Labour Law Changes
Innocuous Mistakes or Sleight of Hand?

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The changes in labour laws announced during the lockdown period in several states reflect a lack of concern for the highest levels of unemployment seen in the past 45 years and the large number of workers leaving industrial pockets and returning back to an economy ravaged by agrarian distress. The events of the last few months suggest that distinctions amongst the working class in terms of organised/unorganised, formal/informal, and migrant/local are being narrowed. Labour must consolidate across the board taking anchorage in the commonalities of experience that various divisions face today.

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India, like the rest of the world today, is going through a pandemic. But the discussion in India, especially surrounding policy, does not seem to take this into account. The government is busy pitching whatever measures it wanted to introduce before the COVID-19 pandemic struck, as definitive ways of recovering from the pandemic's impact on the economy. This article specifically deals with the changes suggested in existing labour laws. For those of us who question this stance of the government, it is not enough to only look at the inadequacies of the rationale provided while introducing these reforms. These inadequacies were there before COVID-19 as well. It is equally important to raise, if not answer, the question as to what is motivating the government to initiate these changes at the time of a global pandemic.

Reasoning or Its Lack

As of now, the argument being made is that the labour welfare legislations embed in them aspirations of labour backed by legal coercion that are too stringent in favour of workers. This in turn, it is said, has paradoxically resulted in the worsening conditions of workers (Krishnan et al 2020). The suggestion is that the laws that seek to regulate minimum wages, payment of wages, occupational safety, industrial disputes, contract labour, employment and service conditions of interstate migrants, etc, are not only onerous, they make the cost of hiring the workforce under a formal set-up too high. To compensate for this disincentive, the employers either do not employ enough workers or employ workers through mechanisms that ensure that the bulk of them do not fall within the ambit of law. For those supporting the current labour law changes, this explains the poor working conditions, rise of informality and the precarious earnings of the workers.

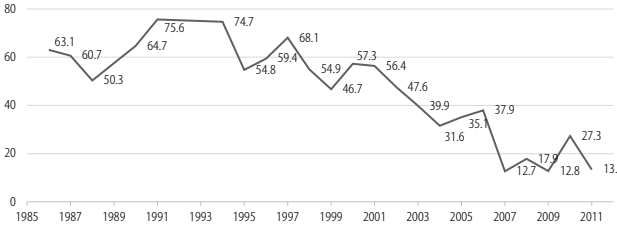
One may ask that if the majority of workers today, for whatever reasons, already do not fall within the ambit of labour laws and the rules are easily circumvented, then how will the suspension of these laws incentivise the industrialists to invest in the welfare of workers? Even within the organised manufacturing section, where some compliance is maintained, we see that the share of wages in gross value added is not only low but has been declining over the years. As per the Annual Survey of Industries data, this share was 28.5 in 1980–81, 21.4 in 1990–91, 15.5 in 2000–01, 10.3 in 2010–11 and 12.3 in 2015–16. Labour costs, where the law is still applicable, are low and steadily falling and yet the solution seems to be to remove these laws as well. Furthermore, it is interesting and revealing to see what major investment consultancies advise potential investors in India and China. For instance, the consultancy firm Genimex (2020) suggests,

> India's manufacturing labor is more competitive when compared to China. In 2014, the average cost of manufacturing labor per hour was $.92 in India and $3.52 in China. While labour costs are much lower, one must also consider the extra costs that will accrue due to India's expensive transportation, power, and water costs. Low power availability can be a major drawback manufacturing in India.

Another investor site suggests that hourly minimum wage in China is three times more than in India ($1.73 compared to $0.61).[1] The underlying point is that labour is already very cheap in India and other factors that reduce India's competitiveness are not being addressed.

