

# Labour Law Reforms – Can they Work

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Labour law in India is rigid, and restricts mobility. It is often implemented strictly; has vague provisions; gives a great deal of discretionary power to the executive and, therefore, is extremely debilitating. Hardly anyone would disagree with this hypothesis.

A number of surveys and studies that have asked investors what they are most worried about, come up with a familiar list: labour laws, land acquisition costs and bureaucratic delays. The list of laws that govern India's workforce is itself formidably large – at least 40 central laws and more than a 100 state-level acts and regulations.

These existing laws almost guarantee that no formal sector employee can ever be removed from his job. The law also stipulates firms which employ more than a 100 employees to seek prior approval from labour authorities for implementing any change. The Industrial Employment (Standing Orders) Act 1946 goes to the extent of making employers seek permission to even reassign an employee's tasks. Given these obvious cases of government overreach, reforming labour law is obviously a good idea.

However, since all manner of things are done in India in the name of reform, the real question is: what can actually be categorized as labour law reform? Last week, the state of Uttar Pradesh unveiled an interesting definition of reform by eliminating nearly all worker protection laws for a period of three years. While the fact is that labour law in India is indeed convoluted, complicated and stringent, should it be done away with entirely? Is wholesale removal the only path to reform?

Some of the provisions which have been invalidated include basic guidelines on occupational safety and minimum standards for working conditions. Give the dire state of the economy, what is likely to happen is that, in several places, workers will continue to be denied basic hygienic and sanitation, but now, with the backing of the law.

In firms that already do not invest in ventilation, toilets or crèche facilities; where potable drinking water is not available; where scant regard for employee welfare is the default setting, the absence of a legal recourse will further impoverish workers who have already lost a lot of bargaining power due to large-scale job losses. **It is important to point out here that the existing laws only protect a small proportion of the Indian workforce. An overwhelming majority, between 90 percent in Maharashtra to 97 per cent in Gujarat, works in the informal and unorganized sector. We are talking about less than 11 million**

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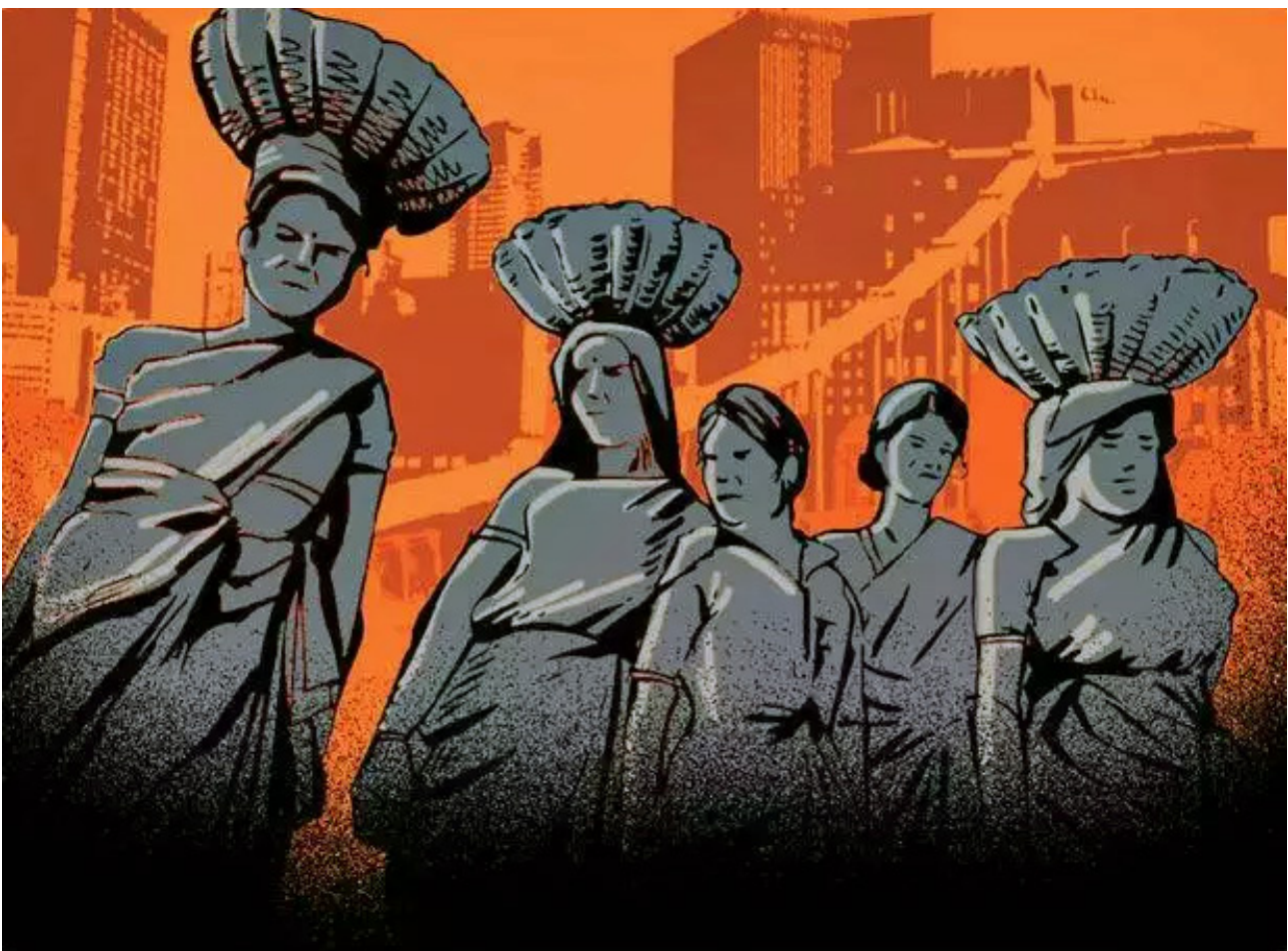
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**people out of 500, who are given this lip service of protection today. How much difference is this going to make, except in giving a signal that the government now wants to handle everything with an iron hand.**

