

# STOP THE RETURN TO LAISSEZ-FAIRE

Relevant for: Indian Economy | Topic: Issues relating to Planning & Economic Reforms

Through the public health crisis created by the [COVID-19 pandemic](#), we are witness to another massive tragedy — of workers being abandoned by their employers and, above all, by the state. The [workers' right to go home](#) was curbed using the Disaster Management Act, 2005. No provisions were made for their food, shelter, or medical relief. Wage payments were not ensured, and the state's cash and food relief did not cover most workers.

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Staring at starvation, lakhs of workers started walking back home. Many died on the way. More than a month later, the Centre issued cryptic orders permitting their return to their home States. Immediately employer organisations [lobbied to prevent the workers from leaving](#). Governments responded by delaying travel facilities for the workers to ensure uninterrupted supply of labour for employers.

Employers now [want labour laws to be relaxed](#). The Uttar Pradesh government has [issued an ordinance](#) keeping in abeyance almost all labour statutes including laws on maternity benefits and gratuity; the Factories Act, 1948; the Minimum Wages Act, 1948; the Industrial Establishments (Standing Orders) Act, 1946; and the Trade Unions Act, 1926. Several States have exempted industries from complying with various provisions of laws. The Confederation of Indian Industry has suggested 12-hour work shifts and that governments issue directions to make workers join duty failing which the workers would face penal actions.

Thus, after an organised abandonment of the unorganised workforce, the employers want the state to reintroduce laissez-faire and a system of indenture for the organised workforce too. This will take away the protection conferred on organised labour by Parliament.

The move is reminiscent of the barbaric system of indentured labour introduced through the Bengal Regulations VII, 1819 for the British planters in Assam tea estates. Workers had to work under a five-year contract and desertion was made punishable. Later, the Transport of Native Labourers' Act, 1863 was passed in Bengal which strengthened control of the employers and even enabled them to detain labourers in the district of employment and imprison them for six months. Bengal Act VI of 1865 was later passed to deploy Special Emigration Police to prevent labourers from leaving, and return them to the plantation after detention. What we are witnessing today bears a horrifying resemblance to what happened over 150 years ago in British India.

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Factory workers too faced severe exploitation and were made to work 16-hour days for a pittance. Their protests led to the Factories Act of 1911 which introduced 12-hour work shifts. Yet, the low wages, arbitrary wage cuts and other harsh conditions forced workers into 'debt slavery'.

The labour laws in India have emerged out of workers' struggles, which were very much part of the freedom movement against oppressive colonial industrialists. Since the 1920s there were a series of strikes and agitations for better working conditions. Several trade unionists were arrested under the Defence of India Rules.

The workers' demands were supported by our political leaders. Britain was forced to appoint the

Royal Commission on Labour, which gave a report in 1935. The Government of India Act, 1935 enabled greater representation of Indians in law-making. This resulted in reforms, which are forerunners to the present labour enactments. The indentured plantation labour saw relief in the form of the Plantations Labour Act, 1951.

By a democratic legislative process, Parliament stepped in to protect labour. The Factories Act lays down eight-hour work shifts, with overtime wages, weekly offs, leave with wages and measures for health, hygiene and safety. The Industrial Disputes Act provides for workers participation to resolve wage and other disputes through negotiations so that strikes/lockouts, unjust retrenchments and dismissals are avoided. The Minimum Wages Act ensures wages below which it is not possible to subsist. These enactments further the Directive Principles of State Policy and protect the right to life and the right against exploitation under Articles 21 and 23. Trade unions have played critical roles in transforming the life of a worker from that of servitude to one of dignity. In the scheme of socio-economic justice the labour unions cannot be dispensed with.

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The Supreme Court, in *Glaxo Laboratories v. The Presiding Officer, Labour* (1983), said this about the Industrial Employment (Standing Orders) Act, 1946: “In the days of laissez-faire when industrial relations was governed by the harsh weighted law of hire and fire, the management was the supreme master, the relationship being referable to a contract between unequals... The developing notions of social justice and the expanding horizon of socio-economic justice necessitated statutory protection to the unequal partner in the industry namely, those who invest blood and flesh against those who bring in capital... The movement was from status to contract, the contract being not left to be negotiated by two unequal persons but statutorily imposed.”

Any move to undo these laws will push the workers a century backwards. Considering the underlying constitutional goals of these laws, Parliament did not delegate to the executive any blanket powers of exemption. Section 5 of the Factories Act empowers the State governments to exempt only in case of a “public emergency”, which is explained as a “grave emergency whereby the security of India or any part of the territory thereof is threatened, whether by war or external aggression or internal disturbance”. There is no such threat to the security of India now. Hours of work or holidays cannot be exempted even for public institutions. Section 36B of the Industrial Disputes Act enables exemption for a government industry only if provisions exist for investigations and settlements.

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The orders of the State governments therefore lack statutory support. Labour is a concurrent subject in the Constitution and most pieces of labour legislation are Central enactments. The U.P. government has said that labour laws will not apply for the next three years. Even laws to protect basic human rights covering migrant workers, minimum wages, maternity benefits, gratuity, etc. have been suspended. How can a State government, in one fell swoop, nullify Central enactments? The Constitution does not envisage approval by the President of a State Ordinance which makes a whole slew of laws enacted by Parliament inoperable in the absence of corresponding legislations on the same subject.

Almost all labour contracts are now governed by statutes, settlements or adjudicated awards arrived through democratic processes in which labour has been accorded at least procedural equality. Such procedures ensure progress of a nation.

In *Life Insurance Corporation v. D. J. Bahadur & Ors* (1980), the Supreme Court highlighted that

any changes in the conditions of service can be only through a democratic process of negotiations or legislation. Rejecting the Central government's attempt to unilaterally deny bonus, the Court said, "fundamental errors can be avoided only by remembering fundamental values", as otherwise there would be a "lawless hiatus".

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The orders and ordinances issued by the State governments are undemocratic and unconstitutional. The existing conditions of labour will have to be continued. Let us not forget that global corporations had their origins in instruments of colonialism and their legacy was inherited by Indian capital post-Independence. The resurgence of such a colonial mindset is a danger to the society and the well-being of millions and puts at risk the health and safety of not only the workforce but their families too.

In the unequal bargaining power between capital and labour, regulatory laws provide a countervailing balance and ensure the dignity of labour. Governments have a constitutional duty to ensure just, humane conditions of work and maternity benefits. The health and strength of the workers cannot be abused by force of economic necessity. Labour laws are thus civilisational goals and cannot be trumped on the excuse of a pandemic.

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