

NISHE RAJEN SHONKER

Advocate-on-Record

Supreme Court of India

May 18,2020

To

The Registrar,
Supreme Court of India,
New Delhi- 110001

LETTER OF URGENCY

Subject: WP(C)No. /2020 Nandini Praveen v. Union of India.
Before The Hon'ble Supreme Court of India.

Dear Sir,

The writ petition is filed challenging notifications/ ordinances suspending central labour legislations or the provisions therein. As a result of these impugned laws, a situation has arisen where every day labourers in the concerned states are put to sheer exploitation in terms of working hours, wages, health and safety conditions. The impugned laws violate the fundamental rights of the citizens concerned. Thus, they are deprived of the benefit of the existing central labour laws passed by the parliament. This is a serious and

unprecedented situation. Its impact is all the more severe at the time of the COVID-19 pandemic. Since lakhs of labourers/ workers are subjected to the rigour of the impugned laws on a day to day basis and since the impugned laws are promulgated for a specified period, a stay of the same is sought for in the writ petition. After the said period, the writ petition may turn infructuous.

The writ petition is filed in *pro bono publico* for safeguarding the interest of the working class, at large, on a day to day basis. Any delay in taking up the matter will adversely affect the interest of the citizens concerned. The quantum of wages, the hours of work, health care etc. of the workers in 10 states will depend upon the order that this Hon'ble court passes in the interim prayer. Any delay in taking up the matter will have the effect of defeating the very purpose of the writ petition.

Therefore, it is humbly prayed that this Hon'ble Court may be pleased to receive and accept the above writ petition urgently and post the same for admission at the earliest.

Thanking you

Nishe Rajen Shonker

Advocate-on-record.

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

WRT PETITION (C) NO. OF 2020

IN THE MATTER OF:

NANDINI PRAVEEN ... Petitioner

Versus

UNION OF INDIA & Ors ... Respondents

OFFICE REPORT ON LIMITATION

DATED: 18.5.2020

BRANCH

OFFICE

FOR FIRST LISTING

SECTION-

The case pertains to (Please tick/ check the correct box):-

<input type="checkbox"/>	Central Act: (Title)	N/A
<input type="checkbox"/>	Section:	N/A
<input type="checkbox"/>	Central Rule: (Title)	Article 19(1) of the Constitution of India 1949
<input type="checkbox"/>	Rule No(s):	N/A
	State Act: (Title)	N/A
<input type="checkbox"/>	Section	N/A
	State Rule: Title:	N/A
<input type="checkbox"/>	Rule No(s):	N/A
<input type="checkbox"/>	Impugned Interim Order: (Date)	N/A
	Impugned Final order/ Decree: Date	N/A
<input type="checkbox"/>	High Court: (Name)	N/A
<input type="checkbox"/>	Names of Judges:	N/A
<input type="checkbox"/>	Tribunal/ Authority: (Name)	N/A
1.	Nature of matter:	Civil
2.(a)	Petitioner/ appellant No. 1:	Nandini Praveen
(b)	e-mail ID:	N/A
(c)	Mobile phone number:	N/A

3.(a)	Respondent No.1:	Union of India	
(b)	e-mail ID:	N/A	
(c)	Mobile phone number:	N/A	
4.(a)	Main category classification:	014	
(b)	Sub classification:	1407 others	
5.	Not to be listed before:	N/A	
6 (a)	Similar disposed of matter with citation, if any, & case details.	No similar matter disposed	
(b)	Similar pending matter with case details	No similar matter pending	
7.	Criminal Matters:	No	
(a)	Whether accused/convict has surrendered:	N/A	
(b)	FIR	Date	N/A
(c)	Police Station:	N/A	
(d)	Sentence Awarded:	N/A	
	Period of sentence undergone including period of detention /custody undergone:	N/A	
8:	Land Acquisition Matters:		
(a)	Date of Section 4 notification:	N/A	
(b)	Date of Section 6 notification:	N/A	
(c)	Date of Section 17 notification:	N/A	
9.	Tax Matters: State the tax effect:	N/A	
10.	Special Category (first petitioner/appellant only):		

	(i) <input checked="" type="checkbox"/> Senior citizen > years	(ii) <input checked="" type="checkbox"/> SC/ST
	(iii) <input checked="" type="checkbox"/> Woman/child	(iv) <input checked="" type="checkbox"/> Disabled
	(v) <input checked="" type="checkbox"/> Legal Aid case	(vi) <input checked="" type="checkbox"/> In custody
11.	Vehicle Number (in case of Motor Accident Claim matters):	N/A

Date: 18.5.2020

NISHE RAJEN SHONKER

AOR for petitioner(s)/appellant(s)

IN THE SUPREME COURT OF INDIA

[ORDER XXXVIII RULE (1)]

CIVIL ORIGINAL JURISDICTION

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

WRIT PETITION (CIVIL) NO.

OF 2020

IN THE MATTER OF:

Nandini Praveen

... Petitioner

Versus

Union of India & Ors.

... Respondents

PAPER BOOK

(FOR INDEX PLEASE SEE INSIDE)

ADVOCATE FOR THE PETITIONER: NISHE RAJEN SHONKER

SYNOPSIS

This writ petition raises fundamental questions concerning the constitutional validity of certain notifications and ordinances issued by the respondent states (hereinafter “impugned laws”) leading to fundamental changes in the labour law framework of the country. The impugned laws are passed in the wake of the COVID-19 pandemic purportedly to enable better economic activity and market reform. However, they are violative of the citizens' (read workers'/labourers') fundamental rights under Articles 14, 15, 19, 21 and 23 of the Constitution of India.