Another rationale given by those who want the suspension of labour rights is that labour-welfare legislation never considered issues like compliance costs, government capacity for enforcement, and more importantly their counterproductive consequences. The COVID-19 crisis provides the country an opportunity to rectify these historical mistakes (Gupta 2020). By compliance costs very often what is implied is the corruption that employers face from regulators (popularly called the "inspector raj"). It is alleged that the corruption in the labour department disheartens industrialists and disincentivises investment,

Figure 1: Inspection Rate (in %) Carried Out under the Factories Act (1948), 1986–2011



Source: *Indian Labour Year Book*, Labour Bureau, various issues.

so as a solution the laws themselves need to be done away with. It is necessary to ask if this rationale has been applied to other situations? Has it been argued that in spite of traffic norms many accidents do occur in this country and therefore transport regulations should be set aside? And because of the fair bit of corruption within the law and order machinery, regulating law and order should be given up? The failure to check corruption in government departments is essentially the responsibility of governments, so it should be logical to associate it as a failure of the government. But, in the case of labour, that connection is seldom made.

Moreover, Figure 1 puts into perspective the factual basis of this argument—showing clearly the low percentage of factories, within the ambit of the Factories Act, 1948 that were being inspected over the last several years in India. The reality on the ground is that the factories' inspectorate staff is highly understaffed. For example, in Bihar in 2013, there was one officer in charge for more than 1,060 factories (Nath et al 2019). A similar situation exists in many other states. The solution to this overall rent-seeking problem lies in checking corruption in government departments and increasing the inspectorate staff rather than doing away with inspections altogether.

Myth of Simplification

Public discourse is inundated with many additional arguments supporting the dilution or removal of all labour-related regulation. The common arguments centre around: multiplicity of laws that need simplification, over-regulation leading to inefficiency, and making pragmatic laws that should benefit a maximum number of workers rather than a privileged few, and that stringent regulation disincentivises investment.

Table 1 provides the changes proposed recently by the Governments of Uttar Pradesh (UP), Madhya Pradesh (MP) and Gujarat. The specific nature of changes sought to be implemented betray the argument that these complex laws need to be simplified in order to make them accessible to all, including the workers. If anything, they make the process far more convoluted. Take, for example, the bizarre decision taken to remove entire acts, save for a couple of sections. The Factories Act, 1948, in Section 2, defines who, according to the purview of this act, is a worker, who is the occupier and what is to be understood about the manufacturing process itself. Having done away with this section, enforcement of the retained sections, unless otherwise specified, stand on dubious

Table 1: Changes Proposed by States

State	Date of Notification	Amendment Made	Points to Note
Uttar Pradesh	6 May 2020 "Uttar pradesh katipay shram vidhiyon se asthyai chhoot"	• Five out of 38 labour laws withdrawn[1] • Bonded Labour system (Abolition) Act 1976, the Employees Compensation Act, 1923 and Building and Other Construction Workers (Regulation of employment and conditions of services) Act, 1996 remain operational • Provisions relating to the employment of women and children as well as Section 5 of the Payment of Wages Act, 1936 have also been retained	Major acts done away with: Factories Act, 1948, Industrial Disputes Act, 1947, Industrial Employment (Standing Orders) Act, 1946, Contact Labour Act ,1970, Trade Unions Act, 1926 and Minimum Wages Act, 1948
Madhya Pradesh	5 May 2020	The Madhya Pradesh Industrial Relations Act, 1960 no longer applicable to 11 major industries	Industries, including textiles, iron and steel, automobiles, cement and electrical goods, exempted from the provisions that recognise trade unions as bargaining agents
		Save for Sections 6, 7, 8, Sections 21 to 41-H under Chapter 4 about safety, Sections 59, 65, 67, 79, 88 and 112, the Factories Act,1948 and the Madhya Pradesh Factories Rules, 1962 have been done away with	The retained sections deal with (a) approval, licensing and registration of firms, (b) notices provided before occupation or in the case of accidents, (c) inspection procedures, (d) safety of workers, (e) prohibition of child labour, (f) wages for overtime and (g) annual leave with wages, (h) capacity of state government to issue exemption orders and the (i) general power to make rules
		Upcoming factories are to be exempted from the Industrial Disputes Act, 1947 for the next 1,000 days save for: Chapters VA and sections 25-N, 25-O, 25-P, 25-Q, 25-R of Chapter VB of the Industrial Disputes Act [2]	• Upcoming factories—Those that register themselves and start production for the first time within the next 1,000 days after the publication of this notification. • Firms dont need permission to lay off, but still need permission to retrench
		• Third-party certification for non-hazardous category factories that employ up to 50 workers to be recognised • This is as per Business Reform Action Plan, 2016	Such firms exempted from routine inspections
		Amendment brought to Contract Labour (Regulation and Abolition) (Madhya Pradesh) Rules, 1973	Licence issued for a specified period of time. Presently, firms need to reapply/modify their licences each time new contract labour joins or leaves the firms
	6 May 2020 Madhya Pradesh Labour Laws	Amends Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961	Threshold for the standing orders act (define the conditions of work) raised to 100 workers
	(Amendment) Ordinance, 2020	Madhya Pradesh Shram Kalyan Nidhi Adhiniyam, 1982 amended	State government can exempt any firm(s) from this law–concerned with the constitution of a welfare fund for workers
Gujarat	Announced by chief minister on 9 May 2020	New firms to be exempted from all labour laws, except the Minimum Wages, Act, the Employees' Compensation Act and safety-related rules in factories for 1,200 days	New firms—firms set up within a year of this order coming into effect

