of Freedom of Speech & Expression and is in the Violation of the Article 19(D).Moreover also with the reference of the case of *Bhasin v Union of India*⁴it was held by The Supreme Court of India ruled that an indefinite suspension of internet services would be illegal and unlawful under Indian law and that orders for internet shutdown must satisfy the tests of necessity and proportionality. The case basically concerned the internet and movement restrictions imposed in the Jammu and Kashmir region in India on August 4, 2019, in the name of protecting public order. In the end, however, the Court and the authority did not lift the internet restrictions and instead, it directed the government to review the shutdown orders against the tests outlined in its judgment & verdict and lift those that were not necessary or did not have a temporal limit. The Court reiterated and mentioned that freedom of expression online enjoyed Constitutional protection, but could be restricted in the name of national security. The Court held that though the Government was empowered to impose a complete internet shutdown, any order(s) imposing such restrictions had to be made public and was subject to judicial review.

Moreover the detainment of the Migrant workers is also in the violation of Article 22 of the Indian Constitution i.e. Protection against arrest and detention in such cases as the law clearly states that No Person who is arrested shall be detained in Custody without being informed as soon as may be , of the grounds and causes of such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice. As We are observing here that the detainment of the Migrant workers is the clear-cut violation of the Fundamental rights of the Workers as without the reason they were detained by the Police Personnel. And according to the details their access to the nearest magistrate within the time-period of 24 hours were also restricted. Also with the reference of the case of *Union of India v. Dimple Happy Dhakad*⁵shows a clear preference for the latter, mistaken view, over the former. By affirming the use of preventive detention in a situation and condition where no “prevention” was really at stake, while at the same time diluting the high burden usually imposed on the state for requesting preventive detention in such cases, the Supreme Court took a dangerous step towards normalising what was meant to be a measure of the absolute last resort. In doing so, it compounded the slide towards normalising and taking it normal preventive detention already being witnessed across states, which have used this tool to deal with bullying and cattle theft, among other issues.

C.IN SPECIAL REFERENCE OF FUNDAMENTAL RIGHTS

C.1.RIGHT TO LIFE

The scope of the right to life conferred by Article 21 has been expanded to be far and wide reaching with the case of Maneka Gandhi v. Union of India. It is a pandora’s box with its various facets and interpretations. The right to life does not imply a mere animal existence but a right to live with dignity, as held in the case of Francis Coralie v. Union Territory

⁴ *Bhasin v Union of India* SCC 641 SC (1985) 1

⁵ *Union of India v. Dimple Happy Dhakad* SCC SC 875 2019

of Delhi. Moreover, this right also holds within its ambit the right to livelihood, as reiterated in the case of **Olga Tellis v. Bombay Municipal Corporation.**

C.2.RIGHT OF PROTECTION FROM EXPLOITATION

In **Sanjit Roy v. State of Rajasthan**, it has been held that the payment of wages lower than the minimum wage to a person employed on famine relief work violates **Article 23**.

Whenever any labour or service is taken by the State from any person, who is affected by drought and scarcity conditions, the State cannot pay him less wage than the minimum wage on the grounds that it is given to them to help meet the famine situations. The State cannot take advantage of their helplessness. Parallels can be drawn from this case in the current situation also. The suspension of the Minimum Wages Act would lead to an exploitative situation by the private as well as public sector employers. This would lead the workers to a situation of forced labour that the Constitution specifically seeks to avoid.

A.SUSPENSION OF THE LABOUR LAWS

In the wake of the global pandemic and the nation-wide lockdown, a heavy constraint has been put on individuals as well as the economy. To minimize the impact of the pandemic on the general public as well as business establishments and ensure minimum disruption in the supply chain, many amendments, advisories and announcements have been introduced which would ideally subsist during the containment period, but could have long-term implications. Understanding the ramifications of these developments is essential for the smooth operation of enterprises. One such amendment was the **suspension** of 35 out of the 38 labour laws for a period of three years by the State of Uttar Pradesh which approved the Uttar Pradesh Temporary Exemption from Certain Labour Laws Ordinance, 2020. This move was followed by other states as well like **Madhya Pradesh**, Gujarat and Odisha, among others, though to a smaller extent.

Reports suggest that with the **exceptions** of the Workmen Compensation Act, 1923, the Bonded Labour System (Abolition) Act, 1976 and the Building and Other Construction Workers Act, 1996, all other labour related laws have been suspended by the aforesaid ordinance. However, Section 5 of the Payment of Wages Act, which relates to the timely payment of wages, will also continue to be in force.

Though the Ordinance has been approved by the UP Government, it has not received Presidential Assent yet, which is required as per **Article 213** of the Indian Constitution. The rationale that has been put forward for such actions is to encourage investment and employment. The idea behind the suspension and dilution is that in the present circumstances, there is a requirement for a certain amount of flexibility for business and industry to cater to the needs of providing employment to the workers who have migrated back to the state and to protect the existing employment of workers.