The impugned laws, by suspending welfare and health measures of workers and by increasing work hours constitute forced labour. The term must be viewed not in a limited sense where the employees are physically threatened to work. A wide interpretation of ‘forced labour’ is already subscribed to by this Hon’ble Court in People's Union for Democratic Rights v. Union of India 1982 AIR SC 1473. The impugned laws violate the ratio of the judgment as well.

Article 19(1)(b) holds that citizens shall have the right to assemble peacefully and 19(1)(c), the right to form associations or unions. The impugned laws include suspension of recognition of trade unions (Please see ‘Grounds’). It is a settled position that the right to form

an association includes the right to its continued function. (See *Damyanti Naranga v. The Union of India*, 1971 AIR SC 966). The impugned laws violate this right as well.

The right to health, leisure, safe working conditions fall within the ambit of the right to life under Article 21 of the Constitution. The impugned laws are clearly in violation of Article 21, r/w Articles 39(e) and 42. (Please see *Sunil Batra v. Delhi Administration*, AIR 1978 SC 1675, *Peoples Union for Democratic Rights v. Union of India* 1982 AIR SC 1473, *Murlidhar Dayandeo Kesekar v. Vishwanath Pande Barde*, (1995) Supp 2 SCC 549, *Regional Director, ESI Corporation v. Francis De Costa*, AIR 1995 SC 1811, *L.I.C. of India v. Consumer Education and Research Centre*, (1995) SCC (5) 482.)

The impugned laws are also violative of the international framework on labour laws. India is a party to several international conventions regulating health and welfare, hours of work, equal remuneration etc of workers. The list of central legislations suspended in various states is tabulated while stating the facts of the case.

The impugned laws which suspend the Industrial Disputes Act are purportedly done so invoking powers under Section 36B. A reading of Section 36B along with the above conditions shows that the notification is ultra-vires of the Section for two reasons. Firstly, the Section does not permit the state government to exempt any

undertaking from the provisions of the Act unless there is adequate mechanism for investigation and settlement of disputes. It is a prerequisite. Secondly, the purpose of the section is not to give power to states to exempt the entire Act without any other alternative, in a crisis like the Covid-19 pandemic. The impugned notification exempts the upcoming industries from the ambit of the ID Act, except for few provisions as stated above. With this, a crucial rule prohibiting unfair labour practice also gets vanished.

It is pertinent to note that the suspension of the provisions of the Factories Act, 1947 is resorted to by the respective state governments without having the competence to do so. None of the State Governments have the power to issue notifications exempting factories from the purview of any of the provisions of the Factories Act, under the pretext of pandemic. According to the impugned notifications, suspending whole or part of the Factories Act, the state governments are allegedly exercising the power under Section 5 of the Factories Act. A reading of the explanation to the said section would show that the state governments are given the power to exempt any factory or class or description of factories from all or any of the provisions of the Factories Act for a period not exceeding 3 months at a time only in case of a public emergency. The Section further clarifies by way of an explanation that ““public emergency” means “a grave emergency whereby the security of India or of any part of the territory thereof is threatened, whether by war or external

aggression of internal disturbance.” No such public emergency is present in India which warrants exempting factories from the purview of the provisions of the Factories Act. (Please see Article 355 of the Constitution of India defining emergency).

Invoking Section 65(2) of the Factories Act, 1948, the states of Haryana, Assam, Punjab and Goa have issued notifications extending the working hours. The same is arbitrary, illegal and violative of the Central law scheme. The said action is unjust, illegal, and arbitrary. Those notifications are ultra vires of Section 65 of the Factories Act.

In Uttar Pradesh, clause 3 of the impugned ordinance states that “all factories and establishments engaged in manufacturing process shall be exempted from the operation of all labour laws for a period of three years..” subject to certain conditions. Since the Code of Wages is suspended (since it comes within the purview of all labour laws) and since the Payment of Wages Act is repealed, there is no statutory obligation for the factories and establishments to give timely wages to their employees. Therefore, the ordinance has essentially led to abolition of minimum wages for labourers in these establishments. This is violative of Articles 14, 15 and 21 of the Constitution.

The impugned laws have also suspended several welfare legislations of the states as detailed under 'Grounds.' They are also illegal and arbitrary.

For these reasons, the impugned laws are liable to be struck down/quashed for the reasons set out in the grounds in detail, as violative of the fundamental rights under Articles 14, 15, 19, 21 and 23 of the Constitution of India.

LIST OF DATES

1924 The Workmen's Compensation Act of 1923 made the employers responsible for compensating workmen for all injuries sustained in the course of their work. The scales of compensation varied according to the wages of the workmen and the kind of disability suffered. This is the first major Act passed in favour of the labourers.

1926 The Trade Unions Act, 1926 is a permissive legislation wherein any seven or more members of a trade union may apply for registration of a trade union. Registration is not compulsory and

unregistered trade unions would not in any way, be illegal. Benefits such as immunity from criminal and civil liability as are conferred by the law on registered unions will not be available to unregistered unions.

1931 The report by Royal Commission on Labour, headed by J.H. Whitley was submitted in the year 1931. The commission looked into the conditions of industrial workers and suggested steps to ameliorate them so that reforms could be carried out as the rising tide of labour unrest stemmed following the recommendations series of legislation ensued during the 1930s.

1931 The Factories Act of 1931 was enacted. It distinguished between seasonal and perennial factories. In the former, working hours were fixed at 11 per day and 60 per week. In the latter they were limited to 10 per day and 54 per week. Children could not be made to work for more than 5 hours a day. Overtime work came to be regulated and higher payments were prescribed for it. In no case an adult worker could be made to

work for more than 13 hours and child for more than seven and half hours at a stretch. Employers were instructed to have suitable arrangements for first aid and crèches for the children of women workers. Ventilation and sanitation facilities were to be improved and safety regulations tightened. The powers of factory inspectors were increased.