[1] See the complete list here, http://uplabour.gov.in/lc/DynamicPages/ActRule.aspx.

[2] 25-N corresponds to conditions precedent to retrenchment of workers, 25-O procedures for closing down an industry, 25-P special provision as to restarting of undertakings closed down before commencement of the act, 25-Q penalty for lay-off and retrenchment without previous permission and 25-R penalty for closure.

grounds because they have no anchorage in well-defined, mutually agreed upon definitions. A factory owner could deny a worker any compensation arising out of injury by stating that the said individual does not constitute a worker in the first place or the process involved was a peripheral activity that was not related to the core production process. Similarly, it is rather futile to retain the section on overtime if one has already removed chapter six of the act that deals with the length of the working day in the first place. How does one even come to an understanding of what constitutes overtime when regular time itself is undefined? Annual paid leave as per the existing regulations requires a worker to be working regularly for 240 days. Section 2 of the Factories Act defines who a worker is. Section 2 as well as Section 62 deal with the maintenance of registers of all adult workers on the factory floor. Both sections have been done away with in all three states. It is unclear as of now as to which workers' muster rolls will be maintained, or for that matter whether rolls will be maintained at all. This renders the act of retaining the section on annual leaves with payment—Section 79—(as MP has done) rather futile. Section 79 mandates,

> worker who has worked for a period of 240 days or more in a factory during a calendar year shall be allowed during the subsequent calendar year, leave with wages for a number of days.

Owners are no longer required to maintain registers and can very well avoid providing annual leave with wages. There seems to be little grounds on which the worker can challenge this. Without muster rolls, the liability will fall on the worker to prove their attendance which is nearly impossible.

One obvious question here is whether these are innocuous mistakes made as a result of an oversight. It is our opinion, in fact, that these are well-thought-out loopholes, a sleight of hand of sorts that seek to absolve firm owners of any liability whatsoever. The MP government retains the act that deals with compensation in the case of an accident but decides to remove the very act that defines the safety measures to be followed inside the factory floor in the first place. Or, consider the fact that all three states do away (or reform in the case of MP) with the Industrial Employment (Standing Orders) Act, 1946 that requires firm owners to define and submit to the certifying officer the terms and conditions of employment. It is difficult to understand how these changes result in a simplification of the legal redressal process. The legal hassles involved with having the presence of two simultaneously applicable and valid interpretations of the same law determined on the basis of when a factory was opened, are a different matter. The message is rather straightforward: simplification is just a ruse to shift the burden of responsibility entirely on labour's shoulders.

Lowest Common Denominator

Two major factors are evident in all this. First, all of these states have done away with the hire and fire "restrictions" imposed upon them. Gujarat and UP have removed even the option of any form of severance pay that could be given to the worker. MP has removed the provisions for lay-off in upcoming industries though it retains the ones for retrenchment, that is, firms will no longer require permission before laying off workers. In a post-COVID-19 scenario where savings would have been reduced to a minimum and debt would be high, this provision of lay-off would result in workers moving away in search of other employment opportunities soon after they are laid off. Second, is the offensive against trade unions. UP and Gujarat have done away with the Trade Unions Act, 1926 while MP has exempted major industries from the Madhya Pradesh Industrial Relations Act, 1960. These states want to do away with any provision in favour of workers collectivising and bargaining for their rights.