B.THE RAMIFICATIONS OF THE MOVE

While the reforms are well-intended and aimed towards the promotion of investment and industries, the unintended consequences of such a move which can be reasonably foreseen are grave. The governments while defending the move have claimed that the workers will continue to be protected, however, this move reminds us of a Machiavelli quote “Never let a good crisis go to waste.”

This is a step in the opposite direction when contrasted with the various other countries’ response trying to minimize the lay-off by providing wage subsidies and the UN’s call to minimize the impact of the pandemic on workers.

Labour laws can be broadly sorted into four categories based on the objectives that they regulate: conditions of work, wages, social security and industrial relations. The sudden suspension of labour laws would leave the labour force at the mercy of employers on various fronts. Establishments are required to be compliant by providing minimum wages and basic safety standards under some legislation.

If an establishment employs more than a certain number of workers, it would require prior approval for closure. There are other statutory requirements such as notice, retrenchment compensation and dues to be paid such as gratuity. There would be a number of employers who would take advantage of the situation and get rid of the employees without the hassle of complying with the formalities. Further, to make matters worse, the suspension itself means that trade unions cannot raise a dispute under the Industrial Disputes Act, 1947, thereby leaving the hapless workers without a grievance redressal mechanism.

C.THE CONSTITUTIONAL VALIDITY OF THE ACTIONS

The Constitution of India confers innumerable rights for protecting and safeguarding the interests of labour under Part III as well as Part IV pertaining to Fundamental Rights and Directive Principles of State Policy (DPSP), respectively.

C.1.FREEDOM TO FORM ASSOCIATIONS

The freedom of citizens to form associations and unions which is enshrined under **Article 19(1)(c)** has been curbed by the aforesaid action. It is pertinent to note that association pre-supposes organisation and includes the right to form trade unions within its purview as held in Raja Kulkarni v. State of Bombay.⁶ When all labour laws are suspended, including the Trade Unions Act, 1926, this fundamental right is also affected. Moreover, such trade unions voice and represent other employees in case of any dispute before the authorities, which is, in fact, essential in any collective bargaining structure. The very reason for the existence of a trade union is to balance the bargaining power against the employer. Even if it is argued that suspension would be valid under Article 19(4) which provides for various reasonable restrictions which can be imposed on the grounds of public order or morality or the sovereignty and integrity of India, there is a need to strike a balance between the rights and the restrictions so as to maintain the balance of bargaining power.

C.2 THE RIGHT TO LIFE AND ITS VARIOUS FACETS

The scope of the right to life conferred by Article 21 has been expanded to be far and wide-reaching with the case of Maneka Gandhi v. Union of India.⁷ It is a pandora's box with its various facets and interpretations. The right to life does not imply a mere animal existence but a right to live with dignity, as held in the case of Francis Coralie v. Union Territory of Delhi.⁸ Moreover, this right also holds within its ambit the right to livelihood, as reiterated in the case of Olga Tellis v. Bombay Municipal Corporation.⁹ In furtherance of the aforesaid action, social security statutes like the Minimum Wages Act, 1948, Factories Act, 1948 and even the Industrial Disputes Act, 1947 have been suspended. This leads to a violation of the right to live a dignified life as well as the right to livelihood of labourers and employees as they do not have a guarantee of a fixed minimum income, and the protection against retrenchment or layoffs anymore. The employers are also no more obligated to provide basic standards of safety and care, as enshrined in the Factories Act, 1948 for them.

Ironically, even the grievance redressal mechanism for them, as provided in the Industrial Disputes Act, 1947, is also not available due to the suspension of the laws despite the Supreme Court of India recognizing the right of access to justice as a fundamental right in the case of Anita Kushwaha v. Pushap Sadan¹⁰ (2016).

C.3.RIGHT OF PROTECTION FROM EXPLOITATION

⁶ Raja Kulkarni v State of Bombay CRLJ 351,AIR(SC) 73,1954.

⁷ Maneka Gandhi v. Union of India AIR 597 1978 SCR (2) 621 197 (1978).

⁸ Francis Coralie v. Union Territory of Delhi.AIR 746,1981 SCR(2) 516 SC 1981.

⁹ Olga Tellis v. Bombay Municipal Corporation SCR SUPPL.(2) 51 1985,AIR 180,1986.

¹⁰ Anita Kushwaha v. Pushap Sadan 8 SCC 509 SC (2016)

In Sanjit Roy v. State of Rajasthan¹¹, it has been held that the payment of wages lower than the minimum wage to a person employed on famine relief work violates Article 23.