1935 Indian Mines Act was passed on the recommendation of Royal Commission in the year 1935 which banned the employment of children below 15 and put the maximum hours of work at 54 per week. The health and safety provision were made stricter.

1936 The Payment of Wages Act, 1936 brought into force. The Act intends to regulate the payment of wages to certain classes of employed persons. The Act fixes the responsibility for payment of wages on every employer. It provides that there shall be a wage period, time of payment of wages, the mode of payment, permissible deductions, fines, maintenances of register and records, competent authorities and grievance redressal

forum. Therefore, the Act provides protection for the labourers against the non-payment of wages or deferment of wages of the labourers.

1947

The Industrial Disputes Act, 1947 is enacted. It is enacted to make provision for the investigation and settlement of industrial disputes, and for certain other purpose. The Act promulgates Labour Courts, Court of Enquiry, Board of Conciliation and Tribunals. As per Section 7A, the Tribunals have the power to hear any industrial dispute as defined under Section 2(k) including the matters specified in Second and Third Schedule. The second schedule includes matters pertaining to wages, compensatory and other allowances, hours of work and intervals, bonus, rules of discipline etc. The third schedule includes matters such as propriety or legality of an order passed by the employer, application and interpretation of standing orders, illegality or otherwise of a strike or lock-out etc. Chapter II A of the Act enlists the requirements when an employee's service conditions are changed. As per Section 9A of the said chapter, without any notice, any change in service conditions cannot be

introduced. Chapter III enumerates provisions with respect to reference of disputes to boards, courts or tribunals. Chapter IV speaks about procedure, powers and duties of authorities. Chapter V is with respect to Strike and Lock-outs. Section 22 in the said chapter prohibits an employee employed in a public utility service to go on strike without giving any notice of the specified period. Clause 2 of the said Section states that no employer carrying on any public utility service shall lock-out any of his workmen without giving them notice of the specified period. Section 24 defines illegal strikes and lockouts. Section VA speaks about Lay-off and Retrenchment. Chapter VB provides special provisions relating to lay-off, retrenchment and closure. Chapter VC is pertaining to unfair labour practice and Chapter VI deals with penalties.

1948

The Factories Act, 1948 is a prominent legislation which focuses on regulating the working conditions of factories in India. The Act came into force on 1st April 1949. Its main focus is to ensure adequate safety measures and to promote the health and safety and welfare of the workers employed in factories. Chapter II deals with

Inspecting Staff giving various powers under Sections 8 and 9. Chapter III deals with health standards mandating certain facilities in an undertaking. Chapter IV deals with safety measures and Chapter IVA deals with provisions relating to hazardous process. Chapter V deals with certain welfare provisions. Chapter VI states about working hours of adults and Chapter VII speaks about employment of young persons. Chapter VIII deals with annual leave with wages and chapter IX provides certain special provisions. Finally, Chapter X provides penalties and procedures. The provisions are crucial for maintaining the safety, health and welfare standards of the labourers. All these enactments show that the labour laws have evolved over a long period of time in India, after much struggles, deliberations and discussions. Though there are lacunas in these statutes, they provide a minimum protection to the labourers against the oppression and harassment of the strong managements making the process democratic.

8.08.2019

Code of Wages Act, 2019 received Presidential assent. The Act consolidates the provisions of four

labour laws concerning wage and bonus payments and makes universal the provisions for minimum wages and timely payment of wages for all workers in India. The Payment of Wages Act, 1936, the Minimum Wages Act, 1948, the Payment of Bonus Act, 1965 and the Equal Remuneration Act, 1976 are hereby repealed.

11.04.2020 The 9th respondent (Government of Rajasthan) issued order No.F3(15) Legal/ F & 13/ 2020/ 188 extending the working hours to 12 hours of the adult workers of the Factories Act, 1948 for a period of three months.

17.04.2020 The 6th respondent (Government of Gujarat) issued notification No. GHR/2020/56/FAC/142020/346/M3 whereby relaxing the labour laws. By exercising the power under Section 65 of the Factories Act, 1948 the notification exempts all the factories registered under the Factories act from various provisions relating to weekly hours, daily hours, intervals for rest etc. of adult workers under Section 51, 54, 55

and 56 with condition from 20th April till 19th July 2020.

20.04.2020 The 10th respondent (Government of Punjab) issued notification No.21/07/2015-5L in the wake of pandemic and has relaxed the provisions of the Factories Act 1948 by extending the working hours for the optimum use of labour in the factories. By exercising power under Section 65 of the Factories Act 1948 the total amount of work hours allowed in a day shall be a maximum of 12 hours instead of a maximum of 9 hours as provided in the Factories Act 1948. The order further provides that no adult worker shall be allowed or required to work in a factory for more than twelve hours in any day and Seventy Two hours in any week. No adult worker shall be allowed or required to work in a factory for more than twelve hours in any day and Seventy Two hours in any week.

21.04.2020 The 13th respondent (Government of Himachal Pradesh) issued notification No. (A)4-3/2017. In exercise of powers conferred under section 5 of

the Factories Act, has ordered that that all the factories registered under the Factories Act, 1948 shall be exempted from the provisions of section 51(weekly hours), section 54 (daily hours), section 55 (interval of rest) and section 56 (spread hours) w.e.f. 21st April, 2020 to 20th July, 2020,1948.

28.04.2020 The 12th respondent (Government of Uttarakhand) issued notification No/VII/20-91(Labour)/2008/TC-1 exercising the power conferred under Section 5 of the Factories Act, 1948 whereby extending the working hours to 11 hours of the workers of the Factories Act, 1948.

