

Letter to the ILO on the Unilateral Suspension of Indian Labour Laws

Tuesday 9 June 2020, by [Collective / Multiple signers](#) (Date first published: June 2020).

We, the largest ten Central Trade Unions in India draw your attention to a retrograde ANTI-labour exercise of the Government of India towards virtual nullification of most of the substantive laws in vogue in the country by the Government of India through the State Governments. This exercise has been aimed at total abrogation of the provisions of not more than eight hour- working day and Right to Freedom of Association and Right to Collective Bargaining. In this context, we refer to the press release by ILO on 13th May 2020 by the Decent Work Team, Asia saying “Certain States in India are moving towards relaxing labour laws with a view to revitalize the economy from the impact of COVID-19.” Such a statement tantamount to certifying by ILO, the retrograde actions of the state governments in connivance with the Govt of India, in gross violation of ILO standards, as legitimate.

Dear Sir,

This joint representation is the follow up with more concrete details on our complaint / representation to you dated 14th May 2020.

Several state governments have already issued notifications in this respect. We give below the present status of the states who all have changed many or few of existing labour laws by applying Ordinance or Executive Order, as mentioned below:

Gujarat:

Ordinance dated 7th April, 2020 extended working hours from 8 hours a day to 12 hours, the work done beyond this will be paid as overtime but at the daily wage rate (not double the daily wage as provided in principle factory Act). It is also reported that they are going to suspend all labour laws for 1200 days.

Madhya Pradesh:

By Ordinance dated 6th May, 2020 had suspended most of the labour laws and notified extension of working hours from eight hours to 12 hours for period of 1000 days. Amendments to Shop and Establishment Act for working from 6am to 12 in the night makes it virtually 18 hours of working without specifying if it will be two shifts or work at a go for the workers on the shops.

Himachal Pradesh:

For the period from 21st April to 31st July working hour are extended from 8 hours to 12 hours with overtime payment as per Factory Act with limits of hours in a week.

Uttar Pradesh:

By issuing Ordinance dated 6th May, 2020 excepting MSME's and other

industries from all but 4 labour laws namely bonded labour act, workmen compensation act, building and construction workers act, maternity act and section 5 of payment of wages act 1936, all labour laws were suspended for next three years.

Haryana:

By issuing ordinance all 18 labour laws are put on suspension. The increase in working hours 8 to 12 hours is also part of the process rather the hours can go beyond 12

Rajasthan:

Working hours is extended from 8 hours to 12 hours with applicability of the overtime payment and stipulated hours of work in a week. This is for three months from 20th April 2020.

Punjab:

Notified on 12 April extension of working hours from 8 hours to 12 hours. With overtime payment as per Factory Act with limits of hours in a week. This is for three months from 20th April 2020.

Uttarakhand:

By Ordinance, 18 labour laws have been put on suspension including Factory Act.

Maharashtra:

Working hours have been enhanced from eight hours a day to 12 hours with provisions in the Factories Act about overtime and stipulated hours in a week.

Odisha:

In Notification dated 8th may working hours enhanced from 8 to 12 hours, with overtime payment as per Factory Act with stipulated limits of hours in a week. This is for three months from 20th April, 2020.

Assam:

Through notification by Governor in May working hours enhanced from 8 to 12 hours, with overtime payment as per Factory Act with stipulated limits of hours in a week. This is for three months from 20th april, 2020.

Bihar:

The order of the Government dated 9th May 2020 increases working hours from 8 to 12 hours. The letter from Bihar Govt. to Labour Secretary, Government of India specifies that Bihar Government would proceed for changes in other laws also and would bring out ordinance.

Karnataka:

Daily working hours has been enhanced from 8 hours to 10 hours through executive notification in May 2020.

Importantly, the states of Madhya Pradesh, Uttar Pradesh and Gujarat are ceasing application of

Trade union Act, 1926 which is main plank of Freedom of Association and Industrial Disputes Act which provides scope for collective bargaining and also right to strike, along with other substantive labour laws for a period of 3 years.

We may refer here that Central Govt. had discussed on labour issues with Industry Associations in four groups in different dates from April 3rd to 10th, 2020 who have asked the Government to stall all trade union activities. There are clear reasons to understand that with the endorsement from, rather insistence of the Central Government on so called "labour law reforms" "on priority basis" the State Governments have dared to attack on the basic rights of the workers. The Labour Secretary of the Central Government has sent communications to all State Governments in this regard, vide letter no Z-200025/34/2015-LRC(PL) dated 5-05-2020. Hence the onus and responsibility of the entire exercise of virtually nullifying most of the labour laws and violation of the basic International Labour Standards through that exercise also falls on the Central Government.