Whenever any labour or workers or service is taken by the State from any person, who is affected by drought and scarcity conditions, the State cannot pay him less wage than the minimum wage on the grounds that it is given to them to help meet the famine situations. The State cannot take advantage of their helplessness. Parallels can be drawn from this case in the current situation also. The suspension of the Minimum Wages Act would lead to an exploitative situation by the private as well as public sector employers. This would lead the workers to a situation of forced labour that the Constitution specifically seeks to avoid.

C.4. DIRECTIVE PRINCIPLES OF STATE POLICY

Part IV of the Indian Constitution deals with the aspect of Directive Principles of State Policy (DPSP), which are non-justiciable in nature. They are ideals which must be kept in mind while the State seeks to formulate policies or enact laws. The basis for many pieces of labour welfare legislation, including social security laws is found in the DPSPs.

Article 38 seeks to promote the welfare of the people by securing social, economic and political justice and minimizing inequalities in income, status and opportunities. Article 39 seeks to secure to the citizens, *inter alia* the right to adequate means of livelihood for all citizens, equitable distribution of material resources of the community for the common good and prevention of the concentration of wealth and means of production. Article 41 states that in cases of unemployment and disablement, the state shall secure to its citizens the right to work. As per Article 43, the states are required to secure a living wage, a decent standard of living and social and cultural opportunities for all workers. Article 51 bestows a duty to foster respect for international treaties and obligations.

Through the suspension of labour laws, the welfare of the employees is not promoted, rather they are deprived of the means to secure social and economic justice. This would indeed increase the inequalities in the income of employees. Moreover, the means of livelihood of the employees can be disrupted in accordance with the whims and fancies of the employer with no legal recourse available to them. In the case of Daily Rated Casual Labour v. Union of India¹², it was held and verdict pronounced that the “job security” is an essential ingredient of the right to work and must be read in the light of the socio-economic philosophy of the right. By suspending labour

¹¹ Sanjit Roy v. State of Rajasthan AIR 328 1983,SCR(2) 271 1983.

¹² Daily Rated Casual Labour v. Union of India AIR 2342 1987,SCR (1) 598 1988.

laws, there would also be an absence of security of employment and living wage, along with a decent standard of living.

Moreover, the aforesaid suspension would also be against the international obligations of India drawn by the ratification of various international labour conventions. Therefore, the instant suspension and dilution would lead to a violation of the DPSPs as well, that ought to be protected by the State.

C.5.LABOUR REFORM IS NEEDED, BUT NOT AT THE EXPENSE OF THE LABOUR FORCE

The objective to increase investment and employment by relaxing the labour laws is optimistic of the government. India had already been experiencing an economic slowdown which was essentially a problem of demand in the economy. The relaxation of labour laws is a reform towards the increase of supply and would intensify the demand problem due to the unavailability of disposable income among a large class of people, i.e., the labour force.

The Central Government agrees that major reforms in the field of labour laws are required due to the presence of multifarious legislation dealing with different aspects of labour law. The Central Government sought to consolidate the existing laws into labour codes, which could be said to be a step in the right direction to ease compliance with the laws. The complete suspension of the laws to attract investment and reduce the compliance burden is patently illegal from a Constitutional perspective.

Even the situation of a global pandemic due to COVID-19 does not justify the deliberate neglect of the labour force. It is particularly in these times that the State must take steps in order to protect their interests. Paradoxically, the response of other countries such as the UK, Canada, etc. has been positive to support the employees and the employers in the time of crisis. This suspension could lead to a wanton “hire and fire” policy by employers.

VIOLETATION OF THE INTERNATIONAL LABOUR ORGANISATION CONVENTIONS RATIFIED BY THE UNION OF WESTEROS

The Petitioner wants to contend that ,The International Labour Organization has written a letter to the Prime Minister of Union of Westeros urging him to send a clear message to central and state governments to uphold India's international commitments (conventions based on LABOUR laws) and engage in social dialogue.¹³

Ten central trade unions had asked the ILO DG to intervene immediately with the Indian authorities to urge necessary action for the protection of workers rights in the light of measures being taken by a number of state governments to undermine the labour legislation and international labour standards.

¹³ Reports of Economic Times on Suspension of Labour Laws:ILO urged Govt to uphold labour laws, accessed 14 June

As India is a part of many conventions with ILO which commensurate with the existing legal system and laws of the land.

In the meanwhile, the ten central trade unions have also shot off another letter on Monday to the ILO pleading that “at this very turbid and uncertain situation, the ILO must powerfully and effectively intervene and interfere to prevail upon the Government of India to refrain from such exercise of abrogation of all basic labour rights unilaterally trampling underfoot the basic concept of social partnership and tripartism as espoused by ILO”.

Finally due to the suspension of the labour laws, the plight and pain of the migrant workers increased at a great cost thought there is the convention signed by the union of Westeros with

ILO ,Secondly due to the exploitation of the workers in the workplaces International Labour Organization forced India to again uphold the labours laws for safeguarding their interest and rights as well as in the best interest of the Labour and Worker Class.