29.04.2020 The 11th respondent (Government of Haryana) issued Notification No. 2/17/2020-2Lab.—vide its official gazette. The notification relax certain provisions of the Factories Act, 1948 by extending the working hours for optimum utilization of labour in the factories by exercise of the powers conferred under Sub-section (2) of the Section 65 of the Factories Act, 1948. The notification orders that all factories under the Factories Act, 1948 shall be exempted from the provisions relating to

weekly hours, daily hours etc. of adult workers under Section 51, Section 54 and Section 56.

05.05.2020 The 5th respondent (Government of Madhya Pradesh) issued notification No.956-02-2020-A-16 in exercise of the powers conferred under section 36-B of the Industrial Disputes Act, 1947 exempting the industries of the state from the provisions of the Act, except section 25-N, 25-O, 25-P, 25-Q and 25-R for 100 days. This notification is applicable to new industries registered under the Factories Act, 1948. The notification dated 05.05.2020 issued by the Labour Department of Madhya Pradesh has brought changes to the Contract Labour (Regulation and Abolition) Madhya Pradesh Rules, 1973, the Industrial Disputes Act, 1947 (hereinafter, the “ID Act”), Madhya Pradesh Industrial Relations Act, 1960 and the Factories Act, 1948. It has also introduced third party certification for non-hazardous category factories having lesser than 50 workers instead of routine inspection by the Labour Inspectors annually. The authorities can inspect the factories submitting the report annually without fail, in case of accident or

complaint, only with the prior permission of Labour Commissioner. It also exempted the factories in the state from the Factories Act, 1948 except for Sections 6, 7, 8, 21-41H (about safety), 59, 65, 67, 79, 88 and 112 for 3 months from the date of the publication of the notification. This is done exercising powers under Section 5 of the Factories Act.

05.05.2020 The 12th respondent (Government of Uttarakhand) issued notification No/VII/20-91(Labour)/2008TC-1 extending the working hours to 12 hours of workers of the Factories Act, 1948.

06.05.2020 The 5th respondent (Government of Madhya Pradesh) promulgated the Madhya Pradesh Labour Laws (Amendment) Ordinance, 2020. The Ordinance amends two state laws: the Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961, and the Madhya Pradesh Shram Kalyan Nidhi Adhiniyam, 1982.

06.05.2020 The 4th respondent, (Government of Uttar Pradesh) submitted 'the Uttara Pradesh

Temporary Exemption From Certain Labour Laws

Ordinance 2020' to the Governor. The ordinance proposes to exempt the undertakings in the State from all the Labour Laws for the period of three years, the factories fulfill the following conditions:

- (a) The name and details of all employed workers shall be entered electronically on attendance register prescribed in section-62 of the Factories Act, 1948.
- (b) No workers shall be paid less than minimum wages as prescribed by UP Government.
- (c) The wages to the workers shall be paid within the time limit prescribed under section- 5 of Payment of Wages Act, 1936.
- (d) The wages to workers shall be paid only in their bank accounts.

(e) The provisions of the Factories Act, 1948 and Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 relating to safety and security of the workers shall remain applicable.

(f) The workers shall not be allowed or required to work for more than eleven hours per day and the spread over of the work shall not be more than twelve hours per day.

(g) For any death or disability due to accident arising out of and in the course of employment compensation shall be paid in accordance with Employees Compensation Act, 1923.

(h) The provisions of the various labour laws relating to the employment of children and women shall remain applicable.

(i) The provisions of Bonded Labour System (Abolition) Act, 1976 shall remain applicable.

08.05.2020 The 4th respondent (Government of Uttar Pradesh issued notification no. 12/2020/502/XXXVI-03-2020-30(Sa.)/2020TC exercising the power under section 5 of the Factories Act, 1948 extending the working hours of the workers of the Factories Act, 1948.

08.05.2020 The 8th respondent (Government of Assam) issued notification No. GLR. 170/2019/ Pt./4 exercising the power conferred under Section 65 of the Factories Act 1948. The notification exempts adult worker of all factories from the provisions of Sections 51, 52, 54, and 56 of the Factories Act 1948. Further exemption is given to provisions under Section 6 of the Assam Shops and Establishment Act, 1971. The notification has prescribed that the total hours of work shall not exceed 12 hours, ie. 13 hours inclusive of intervals.

08.05.2020 The 7th respondent (Government of Goa) issued Order No. CIF/092(Part-2)/S-II/IFB/2020/191 vide the official gazette. The order relaxing certain

provisions of the Factories Act, 1948 thereby extending the working hours for optimum utilization of the workers. It exempt all of the adult workers working in all of the factories situated in the State of Goa, who are not holding positions of supervision or management and/or not employed in a confidential position within the meaning of sub-section (1) of Section 64 of the said Act, from the provisions of Sections 51, 52, 54 and 56 of the said Act, for a period upto 31st July, 2020.

The respondent states have issued the above said notifications in violation of the scheme of central acts, as elaborated under statement of facts. They are violative of the fundamental rights of the labourers. The petitioner, being a law student and a concerned citizen approached this Hon'ble Court seeking interference in this regard.

18.5.2020 Hence, this Writ Petition.

IN THE SUPREME COURT OF INDIA

[ORDER XXXVIII RULE (1)]

CIVIL ORIGINAL JURISDICTION

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

WRIT PETITION (CIVIL) NO. OF 2020

IN THE MATTER OF:

Nandini Praveen,

... Petitioner

Versus

1. Union of India,

Represented by the Secretary,

Ministry of Labour and Employment,
Government of India,
Shram Shakti Bhawan, Rafi Marg,
New Delhi – 110 001.

2. Secretary to Government,
Ministry of Law and Justice
Govt. of India,
Shram Shakti Bhawan,
Rafi Marg,
New Delhi-110 001.
3. Secretary to Government,
Ministry of Health
Govt. of India,
Shram Shakti Bhawan,
Rafi Marg,
New Delhi-110 001.