It may be noted that the Central Govt. despite our protest and discussion through virtual meeting on Zoom held on 6th May, 2020 had not desisted from such brazen abrogation of workers' rights and trade union rights.

These diabolical measures are being pushed taking advantage of lockdown period when no industrial action by workers is possible. And most of the workplaces having been lockdown during this period, there is absolutely no relationship or import of all such measures with the task of containing the COVID-19 Pandemic.

We need to mention here that such action by the State Governments in connivance with the Govt of India contravenes the basic principle of the Constitution of our country which in its article 19(1) (c) says- "Trade union right is fundamental right of the citizens to form an association. It is an organisation or permanent relationship between its members in the matter of common concern. It thus includes the right to form company, societies, partnership, trade union, and political parties."

We also refer here the Philadelphia Declaration of ILO stating that- " The Conference reaffirms the fundamental principles on which the Organization is based and, in particular, that-

1. labour is not a commodity;
2. freedom of expression and of association are essential to sustained progress;
3. poverty anywhere constitutes a danger to prosperity everywhere;"

Thus, the actions of the Government/s here openly transgress their commitments to ILO declaration. The Government also with all enthusiasm had dishonoured the ILO 'Declaration on Fundamental Principles and Rights at Work and its Follow-up' adopted by the International Labour Conference at its Eighty-sixth Session, Geneva, 18 June 1998 (Annex revised 15 June 2010) which stressed the core conventions of ILO saying that-

"2. Declares that all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely:

1. freedom of association and the effective recognition of the right to collective bargaining;
2. the elimination of all forms of forced or compulsory labour;
3. the effective abolition of child labour; and
4. the elimination of discrimination in respect of employment and occupation."

There are umpteen number of instances which reflects refusal by the Government the aims and procedures of ILO as if Government has no obligation to ILO. For example, it is mentioned in the Freedom of Association -Fifth (revised) edition that "it is the responsibility of the Government to ensure application of international labour Conventions concerning freedom of association which have been freely ratified and which must be respected by all state authorities, including the judicial authorities. (313rd Report, case no. 1952, para 300) We also draw your pointed attention to the inhuman miseries of the tens of millions of inter-state migrant workers who have been thrown into during the lockdown period, reducing these most productive workforce along with their family members, both in the organised and unorganised sector of industries and services into job-less, earning less and even shelter-less and penny less non-entities, not having even a full meal a day; in desperation millions of them have been walking hundreds of miles on the highway, on rail tracks ,or even through jungles to reach their home-states and hundreds of them died on the way owing to hunger, exhaustion and malnutrition related ailments besides in road and railway track accidents. All these have happened to them despite there being an enactment to regulate their service conditions, registration and welfare called Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979 owing to tardy implementation, rather non-implementation of the provisions of this Act by the Governments, both at the state and the centre. In such a situation, the Government is still moving to repeal this only enactment for migrant workers through the Occupational Safety Health & Working Conditions Code (OSHWC) 2019 which is still pending in Parliament for enactment. This action of the Government is like throwing the baby with the bathwater and reflects the inhuman insensitivity of the Government towards the migrant workers.

The Occupational Safety Health & Working Conditions Code 2019 (OSHWC Bill 2019) proposes to repeal this Act on the claim that provisions of the Inter State Migrant Workmen Act 1979 have been subsumed in the Code Bill, which is not at all correct as can be verified from the Code Bill 2019, read with existing Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979. All the migration specific protective provisions like registration of the migrant workers as well as establishments and contractors employing them, provisions of separate identity of migrant workers, principal employer's obligation to payment of wages to the migrant workers deployed through contractor etc are done away with or thoroughly diluted in the proposed OSHWC Bill 2019 which is a matter of record. Moreover, the definition of migrant workers in the OSHWC Bill 2019 has been made more restrictive through incorporation of threshold employment ceiling and wage ceiling to push out majority of the migrant workers out of the purview of any protective legislation, wholly at the mercy of the employers. Such move of the Government of India also tantamount to violation of basic ILO standards, principles of decent work, besides being in violation of human rights, it is also not in conformity with U.N agenda 2030 on sustainable development goals for which India is also committed. These actions are quite contrary to the objectives of U.N agenda 2030 as well.

With all the above quotes of Constitution of India and ILO decisions, we feel that at this very turbid and uncertain situation, the ILO must powerfully and effectively intervene 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.

Thanking you,

Yours sincerely,

INTUC AITUC HMS CITU AIUTUC

TUCC SEWA AICCTU LPF UTUC

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Collective

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Sent to Mr Guy Ryder
Director General, International Labour Organisation
Geneva