OTHER DIMENSION OF THE GOVERNMENT

The MHA order Dated 29.03.2020 is purely in the Public interest and social interest of general public as well as it is not arbitrary in nature. The order issued was purely in the interest of the general public to protect them from the global pandemic and it was not in the violation of the fundamental right of workers with the reference to certain reasonable restriction and in the general interest of the masses of citizens living in the territory of India.

Let us test the veracity of such claims. On 15th May, 2020 some petitions heard in Supreme Court which challenged Clause (iii) of the MHA Order No. 40-3/2020-DM-I-(A).

The three judge bench of L. Nageswara Rao, Sanjay Kishan Kaul and BR Gavai, JJ issued notice in a batch of 15 petitions challenging the clause mentioned above. Let us have a look at some of those orders.

In *Ficus Pax Private Ltd vs. Union of India*¹⁴, Writ Petition No. 10983/2020 dated 15.05. 2020, the same clause was challenged. The written order of this case just mentions

There is no mention that any interim order has been passed to stop any coercive action against employers under the MHA circular. The same interim order has been mentioned in 12 other petitions excluding *Ficus Case* which challenged the same clause.

NO COERCIVE ACTION AGAINST THE EMPLOYERS

¹⁴ *Ficus Pax Private Ltd vs. Union of India Writ Petition No. 10983/2020*

In rest of the two petitions namely *Hand Tools Manufacturing Association v Union of India*¹⁵, Writ Petition No. 11193 of 2020 and *Indian Jute Mills vs Union of India*, Writ Petition No. 11281 of 2020 the written order of the case states that

No coercive action shall be taken in the meanwhile.'

If we have a look at the petition filed in the Hand Tools and Indian Jute Mills case, they have also challenged clause (iii) of the MHA circular mentioned above, which directed full payment of wages during the lockdown. In this particular case, direction was given by the Court that no coercive step should be taken.

It is clear from the Supreme Court order in *Govt. of India v. Workmen of State Trading Corporation*¹⁶, that the obligation to pay the wages remains, whereas the Court only in *Hand Tools case and Indian Jute Mills case* has directed that no coercive action be taken.

The Court order is silent whether its direction is In Rem or In Personem especially since it granted this relief in 2 petitions and denied this relief in 13 petitions.

All the above reports were published before the Court's order was available on the Supreme Court's website.

In a haste to report news first, many news websites are reporting cases without waiting for the written order. They are quick to report comments made by judges in open court without mentioning the context in which they were said. Jumping to conclusions without waiting for Court order can lead to such results. Sometimes the comments made in Court are not reflected in the written order and therefore do not have any legal consequences. This leads to wrong information being disseminated into the public, who rely on such reports. Such reporting can mislead the entire country in believing wrong information and should be discouraged.

DIMENSION OF THE HO'BLE APEX COURT

In an order dated 12.06.2020 the 3-judge bench of held that "efforts should be made to sort out the differences and disputes between the workers and the employers regarding payment of wages of above 50 days and if any settlement or negotiation can be entered into between them without regard to the order dated 29.03.2020, the said steps may restore congenial work atmosphere."

¹⁵ *Hand Tools Manufacturing Association v Union of India Writ Petition No. 11193 of 2020*

¹⁶ *Govt. of India v. Workmen of State Trading Corporation SCC 11 641 SC 1997*

In another order dated 04.06.2020, the Court had directed, “*In the meantime, no coercive action, against the employers shall be taken pursuant to notification dated 29.03.2020*

The Supreme Court order dated 04.06.2020 and 12.06.2020 are In Rem as it is directed towards all employers and not specific towards certain employers only. This is unlike the SC orders in a batch of petitions dated 15.05.2020 where the Court order was silent on whether its direction was In Rem or In Personem especially since it granted this relief in 2 petitions and denied this relief in 13 petitions.

India imposed a 21-day nationwide lockdown starting March 25, 2020 until April 14, 2020 – to prevent the spread of COVID-19 across the country. However, the number of reported cases continues to increase daily, leaving many to speculate that the lockdown could be extended beyond April 14.

For instance, the state of Odisha has already extended its own state lockdown until April 30. However, it must be noted that the federal government has not yet announced any such national extension of the lockdown.

While most organizations have remained operational as employees work from home, this hasn't been the case for those classified as essential services by the government. Some of the essential services are hospitals and all related medical establishments including their manufacturing and distribution units, grocery shops, print and electronic media, grocery shops, banks, delivery of essential products through e-commerce, manufacturing units of all essential commodities, and internet and broadcasting services to name a few.

As a result, several employees have had to travel to work even during the shutdown. These workplaces have thus been required to implement certain best practices to ensure the well-being of all its employees, and to contain the spread of COVID-19.