4. State of Uttar Pradesh,
Through Principal Secretary,
Labour Department,
Government of Uttar Pradesh,
BaapuBhawan, Secretariat,
Lucknow,

Uttar Pradesh.

5. State of Madhya Pradesh,
Through Secretary,
Labour Department, Mantralaya,
Vallabh Bhawan, Bhopal
Madhya Pradesh.

6. State of Gujarat,
Through Secretary,
Labour and Employment Department,
Government of Gujarat,
Sachivalaya, Gandhinagar
Gujarat.

7. State of Goa,
Through Secretary,
Labour Department,
Secretariat,
Porvorim,
Goa.

8. State of Assam,
Through Secretary to the Govt. of Assam,
Labour and Welfare Department,

Government of Assam,
Block –D, 3rd Floor,
Assam Secretariat,
Dispur,
Guwahati-6

9. State of Rajasthan,
Through Secretary,
Labour Department,
Government of Rajasthan
Secretariat, Room No. 2018

Main Building, Jaipur,
Rajasthan.

10. State of Punjab,
Through Principal Secretary of Labour
Labour Department,
Government of Punjab
Punjab.

11. State of Haryana,
Through Principal Secretary to Government,
Haryana Labour Department
Room No. 429, 4th Floor,

New Haryana Secretariate,
Sector 17 Chandigarh
Haryana.

12. State of Uttarakhand,
Through Principal Secretary to Government,
Department of Labour,
Government of Uttarakhand
Uttarakhand.

13. State of Himachal Pradesh,
Through Principal Secretary to Government,
Department of Labour,
New Himrus Building Circular Road,
Shimla,
Himachal Pradesh. ... Respondents

WRIT PETITION UNDER ARTICLE 32 OF THE CONSTITUTION
OF INDIA

TO

THE HON'BLE THE CHIEF JUSTICE OF INDIA AND HIS
COMPANION JUDGES OF THE HON'BLE SUPREME COURT OF
INDIA

THE HUMBLE PETITION OF THE
PETITIOENR ABOVE NAMED

MOST RESPECTFULLY SHOWETH:

1. The petitioner herein is filing the present writ petition under Article 32 of the Constitution of India.

2. **STATEMENT OF FACTS**
 - 2.1 The petitioner herein is a citizen of India presently residing at Ernakulam District in the State of Kerala. She is a student of 3rd year LL.B. at His Highness Maharajas Government Law College, Ernakulam. The petitioner is a law abiding citizen and she had been taking keen interest in the socio-legal affairs of the nation. She is member of several non-governmental organisations which work for welfare of orphan children. As an enthusiastic and responsible law student, she has been actively watching the happenings in her country. The recent actions of the respondent state governments in suspending key labour provision in those States, in violation of the various Central Legislations and the Constitution of India is an issue of great concern for the country. It, in effect, freezes the labour

laws in those states with the sole intention to favour the capitalistic interests. The situation of pandemic is being used as a cover to take away the rights guaranteed to the labourers by the Central enactments and the Constitution of India. Aggrieved by this the petitioner prefers the present petition in the nature of Public Interest Litigation and the same squarely falls within the ambit of the Constitution Bench Decision dated 1.12.1988 and subsequent judgments wherein this Hon'ble Court had reiterated the prerequisites of a PIL.

The petitioner has not approached any of the Respondents/authority for the reliefs sought in the present Writ Petition.

- 2.2 That the petitioner has no individual or personal interest in the matter and the petition is being preferred exclusively on larger public interest. In an earlier occasion, the petitioner had filed an Interim Application as I.A. 1 /2020 in WP (C) No. TMP 285/2020 before the Hon'ble High Court of Kerala, for defending the ordinance No. 30 of 2020 issued by the Government of Kerala as per Notification No. 693/Leg.A1/2020/Law dated 30.04.2020, which was promulgated to cater the larger public interest to deal with the acute financial crisis faced with by the State of Kerala during

the time of pandemic. In the said case, the Hon'ble High Court of Kerala has refused to stay the operation of the above said ordinance, in acceptance of this petitioner's contentions as well.

2.3 On 30 January, 2020, the first Covid-19 positive case was confirmed in India. Thereafter, due to the steady rise in Covid - 19 positive cases, On 24 March, the Hon'ble Prime Minister of India announced a nationwide lockdown, effective from midnight of 25 March, 2020. The country is still in lockdown since Covid-19 cases are surging in many states of India, especially states like Maharashtra and Tamil Nadu. However, in this difficult time, instead of taking steps to protect the interest of the labourers, who are the backbone of the economy, states of Gujarat, Rajasthan, Haryana and Himachal Pradesh, Uttarakhand, Uttar Pradesh, Madhya Pradesh, Assam, Punjab, and Goa have exempted factories from the purview of the provisions of Labours Laws, enabling the Industries to exploit the work force. These exemptions are granted by issuing notifications or by issuing ordinances. The list in paragraph 19 (infra) contains the details of the Legislation, the provisions of which are suspended by the states shown in the last column.

2.4 This writ petition is filed challenging the constitutional validity of the Notifications/Ordinances by which the establishments are exempted from the purviews of the provisions of the above legislations. Those notifications/ordinances are unjust, illegal and arbitrary. These Notification/Ordinance are issued without authority and in violation of the Central Legislations. The respondent states have totally disregarded the rights guaranteed to the labourers by various Statutes and the Constitution of India. Suspension of labour laws by the respondent states warrants interference of this Hon'ble Court.