We are already being handed glimpses of what the new work ethos would look like. All the three states, in the name of fighting the ill effects of the pandemic, intend to increase the length of the working day from the 9-hour time period that is currently stated in the Factories Act. Interestingly, while the Factories Act (Amendment) Bill, 2016 sought to extend the number of overtime hours,[2] the new regulations seem to have abandoned the overtime question. They seek to directly increase the number of daily working hours to 12 and the weekly hours to 72. This shift from overtime to an increased work day is very significant and has very serious implications. Those familiar with the realities of the shop floor know that the actual number of hours put in by factory workers during a week often exceed the existing 48 hour norms as stipulated by the law. The Periodic Labour Force Survey (PLFS) 2017–18 data too informs us that wage workers inside the factory floor work for an average of 60 hours in a week with only 7% working for 55 hours or less. These extra hours are legally considered as overtime work and their rate of payment by the hour varies from 1.5 to 2 times that of the regular hourly pay. What these new regulations in fact seek to do is to bring these extra hours within the purview of a regular day and thus the workers are deprived of the extra earnings that they would have received if they were ticked as overtime hours.

Amidst this entire brouhaha surrounding production and the need to increase the working hours, these two points are simply missed. Instead of checking the increasing hours of back-breaking work that is becoming the norm in the factory place, the workforce is deprived of the overtime incentive they would have ordinarily received. It needs to be noted that these hours are increasing in a workplace that is no longer mandated to provide restrooms, washrooms, drinking water facilities, etc, for its workforce. With ease of hire and fire and minimal union intrusion one can clearly see how these changes lower the minimum benchmark of workers.

Adding Insult to Injury

If, as suggested by supporters of these labour law changes, the cause of the underdevelopment of regions within India is the stringent labour laws, what explains the experience and condition of labour in the more developed regions? The question we should be asking is: has the suffering of labour reduced in the developed states where investment is much more? Is the experience of labour within these developed regions under COVID-19 in any way different for the

Figure 2: Contractual Density Organised Manufacturing Sector, 2015–16 (%)

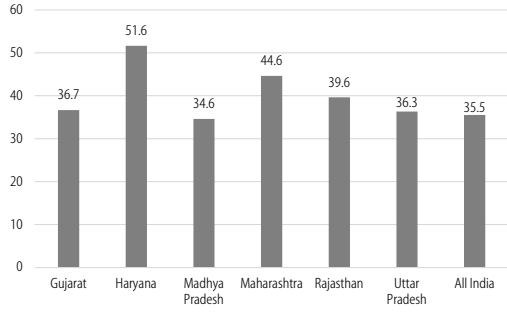
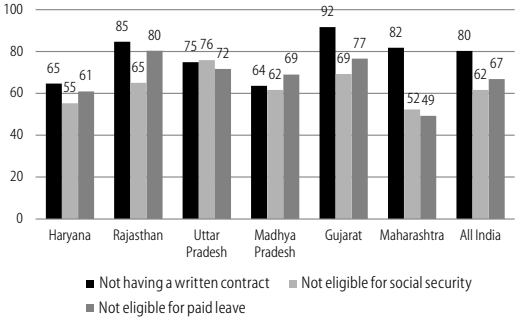


Figure 3: Conditions of Employment, Wage Workers Employed in the Organised Manufacturing Sector, 2017–18 (%)



labour that is from within the state and the ones from outside?

Between 2014 and 2016, changes in labour laws were introduced by some states, both "developed" and "underdeveloped," namely Rajasthan, Gujarat, MP, and Maharashtra. At that time, proposals were made to dilute the laws, but not to fully suspend them. It is interesting to note that even then all the states that went ahead with the labour reforms were marked by high levels of contractual density[3] (see Figure 2).[4] The situation with respect to employment conditions in the states that initiated labour reforms in 2015–16 also did not support the rationale that was given then to make the regulatory changes. We note that Gujarat, Rajasthan and MP perform either at par or even worse than the national average, which in itself is abysmal (Figure 3).