Businesses in India should comply with all the directions and advisories issued by the public health ministry and the state and national government.

Here are some measures organizations engaged in essential services can take to protect their staff during the lockdown.

In all the above mentioned petitions , the top court disposed of intervention applications filed by petitioner on the issue of stopping inter-state migration of workers and said that it is the Central government to look into the issue.

The top court said it is not the coordinating agency between the Centre and states, and the Union government has to take necessary action in this regard.

The petitioner stated that in their plea had said that in wake of the extension of the nationwide lockdown, the migrant workers who are among the worst affected category of people must be allowed to go back to their homes after being tested for COVID-19.

It said that those migrant workers who test negative for COVID-19 must not be forcefully kept in shelters or away from their homes and families against their wishes.

It said that although the national lockdown has been necessitated because of the unprecedented pandemic of COVID-19 and its imposition is much needed, it is submitted by the petitioners that the fundamental right of the migrant workers enshrined under Article 19(1)(d) (right to move freely throughout India) and Article 19(1)(e) of the Constitution (right to reside and settle in any part of India) cannot be suspended for an indefinite period.

It said that these migrant workers cannot be forced to stay away from their families and living in unpredictable and arduous conditions, as the same is an unreasonable restriction beyond what is envisaged under Article 19(5) of the Constitution.

The petition said that necessary transport services may be provided by the state governments in abundance so that the purpose of 'social distancing' is not defeated.

The Reference Verdict of the apex court clearly states that it is the pure responsibility of the central government to look into all these issues and secondly it can not impose a great intervention on the order state by MHA as the Order is purely in the interest of the General Public.

FREEDOM OF MOVEMENT: ARTICLE 19(1)(d) AND 19(5)

Article 19(1) (d) guarantees to all citizens of India the right "to move freely throughout the territory of India." This right is, however, subject to reasonable restrictions mentioned in clause (5) of Article 19, i.e., in the interest of general public or (2) for the protection of the interest of any Scheduled Tribe. Article 19(1)(d) of the Constitution guarantees to its citizens a right to go wherever they like in Indian territory without any kind of restriction whatsoever. They can move not merely from one state to another but also from one place to another within the same state. This freedom

cannot be curtailed by any law except within the limits prescribed under Article 19(5).

Grounds of Restrictions: The State may under clause (5) of Article 19 impose reasonable restrictions on the freedom of movement on two grounds:-

- (1) In the interest of general public;
- (2) For the protection of the interest of Scheduled Tribes.

In *State of Uttar Pradesh v. Kaushalya*, the Supreme Court has held that the right of movement of prostitutes may be restricted on ground of public health and in the interest of public morals. With the reference to the violation of

the Fundamental rights of the migrant workers in the case of the *Raghubar Dayal v. Union of India*¹⁷, the apex court declared that the right of a citizen to move freely may also be restricted for the protection of the interest of aggrieved people. Similarly in the case of *Rajneesh Kapoor v. Union of India*¹⁸, certain statutory laws imposed on the people for a great cause such as wearing helmet is not a restriction on free movement of citizen.

SIMILARLY IN THE TIME OF COVID-19 ,A GREAT GLOBAL PANDEMIC THE LOCKDOWN OF TRANSPORT AND COMMUNICATION PURELY FALLS UNDR THE AMBIT OF THE MANDATORY LAWS AND IT SHOULD BE IMPOSED IN THE GENERAL INTEREST OF THE PUBLIC AND IS NOT IN THE VIOLTION OF THE FUNDAMENTAL RIGHTS OF THE WORKERS.

FREEDOM OF RESIDENCE: ARTICLE 19(1)(e) AND 19(5)

According to Article 19(1) (e) every citizen of India has the right “to reside and settle in any part of the territory of India.” However, under clause (5) of Article 19 reasonable restriction may be imposed on this right by law in the interest of the general public or for the protection of the interest of any Scheduled tribe. The rights to reside and right to move freely throughout the country are complementary and often go together. Therefore, most of the cases considered under Article 19 (1) (e) also. This right is subject to reasonable restrictions imposed by law in the interest of general public or for the protection of the interests of any Scheduled Tribes. Thus, where a prostitute, under the Suppression of Immoral Traffic in Women and Girls Act, 1956, was ordered to remove herself from the limits of a busy city or the restriction was placed on her movement and residence, it was held to be a reasonable restriction.

The freedom of movement and residence may be curtailed and suspended during an emergency. In the case of a foreigner it can be restricted under the Foreigners Acts of 1964 and 1966. A foreigner may be ordered to remove himself from India. The important case on this Similarly in the case of *Kamala China v. State*¹⁹, the reasonable restriction on residing and settling in any part of India is held to be purely correct by the Apex Court.. Also in the case of *State of U.P. v. Kaushalya* ²⁰the reasonable restriction is held to be correct by the apex court. In *State of Uttar Pradesh v. Kaushalya*, the Supreme Court has held that the right of movement of prostitutes may be restricted on ground of public health and in the interest of public morals as well as there was restriction on their residence for the general interest of the public With the reference to the violation of the Fundamental rights of the migrant workers in the case of the *Raghubar Dayal v. Union of India*²¹, the apex court declared that the right of a citizen to move freely may also be restricted for the protection of the interest of aggrieved people as well as there was also the restriction on their residence.