2.5 The 9th respondent (Government of Rajasthan) issued order No. F3(15) Legal/ F & 13/ 2020/ 188 extending the working hours to 12 hours of the adult workers of the Factories Act, 1948 for a period of three months. A copy of order No. F3(15) Legal/ F & 13/ 2020/ 188 issued by the 9th respondent dated 11.04.2020 is produced herewith and marked as **ANNEXURE - P/1 (Pg. to).**

2.6 The 6th respondent (Government of Gujarat) issued notification No. GHR/2020/56/FAC/142020/346/M3 relaxing the labour laws. By purportedly exercising the power under Section 65 of the Factories Act, 1948 the notification exempts all the factories registered under the Factories act from various provisions relating to weekly hours, daily hours,

intervals for rest etc. of adult workers under Section 51, 54, 55 and 56 with condition from 20th April till 19th July 2020. A copy of notification No. GHR/2020/56/FAC/142020/346/M3 issued by the 6th respondent dated 17.04.2020 is produced herewith and marked as ANNEXURE – P/2 (Pg. to).

2.7 The 10th respondent (Government of Punjab) issued notification No.21/07/2015-5L in the wake of the pandemic and has relaxed the provisions of the Factories Act 1948 by extending the working hours for the optimum use of labour in the factories. By exercising power under Section 65 of the Factories Act 1948, the total amount of work hours allowed in a day shall be a maximum of 12 hours instead of a maximum of 9 hours as provided in the Factories Act 1948. The order further provides that no adult worker shall be allowed or required to work in a factory for more than twelve hours in any day and Seventy-Two hours in any week. No adult worker shall be allowed or required to work in a factory for more than twelve hours in any day and Seventy-Two hours in any week. A copy of the notification No.21/07/2015-5L by the 10th Respondent (Government of Punjab) dated 20.04.2020 is produced herewith and marked as ANNEXURE – P/3 (Pg. to).

2.8 The 13th respondent (Government of Himachal Pradesh) issued notification No. (A)4-3/2017. In exercise of powers conferred under section 5 of the Factories Act, has ordered that that all the factories registered under the Factories Act, 1948 shall be exempted from the provisions of Section 51 (weekly hours), Section 54 (daily hours), Section 55 (interval of rest) and Section 56 (spread hours) w.e.f. 21st April, 2020 to 20th July, 2020, 1948. A copy of the notification No. (A)4-3/2017 by the 13th Respondent (Government of Punjab) dated 21.04.2020 is produced herewith and marked as **ANNEXURE**
– P/4 (Pg. _____ to _____).

2.9 The 12th respondent (Government of Uttarakhand) issued notification No/VII/20-91(Labour)/2008/TC-1 exercising the power conferred under Section 5 of the Factories Act, 1948 thereby extending the working hours to 11 hours of the workers of the Factories Act, 1948. A copy of the notification No. No/VII/20-91(Labour)/2008/TC-1 issued by the 12th Respondent (Government of Uttarakhand) dated 28.04.2020 is produced herewith and marked as **ANNEXURE – P/5 (Pg. _____ to _____).**

2.10 The 11th respondent (Government of Haryana) issued Notification No. 2/17/2020-2Labvide its official gazette. The

notification relaxes certain provisions of the Factories Act, 1948 by extending the working hours for optimum utilization of labour in the factories by exercise of the powers conferred under Sub-section (2) of the Section 65 of the Factories Act, 1948. The notification orders that all factories under the Factories Act, 1948 shall be exempted from the provisions relating to weekly hours, daily hours etc. of adult workers under Section 51, Section 54 and Section 56. A copy of the notification No. 2/17/2020-2Lab by the 11th Respondent (Government of Haryana) dated 29.04.2020 is produced herewith and marked as ANNEXURE – P/6 (Pg. to).

2.11 The 5th respondent (Government of Madhya Pradesh) issued notification No.956-02-2020-A-16 in exercise of the powers conferred under section 36-B of the Industrial Disputes Act, 1947 exempting the industries of the state from the provisions of the Act, except section 25-N, 25-O, 25-P, 25-Q and 25-R for 100 days. This notification is applicable to new industries registered under the Factories Act, 1948. The notification dated 05.05.2020 issued by the Labour Department of Madhya Pradesh has brought changes to the Contract Labour (Regulation and Abolition) Madhya Pradesh Rules, 1973, Industrial Disputes Act, 1947 (hereinafter, “ID Act”), Madhya Pradesh Industrial Relations Act, 1960 and Factories Act, 1948. It has also introduced third party certification for non-

hazardous category factories having lesser than 50 workers instead of routine inspection by the Labour Inspectors annually. The authorities can inspect the factories submitting the report annually without fail, in case of accident or complaint, only with the prior permission of Labour Commissioner. It also exempted the factories in the state from the Factories Act, 1948 except for Sections 6, 7, 8, 21-41H (about safety), 59, 65, 67, 79, 88 and 112 for 3 months from the date of the publication of the notification. This is done exercising powers under Section 5 of the Factories Act. A copy of the notification No. 956-02-2020-A-16 issued by the 5th respondent dated 05.05.2020 is produced herewith and marked as ANNEXURE-P/7 (Pg. to).

2.12 The 12th respondent (Government of Uttarakhand) issued notification No/VII/20-91(Labour)/2008TC-1 extending the working hours to 12 hours of workers of the Factories Act, 1948. A copy the notification issued by the 12th respondent dated 05.05.2020 is produced herewith and marked as ANNEXURE – P/8 (Pg. to).

2.13 The 5th respondent (Government of Madhya Pradesh) promulgated the Madhya Pradesh Labour Laws (Amendment) Ordinance, 2020. The Ordinance amends two state laws:

the Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961, and the Madhya Pradesh Shram Kalyan Nidhi Adhiniyam, 1982. A copy of the Ordinance dated 06.05.2020 by the 5th respondent (Madhya Pradesh government) dated 06.05.2020 is produced herewith and marked as **ANNEXURE**
- P/9 (Pg. _____ to _____).