Minimum workplace standards are actually more important in the post-Covid world, not less. There will have to be serious supervision with regard to safe distancing, facilities for washing hands, and even adequate sanitization. By diluting aspects of the law which already mandate many of these basic minimums, India will only hurtle towards more covid-19 cases. This will also lead to conflicting signals from different ministries. For example, the Ministry of Home Affairs Order No 40-3/2020-DM(I) of 15 April 2020 mandates all firms to provide medical insurance to all employees. Will this apply in Yogi's new legal environment in UP? Ultimately, in this ostensible new government-led push to wean away industries from China, one question will still need to be answered: are there some basic protections that India's workers still deserve, and if so, what are these?

## **The Beginning of Reform**

Six years ago, it was the Smt Vasundhara Raje Scindia led government in Rajasthan that started the labour law reform process, when the Indian Parliament couldn't. The state relaxed the norms for retrenchment and hiring of contract workers and also made the process of registering a new trade union more stringent. While this was applauded by India Inc. and the Economic Survey of the Government of India, unfortunately, the timing went wrong.



Rajasthan's wage growth dipped considerably, unemployment rates went up, and the domestic product fell as the effect of demonetization kicked in and economic activity went downhill. Reforms were put on the back burner, and the government in the state also changed hands in 2019. This was the story of labour reforms for the previous BJP-led government.

After getting re-elected with a thumping margin, there was renewed urgency. But Modi 2.0's early focus was entirely on its political agenda – from revoking special provisions in the constitution (Article 370) meant for Jammu and Kashmir to the controversial amendment of the country's citizenship law. Economic legislation was never really brought up, even though there were heated discussions about the need for banking reform, for greater clarity in tax laws, and for further tightening the bankruptcy code. But before any of these measures could be taken up legislatively, the pandemic stuck and now occupies centre stage.

By the end of the year 2019, the direction of Indian policy making was concentrated on the social domain. So, it took everyone by surprise when the newly-installed Madhya Pradesh government announced some startling labour law exemptions to new investors for the next 1000 days.

Labour inspectors – the bane of industry managers – will now be replaced with third-party certification. In addition, the order issued made several existing provisions defunct. For these new units, firing workers would become much simpler and trade unions would not be allowed to raise issues and bargain with management. There would, in effect, be two regulatory regimes – one for existing units and a relaxed regime for new entrants.

Even before people could react to these quiet changes through a simple executive order came another announcement, this time from the UP government. Except for the Building and other Construction Workers Act, Bonded Labour Act and Section 5 of the Payment of Wages Act (which gives labour the right to receive timely wages), all other laws were deleted for the next three years for all firms.

It was Gujarat's turn the next day. Taking a cue from MP and UP, the state went further and granted labour law exemptions for 1200 days. Now, the Assam government has announced a provision for fixed-term employment of workers. It has also proposed that factories will now be allowed to increase working hours from the existing 8-hours to a new 12-hour shift. The governments in Punjab and Rajasthan are also considering similar changes in labour law statute.

