

Gist of EPW January Week 2, 2021

TABLE OF CONTENTS

1. [Labour Laws and Migrants](#)
2. [The Regulatory Myopia of 'Work from Home'](#)

Labour Laws and Migrants

Context:

The article analyses the impact of COVID-19 on labour laws and migrant workers.

Background:

- The Indian government treated the [COVID-19](#) outbreak as a disaster. A countrywide lockdown was imposed which resulted in the closing down of many industries and business enterprises.

Impact of lockdown on industries and workers:

- Closing of industries resulted in the mass departure of labour and migrant workers from industrial towns and cities.
- All the economic activities halted due to the lockdown and this resulted in huge revenue loss, shutting down of industries along with workers being retrenched and laid off.
- This has created a psychological fear and job-related stress among the Indian working class.
- The healthcare costs have skyrocketed due to the adversity generated by the pandemic which has resulted in increased debt burdens.
- The Indian workers are going through a transition and need adequate wages and job security.
- The migrant workers are more likely to be infected by the Coronavirus because of their poor and meagre living and working conditions.

The response of government:

- To contain the COVID-19 pandemic, the government invoked various sections of the [Disaster Management Act, 2005](#) namely 6, 10, 38 and 72.
- Along with this, the Epidemic Diseases Act, 1897 was invoked and Epidemic Diseases (Amendment) Ordinance, 2020 was promulgated to regulate the contagion. Disobeying any order made under the said Act invites punishment as per Section 188 of the [Indian Penal Code](#).
- Both the Ministry of Home Affairs and the Ministry of Labour and Employment requested industrial houses to treat workers equitably and compassionately during the pandemic.
- The Ministry of Labour and Employment directed all business and industrial establishments to neither fire any employee nor to reduce the remuneration of any employee during the pandemic.
- The Ministry of Home Affairs ordered for distribution of wages on time. It also prohibited any unauthorised deduction of wages during the closure amid the pandemic.
- At the same time, to reduce the impact of lockdown, governments revamped the economic and fiscal setting of industries and factories.
- As opposed to it, many state governments diluted labour laws, threatening the rights of labourers.
- Under such circumstances, ensuring just and human conditions of living for the Indian labour force has become a daunting task.
- Lockdown and its associated effects have put India into a deeper economic crisis. It has also impacted the mental health conditions of migrant workers.

The response of the Supreme Court of India:

- In the Alakh Alok Srivastava case, the Supreme Court of India intervened to ensure the availability of basic amenities such as food and medicines during travel and transit of migrant workers.
- In the Harsh Mander case, while highlighting the right to health and equity, the petitioners stated before the Supreme Court that migrant workers needed money apart from food and shelter homes in order to return home safely. They argued that under Section 12 of the Disaster Management Act, 2005, stranded workers should be given salaries and relief by the government.
- In Aayom Welfare Society case, issues related to the distribution of ration to non-ration cardholders to mitigate the effects of job loss amid the pandemic was also raised by the

petitioners in Supreme Court. The petitioners argued to make food distribution universal for non-ration cardholders under the public distribution system.

Conclusion:

- The workers' rights have suffered during the lockdown due to exemptions made by many state governments in labour laws.
- Under the garb of the quarantine law enforcement, public health and labour laws were neglected, which adversely impacted the working class.
- The purpose of labour laws is to uphold the rights of the labour class and not to benefit capitalists. India's labour class suffered from both ends, by the pandemic and associated lockdown as well as due to neglect of their rights to social security and humane working conditions.

The Regulatory Myopia of 'Work from Home'

Context:

The article analyses the various aspects of the draft related to work for home (WFH) released by the Ministry of Labour and Employment.

Introduction:

- The draft model standing orders for the service sector that was released in December 2020 by the Ministry of Labour and Employment mentions Work from Home (WFH).
- These standing orders are applicable to organizations which have more than 300 employees. According to Section 10 of the draft, "subject to conditions of appointment or agreement between employers and workers, the employer may allow a worker to work from home for such period or periods as may be determined by the employer."
- In 2020, new controversial labour codes were enacted and 2021 will be the year of functionalization of the new labour regime. The act of introducing a separate draft for the service

sector and mentioning WFH, which is largely driven by the change in work culture and the emergencies created by the COVID-19 pandemic, has been well appreciated by people.

Work from home in the IT sector:

- NASSCOM in May 2020, gave certain recommendations to adopt WFH in the Information and Technology (IT) sector.
- These were related to the flexibility in the selection of the working hours and week offs and exemption from registration where 100% of employees are working from home.
- In fact, it proposes to completely keep the IT sector out of the bracket of standing orders, stating that in a flexible working environment, there is a regular change in the service conditions, which makes the certification expensive.
- Section 5 of the draft supports this by stating that “in the case of the IT Sector, the working hour shall be as per agreement or conditions of appointment between employer and workers.”

Impact of work from home on women:

- There was a noticeable increase in the cases of domestic violence during the pandemic and the lockdowns across the world. Feminist scholars have defined a household as a place where women’s unpaid labour contributes to the reproduction of “productive” labour.
- Due to sudden lockdowns, the workplace has intruded into the household. It has resulted in conflicts, the creation of a fragile environment and an illusion of work-life balance.
- While violence and harassment at the workplace are recorded, “homes” also represent limitations regarding freedom, especially for women. Many of them escape from home to work for emancipation. Work from home may lead to the reiteration of social biases and constraints on freedom.
- If we analyse various aspects connecting “work” and “home” then we observe that the draft policy on WFH reinforces exclusions related to recognition and valuation of work.
- “Home-based work” is largely performed by women in their home. This contributes to different manufacturing supply chains and their contribution is seldom recognised. The concept of “Work in home” which is performed by domestic workers is absent. That is why domestic workers are demanding legislation to regulate working conditions and wages at the national level.

Legal aspects of work from home:

- When a household becomes a workplace, it is directly impacted by exploitative work conditions.
- It results in the removal of the possibility of regulatory oversight over the workplace, leading to dilution of liability of employers.
- For example, what does an accident at the workplace imply, if the workplace is home? Can domestic violence be a case for sexual harassment at the workplace?
- The Netherlands has made it compulsory for employers to legally comply with workers' rights.
- However, according to the draft standing order of the Ministry of Labour and Employment, the terms and conditions related to WFH are to be based on an agreement between the employer and the employee. This leaves a lot of ambiguity.

Issue of workers' rights:

- Moreover, the draft appears to institutionalize temporary and fixed-term employment. This will lead to uncertainty in the tenure of employment and may make the bargaining capacity of workers weak as compared to those of employers.
- WFH promotes individualism and discourages unionisation of workers. However, the draft has mentioned the possibility of shutting down operations in case of an illegal strike which is ironic.
- In such a situation, it would be attractive for employers to shift to WFH in order to ignore any protest by workers.
- There is a concern over privacy too. As gig and platform workers' experiences have highlighted, remote working leads to increased surveillance of work and non-work time by employers.

Conclusion:

- Although it is difficult to defend the rights of employees in case of WFH, there is an opportunity to forge solidarity among workers working from home. This may challenge the myopic view of the government with respect to upholding workers' rights.
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