2.14 The respondent (Government of Uttar Pradesh), submitted 'the Uttara Pradesh Temporary Exemption from Certain Labour Laws Ordinance 2020' to the Governor and the Governor has approved the ordinance. The ordinance proposes to exempt the undertakings in the State from all the Labour Laws for the period of three years, the factories fulfilling the following conditions:

(a) The names and details of all employed workers shall be entered electronically on attendance register prescribed in section-62 of the Factories Act, 1948.

(b) No workers shall be paid less than minimum wages as prescribed by the UP Government.

- (c) The wages to the workers shall be paid within the time limit prescribed under Section- 5 of Payment of Wages Act, 1936.
- (d) The wages to workers shall be paid only in their bank accounts.
- (e) The provisions of the Factories Act, 1948 and Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 relating to safety and security of the workers shall remain applicable.
- (f) The workers shall not be allowed or required to work for more than eleven hours per day and the spread over of the work shall not be more than twelve hours per day.
- (g) For any death or disability due to accident arising out of and in the course of employment compensation shall be paid in accordance with Employees Compensation Act, 1923.
- (h) The provisions of the various labour laws relating to the employment of children and women shall remain applicable.

(i) The provisions of Bonded Labour System (Abolition) Act, 1976 shall remain applicable.

A copy of the draft ordinance issued by the Government of Uttar Pradesh is produced herewith and marked as **ANNEXURE – P/10 (Pg. to)**. As on today, it is learnt that the ordinance is submitted to the Hon'ble President for approval.

2.15 The 4th respondent (Government of Uttar Pradesh issued notification no. 12/2020/502/XXXVI-03-2020-30(Sa.)/2020TC exercising the power under section 5 of the Factories Act, 1948 extending the working hours of the workers of the Factories Act, 1948. A copy of the notification issued by the 4th respondent dated 08.05.2020 is produced herewith and marked as **ANNEXURE – P/11 (Pg. to)**.

2.16 The 8th respondent (Government of Assam) issued notification No. GLR. 170/2019/ Pt./4 purportedly exercising the power conferred under Section 65 of the Factories Act 1948. The notification provides exemption to adult worker of all factories from the provisions of Sections. 51, 52, 54, and 56 of the of the Factories Act 1948. Further exemption is given to provisions under Section 6 of the Assam Shops and

Establishment Act, 1971. The notification has prescribed that the total hours of work shall not exceed 12 hours, ie. 13 hours inclusive of intervals. A copy of the notification No. GLR. 170/2019/ Pt./4 by the 8th Respondent (Government of Assam) dated 08.05.2020 is produced herewith and marked as ANNEXURE – P/12 (Pg. to).

2.17 The 7th respondent (Government of Goa) issued Order No. CIF/092(Part-2)/S-II/IFB/2020/191 vide the official gazette. The order relaxing certain provisions of the Factories Act, 1948 thereby extending the working hours for optimum utilization of the workers. It exempt all of the adult workers working in all of the factories situated in the State of Goa, who are not holding positions of supervision or management and/or not employed in a confidential position within the meaning of sub-section (1) of Section 64 of the said Act, from the provisions of Sections 51, 52, 54 and 56 of the said Act, for a period upto 31st July, 2020. A copy of the order No. CIF/092(Part-2)/S-II/IFB/2020/191 by the 7th Respondent (Government of Goa) dated 08.05.2020 is produced herewith and marked as ANNEXURE – P/13 (Pg. to).

2.18 Annexures P1 to P13 are unjust, illegal arbitrary and violative of the fundamental rights of the labourers. The respondent

states have suspended the provisions of labour laws, without any authority and under the cover of pandemic issue. There is a total disregard to the fundamental rights of the labourers. One of the primary intentions of the labour laws is protection of the welfare of the oppressed class. By way of the impugned Notifications and Ordinances, the respondent State Governments have, opened path to the employers to further exploit this oppressed class. Following are the details of provisions suspended by the respondent states:

Central Legislation	Objective	States where the Acts Are Suspended/ Establishments Are Exempted
The Employees Compensation Act, 1923	An Act to provide for the payment by certain classes of employers to their Employees, compensation for injury by accident	Suspended in Uttar Pradesh, for a period of 3 years.
The Trade	An Act to provide for the registration	Suspended in Uttar Pradesh, for a

Unions Act, 1926	of Trade Unions and in certain respects to define the law relating to registered Trade Unions.	period of 3 years.
The Weekly Holidays Act, 1942	The purpose of the Act is to provide for the grant of weekly holidays to persons employed in shops, restaurants and theatres.	Suspended in Uttar Pradesh for a period of 3 years.
The Industrial Employment (Standing Orders) Act, 1946	The Act requires employers in industrial establishments to define with sufficient precision the conditions of employment under them and to make	Suspended in Uttar Pradesh for a period of 3 years.

	the said conditions known to workmen employed by them.	
The Mica Mines Labour Welfare Fund Act, 1946	An Act to constitute a fund for the financing of activities to promote the welfare of labour employed in the mica mining industry	Suspended in Uttar Pradesh for a period of 3 years.
The Industrial Disputes Act, 1947	An Act to make provision for the investigation and settlement of industrial disputes, by providing mechanism and procedure for the investigation and settlement of industrial disputes	Suspended in Uttar Pradesh for a period of 3 years. Partially suspended in Madhya Pradesh for the next 1000 days of publication of notification.

	by conciliation, arbitration and adjudication which is provided under the statute.	
The Factories Act, 1948	An Act to consolidate and amend the law regulating labour in factories	<p>Uttar Pradesh and has suspended various provisions of the act for a period of 3 years. However the provision relating to safety and security remain applicable.</p> <p>Madhya Pradesh has suspended various provisions of the act for the next 1000 days of publication of notification.</p>