The broad justification is that economic activity has been hampered by the pandemic and governments across the country need to give greater flexibility to businesses and industries to provide employment to returning migrants, among others. However, if that was indeed the purpose, the 12-hour shift decision is clearly contrary to the objective. If jobs have to be added, the push should have been for shorter work hours and an increase in shifts, which would then distribute employment.

## Impact on the Economy

The lockdown has indeed resulted in massive economic disruption. For an economy that was already in the grip of a slowdown, the near closure of almost all activity has meant a steep rise in unemployment. Over 120 million Indians have already lost their jobs, with three-fourths of them being small traders and wage labour. The number of unemployed will only go up in the **medium-term**.

The silver-lining, according to some, is that China has become unpopular and is now on its way down. Trade with China will no longer be encouraged by various nations and supply chains will attempt to move elsewhere. This has led to a situation where Indian industry is fancying its chances and striving to replace China as the factory of the world. However, this optimism seems misplaced. Industries that did move away from China in the recent past have mainly shifted to Bangladesh and Vietnam, and have stayed away from India, despite the country's large domestic market.

Even Indian industry has been loath to invest in India, especially over the last few years. The reason for this cannot be stringent labour laws alone. India's ease-of-doing business is still struggling with poor contract enforcement, shortage of skilled labour, and an unstable tax structure.

But the covid-19 crisis has opened up the possibility for radical change, and labour seems to have become easy pickings to show that change is happening. All past disasters have led to some serious rethinking about existing institutions and forced legislators to make new laws or amend old ones.

The Bhopal Gas tragedy famously brought home the need for environment protection laws. A series of coal mine explosions, starting from 1958, forced the attention of the government on the poor conditions of workers, resulting in complete nationalization of the sector in 1973.

India's first labour law was the Apprenticeship Act passed in the mid nineteenth century when large numbers of orphaned children needed to be employed in industry and needed training. Suspending all but a few labour laws by states governments such as UP and MP is an understandable contemporary reaction to the massive unemployment and production slowdown over the last two months.

But the unfortunate story that is unraveling in front of us today is that of a strong government using this crisis as an opportunity to push forward legislation that is important, but is neither well-thought nor particularly relevant now.

The Central government first delayed implementing the lockdown, and then declared a curfew without giving any notice. Millions of people were stranded without food and shelter. Some of the poor migrants who started walking back home in the summer heat have died on the way.

While a large number of workers are losing their jobs and are traveling thousands of miles to go back home in desperation, it does not make any sense to give additional powers to factories and firms to terminate their workforce. It only makes a hostile government appear even more aggressive.

Even if industrial revival and the need to make India globally competitive is the only pressing concern in policy circles at the moment, the case for rigid labour laws being the main villain preventing an Indian manufacturing renaissance is very weak.

In the 21st century, Indian industry has been repeatedly slow and ineffective in reacting to global economic shocks, such as the textile sector losing its sheen after the Multi Fibre Agreement expired in 2005, for instance. These failures have been repeatedly blamed on labour market rigidity, but the evidence is weak.

Faizan Mustafa, a renowned legal expert and vice-chancellor of NALSAR University of Law, points out that the very premise for massive changes in labour legislation, especially at this juncture when workers are going through a crisis, is largely unsubstantiated. "Mere perception cannot be used to make policy," he said.

## In Conclusion

Ultimately, the problem with what UP, MP and several other governments are trying to do is related to both the process and the timing of these amendments. Labour is a concurrent subject and the significant laws are central laws. They cannot be done away with through State ordinances. And the timing is so poor.

The national minimum wage that the Modi government had been trying to get into place for a while will now get pushed away under these sweeping changes, possibly forever.

The Economic Survey of 2018-19 had stressed that a high minimum wage is critical for workers and does not impact employment generation. At a time when there are calls for universal basic income, at least a higher minimum wage is essential.

Trade unions, including the ones backed by the RSS-affiliated Bharatiya Mazdoor Sangh, will inevitably oppose these changes since all attempt at labour law reform in India involves no consultation with labour.

There is an oft-repeated criticism that India's socialist-era inspector raj has been stringent and, therefore, imposed excessive costs on Indian business. But Professor Mustafa points out that the belief that our labour laws have been strictly implemented is a myth. Like all other laws, these have also served more as guiding principles and deterrents, and have been used by exception. To then infer that their implementation has been the primary cause for losses in productivity would be very erroneous.

When law ceases to exist, the jungle raj takes over. If employees have to now be left completely to the mercy and the goodness of the employer, the workplace becomes distasteful and far from attracting foreign direct investment, these new measures might keep it away. This move of allowing state governments to use a weak moment in national history to push through hurried and sweeping measures will only undermine worker safety and distort our labour institutions further.