IN THE DIMENSIONS OF THE REASONABLE RESTRICTIONS

¹⁷ *Raghubar Dayal v. Union of India*, AIR 1950 SC 263.

¹⁸ *Rajneesh Kapoor v. Union of India* AIR MP 204 SC 2007

¹⁹ *Kamala China v. State* 31 AIR SC 416 1964

²⁰ *State of U.P. v. Kaushalya*, AIR SC 416. 1964

²¹ *Raghubar Dayal v. Union of India*, AIR SC 263. 1950

Freedom of speech and expression guaranteed by Article 19(l)(a) is not absolute. There is no such thing as a absolute or unrestricted freedom of speech and expression wholly free from restraint for that would amount to uncontrolled licence which would tend to lead to disorder and anarchy. Our Constitution has rightly attempted to strike a proper balance between the various competing social interests. The Constitution must be interpreted in a broad way and not in a narrow and pedantic sense. The Court must not be too astute to interpret the language of the Constitution in so literal a sense as to whittle down fundamental rights. On the other hand the Court must interpret the Constitution in a manner which would enable the citizen to enjoy the fundamental rights in the fullest measure². The legislature cannot disregard or override constitutional

provisions by employing indirect methods of achieving exactly the same results. With the reference of the cases such as 1 Santosh Singh v. Delhi Administration²² & Sakal Papers Ltd.,²³ the reasonable restriction purely falls in the ambit of the situation as well as in the general interest of the public the government is completely entitled to impose such reasonable restriction.

The legislature cannot do indirectly what it cannot be directly .

The Court is not over persuaded by the mere appearance of the legislation. The Court has to look behind the names, forms and appearances to discover the true character and name of the legislation. It is the substance and the practical result of the act of the

State that should be considered rather than its pure legal aspect. The correct approach should be to enquire what in substance is the loss or injury caused to the citizen and not merely what manner and method has been adopted by the State in placing the restrictions. No law or action would state in words that rights of freedom of speech and expression are abridged. Nevertheless, it is the duty of the Court to strike down the legislation or the executive action if it causes direct interference with the freedom of speech and expression notwithstanding that it does not appear to do so on its face.

In the garb of distribution of newsprint the growth and circulation of newspapers cannot be controlled. In dealing with the complex strands in the web of freedoms which make up free speech, Also in the cases such as In re: Kerala Education Bill²⁴

Dwarakadas v. Sholapur Spinning and Weaving Co. Ltd²⁵. Express Newspapers Ltd²⁶.

²² Santosh Singh v. Delhi Administration²², AIR SC 1094 1973

²³ Sakal Papers Ltd.,²³AIR AI SC 315 1962

²⁴ Kerala Education Bill²⁴, , AIR 1958 SC 956 at 983,1957

²⁵ Dwarakadas v. Sholapur Spinning and Weaving Co. Ltd²⁵. AIR 119 at 123.SC,1958

²⁶. Express Newspapers Ltd., AIR SC 578 at 619, 1958

Sakai papers²⁷ & Bennett Coleman²⁸

the operation and effect of the methods by which speech is sought to be restrained must be subjected to close analysis and critical judgment in the light of the particular circumstances to which it is applied.

IN THE DIMENSION OF THE STATUORY LAWS

Where fundamental rights and freedoms of the individual are being considered, a Court should be cautious before accepting the views that some particular disregard of them is of minimal account . In protecting fundamental rights Courts should always remember that “it is from petty tyrannies that large ones take root and grow”. This fact can be more plain than when they are imposed on the most basic rights of all. Seedlings planted in that soil grow great and, growing, breakdown the foundations of liberty⁹. Clause (2) of Article 19 specifies the purposes or grounds in the interest of which or in relation to which the reasonable restrictions can be imposed on the freedom of speech and expression.

It may be noticed that reasonable restrictions under Clause (2) of Article 19 can be imposed only by a duly enacted law and not by executive action unsupported by law¹⁰. Article 19 clause (2) says that “Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far in reference of cases such as Speiser vs. Randal²⁹, Oliver vs. Buttigieg³⁰, Thomas vs. Collins³¹, , Quoted with approval by Privy Council to Oliver’s case.as well as in the case of Romesh Thaper vs. State of Madras³²

REASONABLE RESTRICTION ON THE DIMENSION OF ARTICLE 23:

Under clause (2) of Article 23, the State is allowed to impose compulsory services for public purposes like national defence, removal of illiteracy and other public utility services (electricity, water, air and rail services, postal services, etc.) provided that in making any such service compulsory for public purposes, the State, however, cannot make discrimination on the basis of religion, race, caste or class or any of them. Thus the MHA Suspension of the labour laws was purely to overcome the economic crisis as well as in the general interest of the people so it falls in the purview of reasonable restriction under article 23.Hence it doesn’t violates the fundamental rights of the citizen in reference of article 23 i.e. Right against Exploitation.