Sometimes "concern" for the vast majority of labour is also used to make a case to dilute labour regulation. It is argued that labour laws tend to benefit a handful of workers as a finite set of benefits are concentrated in the hands of few. The rest are deprived because they face barriers to access these benefits. Rather than deliberate on overcoming the barrier, the proposal is made to dilute the standards for all. Perhaps, the assumption is that the share of labour is limited and it better be spread thinly amongst all. That is the only way one can comprehend the idea of pitting one set of workers against the other, rather than extending protection to all workers. The declining share of wages, increasing contractualisation and poor working conditions within the organised manufacturing sector, where supposedly this "labour aristocracy" resides, clearly show that the issue of maintaining or diluting labour standards is hardly a question of economic facts; rather it is more about reducing the power of labour in general. So rather than seeking a larger share for labour in general, merely pitting one set of workers against the other has greater currency. To hang the guilt on one set of workers for the precarious conditions of the majority of working force is unfair and unethical.

Overall, the larger context of the labour market in India in which labour laws are being suspended, is worth summarising here. As per the PLFS 2017–18, 45% of regular workers earned less than ₹10,000 per month, and about 12% earned less than ₹5,000 per month. The average wage in rural areas for casual workers in April–June 2018 was ₹282 for men and ₹179 for women and in urban areas, it was ₹335 and ₹201 respectively. Average gross earnings from self-employment are also low on average (for all categories barring rural males) when compared to the minimum wage of ₹9,750 per month arrived at by the expert committee. Given such low levels of earnings, it is difficult to comprehend how India's workforce sustains itself. Clearly their capacity to survive even for a few days on their savings is negligible. This labour market reality should explain to India's rich the disturbing images of those who labour, which the whole nation witnessed in the last two months. It is disconcerting that workers in India struggle to make a decent living, even though they work for considerably long hours. And now they are being told that the regulatory framework to safeguard them is responsible for their plight, and the hope of overcoming hunger is to give up on these safeguards.

What Is New?

What do these changes in labour laws mean for the working class? We feel that we are experiencing a new framing of the development agenda in India. The COVID-19 crisis is being seriously used as an opportunity to strengthen the control of capital over labour. We have covered this deregulation of capital, re-regulation of labour in detail elsewhere (Sood et al 2014). In the past too, policies were made in the name of the poor but they benefited the rich mostly. While the previous ruling regimes diluted labour laws and promoted voluntary regulation, this regime believes that it has the mandate to do it upfront. The nation and the national aspirations are being redefined. Those who oppose it are "outdated," not worthy of consideration and even "anti-national." Pushing this agenda, at this time of crisis, serves another useful purpose. It helps put the onus for the current precarious condition of workers not on the government but on a regulatory framework, which is a hangover from the past. It helps to cover up the fact that the state has abdicated all its responsibility towards majority of its working people. Workers have been let down by archaic laws, not by governments.

This fits in with the current scheme of things in other ways too: The nation is now used to seeing victims as perpetrators. Victims are nowadays self-responsible for their suffering. We saw that in cases of lynching, in the case of violence that ensued the day of the bicentenary celebrations of the Bhima Koregaon battle in 2018, and in the case of teachers/students who were injured in the attack in Jawaharlal Nehru University. Those protesting against CAA are responsible for bringing suffering to their community as a result of riots that ensued in north-east Delhi during the protests. Now the same principle is being applied to the vast majority of the labouring population in this country. Those who experienced hunger, starvation, unemployment, humiliation, indignity and

death during the lockdown are now being held responsible for their precarious existence. They are being told that the attempt by the state to "over-protect" them, in the past has made them more vulnerable. The implication of this rationality is grotesque. Since the workers are responsible for their precarity so they will have to pay the cost not only of lockdown but also of rebuilding the economy, livelihood and lives in the post-COVID-19 India.