ARTICLE 14:WITH SPECIAL REFERENCE OF THE REASONABLE RESTRICTION

²⁷ Sakai papers, AIR SC 315,1962

²⁸ Bennett Coleman²⁸, AIR SC 106 at 120,1973

²⁹ Speiser vs. Randal!, 2 L.Ed 2d. 1460.

³⁰ Oliver vs. Buttigieg, 1966(2) All. E.R. (P.C.) 459 at 466

³¹ Thomas vs. Collins, 323 US 516 at 543,

³² Romesh Thaper vs. State of Madras, AIR SC 124 1950

While Article 14 forbids class legislation it does not forbid reasonable classification of persons ,objects and transactions by the legislature for the purpose of achieving specific ends. But classification must not be “arbitrary, evasive, and artificial in nature., It must be always rest upon some real and substantial distinction bearing a just and reasonable relation to the object sought to be achieved by the legislation.

Classification must follow two conditions:

Firstly, the classification must be founded on the intelligible differentia which distinguishes persons or thing that are grouped together from others left out of the group.

Secondly the differentia must have a rational relation to the object sought to be achieved .The differentia which is the basis of the classification and the object of the acta re two distinct things. Finally here the suspension of the labour law has both the features of intelligible differentia as well a reasonable restriction that's why it is not in the violation of the fundamental rights of the workers.

D.S. Nakara v. Union Of India³³

The Government issued an office memorandum announcing a liberalized pension scheme for retired government servants but made it applicable to those who had retired after 31 March 1979. The supreme court held that the fixing of the cutoff date to be discriminatory as violating Article 14. The division of pensioners into two classes on the basis of the date of retirement was not based on any rational principle because a difference of two days in the matter of retirement could have a traumatic effect on the pensioner. Such a classification held to be arbitrary and unprincipled as there was no acceptable or persuasive reason in its favor. The said classification had no rational nexus with the object sought to be achieved.

Madhu Limaye v. Supdt. Tihar Jail Delhi³⁴

There were Indian and European Prisoners. Both were treated differently. European gets better diet. Court held that difference between Indian and European prisoners in the matter of treatment and diet violates right to equality under Article 14 of Indian prisoners. They all are prisoners they must treat equally.

Sanaboina Satyanarayan v. Govt. of A.P³⁵

In Andra Pradesh. They formulate a scheme for prevention of crime against women. In prisons also prisoners were classify in to two category first

Prisoners guilty of crime against women and second prisoners who are not guilty of crime against women. Prisoners who are guilty of crime against women challenge the court saying that their right to equality is deprived. Court held that there is reasonable classification to achieve some objective.

Tamil Nadu Electricity Board v R. Veeraswamy³⁶

³³ D.S. Nakara v. Union Of India³³ AIR 130 1983

³⁴ Madhu Limaye v. Supdt. Tihar Jail Delhi³⁴ AIR 1505 1975

³⁵ Sanaboina Satyanarayan v. Govt. of A.P³⁵ APPEAL CRLJ. 1227 OF 2002

³⁶ Tamil Nadu Electricity Board v R. Veeraswamy³⁶ APPEAL 1721-1725 OF 1999(Civil)

The employee were governed by the contributory provident fund scheme. With effect from 1-7-1986 a scheme was introduced. The question was whether the pension scheme ought to be applied to those who had already retired before the introduction of the pension scheme the supreme court rejected the claim. As per the rules prevalent at the time the retirees had received all their retiral benefits. If the pension scheme was made applicable to all past retirees, the resulting financial burden would be Rs200 crore which would be beyond the capacity of employer. The reason given for introducing the scheme was financial constraint- a valid ground. The court held that retired employees and those who were in employment on 1-7-1986 can't be treated alike as they do not belong to one class. The workmen who had retired and received all the benefits under the contributory provident fund scheme cease to be employees of the appellant board w.e.f. the date of their retirement. They form a separate class. Thus there was no illegality in introducing the pension scheme and not making it applicable retrospectively to those who had retired before the date.

Similarly the order by the MHA was having both the contents of the intelligible differentia and reasonable nexus that's why it was not in the violation of the fundamental rights of the workers.