As argued above, the suspension of labour laws does not make sense either in terms of benefiting labour or bringing in investment. In fact, it does not even help in fostering growth. This comes at a time when a large section of the workforce has already lost out on their earnings because of the lockdown and is resorting to borrowing money to sustain themselves. A recent study by the Centre for Sustainable Employment (2020), Azim Premji University found that two-thirds of their survey respondents reported a loss in employment during the lockdown. There is going to be a severe demand shortage in an already stumbling economy and to take away whatever feeble benefits or safety precautions/liability that the owners had, essentially means the workers need to finance every component of their living, including their healthcare. The squeeze on the demand will be very harmful to even support growth, not to talk about its adverse implications for distribution of income and its impact on increasing the precarity of vast majority of India's labour force. How can we possibly explain why this is happening and the government's preoccupation with changing laws when millions of migrants are walking back home on foot under adverse circumstances?

Admittedly, more questions are raised here than answered. Do we pin it down to apathy? Or incompetence? Or lack of information? Any one of these suggestions would be preferable to a realisation that this hostile attitude is very much intentional and has a cold calculated logic behind this. For, the latter raises serious questions regarding the manner in which the ruling class envisions the logic of accumulation that it wishes to proceed with and the role that labour has to play and to what extent.

Are these changes the desired end in themselves or are they just a footnote, a means to something much larger that is being attempted here, namely the reinvention and re-imagination of the labour market itself? A project which seems to be unconcerned that we have the highest levels of unemployment seen in the past 45 years that is fairly agreeable with large swathes of workers leaving industrial pockets and returning back to an economy ravaged by agrarian distress. The events of the last few months seem to suggest, more than ever, that distinctions amongst the working class in terms of organised/unorganised, formal/informal, and migrant/local are being narrowed out. It is also obvious from the hunger and hardships that workers across the board are experiencing with each passing day of the lockdown that the earnings of most workers do not leave them with any savings to survive for more than a few days. Jan Sahas Survey (2020) on 27 March found close to 42% of the workers in their sample without ration.

At the same time, this shared experience of the working class creates opportunities for a new logic of differentiation to emerge, based entirely on the terms and conditions set by the ruling powers that be. The means to achieve this differentiation can be manifold—selective induction into the core labour force accompanied by technological shift, patronage via schemes and transfers for a section of the working class, not part of the core labour force, building relations of neo-bondage with segments of the working class by regulating the mobility of the workers and controlling the avenues for sale of labour power on the whims of capital, taking away all rights of labour to organise and bargain with capital, etc. Each of these in part of full will have far-reaching consequences not only with respect to the condition of workers but for the larger capital–labour dynamics in the country.

One thing is clear enough. The shift in the overall attitude of the state necessitates a drastic shift in terms of how labour pitches its agenda moving forwards. The rights-based approach seems to be found wanting, with both the state and capital displaying utter disinterest towards any appeals made within this discourse. As a logical extension to this argument, it is time for labour to consolidate across the board taking anchorage in the commonalities of experience that various divisions face today.

NOTES

1 www.nationmaster.com/country-info/compare/China/India.

2 The Factories (Amendment Bill) 2016 sought to extend the number of overtime hours that were allowed in a quarter from 50 to 100 and in the case of higher workload to 115 and further to 125 if it was deemed to be in the public interest.

3 Only MP had a contractual density less than the all-India average.

4 Admittedly, there is an argument stating that higher rates of contractual density are, in fact, a result of inflexible labour laws such as the Industrial Disputes Act, 1947 because of which plant owners are forced to hire contract workers in the place of permanent workers. However, from Table 2, we note that it is the "0–19" bin that has the highest contract intensity at 61%, with the "50–99," "100–299" and "300–499" size classes having roughly the same contract intensity somewhere in the mid-30s.

Table 2: Size Class Distribution of Contract Workers, Organised Manufacturing Sector, 2015–16

Size Class	Contract Intensity	Share of Contract Workers	Average Number of Contract Workers Per Factory
0–19	61.1	31.4	7
20–49	34.7	11.9	16
50–99	36.4	13	37
100–299	33.4	19.8	68
300–499	34.8	9.5	142
500–999	25.2	6.5	126
1000–1999	20.7	4.1	148
2000–2999	12.6	1	100
3000 and above	14	2.8	207

Source: Annual Survey of Industries, 2015–16.

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