TREATY BETWEEN UNION OF WESTEROS AND THE INTERNATIONAL LABOUR ORGANISATION CONVENTIONS

Statistics released by the Centre for Monitoring of the Indian Economy for India indicate that nearly a quarter (24 percent) of India's workforce is now out of gainful work, a precipitous rise in unemployment from already record levels of 8 percent. In the last week of April 2020, states with large variances in their industrial activity; Bihar, Tamil Nadu, Tripura, and Haryana have all reported unemployment figures of close to 50 percent, signalling that the issue of mass layoffs is widespread. While the impact of the COVID-19 outbreak may have prompted the corresponding suspension measures, the ideological backing is provided by the larger project of the vilification of India's labour law framework as "regulatory cholesterol".

Prompted by the liberalisation of India's product markets in 1991, the key goal then, as now, has been to generate greater labour flexibility — a euphemism for employers to be able to hire and fire workers at will, dole out starvation wages and not expend resources on ensuring safe workplaces.

The stated policy vision is that these pervasive suspensions will bring about greater 'labour flexibility' and revive economic activity by (a) providing employment to workers who have migrated back to the state, and (b) attracting investment by creating a positive atmosphere for industry. The larger goal here appears to be that of becoming an attractive destination for international firms seeking to move production out of China. This is delirious policy making, not backed by empirical analysis and a move akin to 'spinning the wheels in the sand': the illusion of regulatory agility without demonstrable impact.

creation. On the contrary, data shows that employment in establishments within the purview of labour laws grew faster than those that didn't.

Notwithstanding the economic case for the suspensions, their legal and socio-political foundation is particularly precarious. The design of India's labour law framework has been a product of its obligations under the International Labour Organisation's conventions, constitutional obligations, decades of jurisprudence and hard fought struggles of the working class. Fundamentally, the socio-political case for a labour law framework emerges from the power asymmetry between labour and capital. Labour laws, then, are meant to countervail the inequality of bargaining power by preventing the unilateral setting of the terms of service by the owners of capital.

A balanced inter-play between labour and capital pushes economic growth upward without the spectre of social unrest that can potentially erase gains in productivity and purchasing power.

Typically, this has taken two conceptual forms in democratic settings. One has been the industrial democratic approach in which the law enables and recognises the role of worker collectives in managerial decision-making. The German model of “co-determination” is a successful example of this approach. Another approach is that of traditional social contract where the state seeks to empower individual workers by giving them enforceable rights, social protections and an industrial disputes resolution mechanism. The Indian labour law framework was originally conceptualised as a derivation of both (with rights accorded to individual workers as well as rights of recognition and bargaining accorded to trade unions), but over time has seen an increased placing of encumbrances on the rights accorded to trade unions. For example, the right to strike as an essential feature of the right to form trade unions has been eroded by the carving out of arbitrary sectoral exemptions.

In India, the pronouncements of the 7-judge Supreme Court bench in *Krishna Kumar Singh v. State of Bihar*³⁷ holds important takeaways. Recognising that the power to make ordinances has been abused for far too long by legislatures, the Court held that ordinances were subject to judicial challenge. At the very least, the suspension of the Equal Remuneration Act, the Minimum Wages Act, the Contract Labour Act and the Minimum Wages Act raise fundamental rights challenges as was held in *PUDR v. Union of India*³⁸ and in *Bandhua Mukti Morcha v. Union of India*³⁹.

These state ordinances should be subject to judicial scrutiny and be liable to be struck down on constitutional grounds. Finally the suspension of the labour laws was the need of the hour and the law was not in the violation of the fundamental rights of the labourers and the migrant workers as it was also impliedly understood by the International Labour Organisation.

CONCLUSION

The Indian authorities need to adopt measures to protect the country's poorest and most vulnerable people if COVID measures prove to be inadequate in nature. The lockdown by the order had hurt already disproportionately marginalized communities due to loss of livelihood and lack of food, shelter, health and other basic needs. The government does have a responsibility to protect the health and well-being of the population, but some of these steps have left tens of thousands of out-of-work migrant workers stranded, with rail and bus services shut down. The blanket closing of state borders have caused disruption in the supply of essential goods, leading to inflation and fear of shortages. Thousands of homeless people are in need of protection. Police actions to punish those violating orders have reportedly resulted in abuses against people in need. The MHA order Dated 29.03.2020 is purely in the Public interest and social interest of general public as well as it is not arbitrary in nature. The order issued was purely in the interest of the general public to protect them from the global pandemic and it was not in the violation of the fundamental right of workers with the reference to certain reasonable restriction and in the general interest of the masses of citizens living in the territory of India. Finally, in this regard the whole dissertation completely tries to provide a great knowledge to the readers with the multidimensional approach of the concerned topic.

³⁷ *Krishna Kumar Singh v state of Bihar Civil Appeal no 5875 of 1994*

³⁸ *PUDR v. Union of India AIR 1473 1982*

³⁹ *Bandhua Mukti Morcha v. Union of India AIR 802 1984*