	<p>Gujarat,</p> <p>Uttarakhand has suspended provisions Sections 51, 54, 55 and 56.</p>
	<p>Haryana has suspended Sections 51, 54 and 56</p>
	<p>Himachal Pradesh has suspended Sections 51, 64, 55, 56.</p>
	<p>Assam and Goa have suspended Sections 51 52, 54, 56.</p>
	<p>Rajasthan has</p>

		exempted various provisions of working hours in the Act.
The Employees' State Insurance Act, 1948	An Act to provide for certain benefits to employees in case of sickness, maternity and employment injury and to make provision for certain other matters in relation thereto	Suspended in Uttar Pradesh for a period of 3 years.
The Plantation Labour Act, 1951	An Act to provide for the welfare of labour and to regulate the conditions of work in plantations.	Suspended in Uttar Pradesh for a period of 3 years.
The Mines Act,	Objective of the Act is to provide	Suspended in Uttar Pradesh for a

1952	labour and safety of the mines as well as to amend and regulate the legislation for the betterment of labourers and workmen employed in it.	period of 3 years.
The Employees' Provident Funds and Miscellaneous Provisions Act, 1952	An Act to Provide for the institution of provident funds, Pension Fund and deposit-linked insurance fund for employees in factories and other establishments.	Suspended in Uttar Pradesh for a period of 3 years.
The Working Journalists and Other Newspapers Employees (Conditions of	An Act to regulate certain conditions of service of working journalists and other persons employed in	Suspended in Uttar Pradesh for a period of 3 years.

Service) and Miscellaneous Provisions Act, 1955	newspaper establishments	
The Working Journalists (Fixation of rates of Wages) Act, 1958	An Act to provide for the fixation of rates of wages in respect of working journalists.	Suspended in Uttar Pradesh for a period of 3 years.
The Employment Exchange (Compulsory Notification of Vacancies) Act, 1959	An Act to provide for the compulsory notification of vacancies to employment exchanges.	Suspended in Uttar Pradesh for a period of 3 years.
The Motor Transport Workers Act, 1961	Intended to take care of the welfare of the motor transport workers and to regulate the conditions of their	Suspended in Uttar Pradesh for a period of 3 years.

	work.	
The Beedi and Cigar Workers (Conditions of Employment) Act, 1966	An act to provide for the welfare of the workers in beedi and cigar establishments and to regulate the conditions of their work and for matters connected.	Suspended in Uttar Pradesh for a period of 3 years.
The Contract Labour (Regulation and Abolition) Act, 1970	To prevent exploitation of contract labour and also to introduce better conditions of work.	Suspended in Uttar Pradesh for a period of 3 years.
The Payment of Gratuity Act, 1972	To provide for a scheme for the payment of gratuity to employees engaged in factories, mines,	Suspended in Uttar Pradesh for a period of 3 years.

	oil fields, plantations, ports, railway companies, shops or other establishments.	
The Limestone and Dolomite Mines Labour Welfare Fund Act, 1972	An Act to provide for the levy and collection of a cess on limestone and dolomite for the financing of activities to promote the welfare of persons employed in the limestone and dolomite mines.	Suspended in Uttar Pradesh for a period of 3 years.
The Sales Promotion Employees (Conditions of Service) Act, 1976	An Act to regulate certain conditions of service of sales promotion employees in certain	Suspended in Uttar Pradesh for a period of 3 years.

	establishments	
The Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare (Cess) Act, 1976	An Act to provide for the levy and collection of a cess on iron ore , manganese ore and chrome ore for the financing of activities to promote the welfare of persons employed in the iron ore mines, manganese ore mines and chrome ore mines and for matters connected therewith or incidental thereto.	Suspended in Uttar Pradesh for a period of 3 years.
The Iron Ore Mines, Manganese Ore Mines and	An Act to provide for the financing of activities to promote the	Suspended in Uttar Pradesh for a period of 3 years.

Chrome Ore Mines Labor Welfare Fund Act, 1976	welfare of persons employed in the iron ore mines, manganese ore mines and chrome ore mines.	
The Beedi Workers Welfare Cess Act, 1976	An Act to provide for the levy and collection, by way of cess, a duty of excise on manufactured beedis.	Suspended in Uttar Pradesh for a period of 3 years.
The Beedi Workers Welfare Fund Act, 1976	The Act have been enacted to ameliorate the living conditions and provide welfare measures to beedi workers.	Suspended in Uttar Pradesh for a period of 3 years.
The Inter-State	An Act to regulate	Suspended in Uttar

Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979	the employment of inter-State migrant workmen and to provide for their conditions of service and for matters connected therewith.	Pradesh for a period of 3 years.
The Cine Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981	An Act to provide for the regulation of the conditions of employment of certain cine-workers and cinema theatre workers and for matters connected therewith.	Suspended in Uttar Pradesh for a period of 3 years.
The Cine Workers Welfare (Cess) Act, 1981	An Act to provide for the levy and collection of a cess on feature films for the	Suspended in Uttar Pradesh for a period of 3 years.

		financing of activities to promote the welfare of certain cine-workers and for matters connected therewith or incidental thereto.	
The Cine Workers Welfare Fund Act, 1981	An Act to provide for the financing of activities to promote the welfare of certain cine-workers.	Suspended in Uttar Pradesh for a period of 3 years.	
The Dock Workers (Safety, Health and Welfare) Act, 1986	An Act to provide for the safety, health and welfare of dock workers and for matters connected	Suspended in Uttar Pradesh for a period of 3 years.	

	therewith.	
39. The Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988	An Act to provide for the simplification of procedure for furnishing returns and maintaining registers in relation to establishments employing a small number of persons under certain labour laws.	Suspended in Uttar Pradesh for a period of 3 years.
The Building and Other Construction Workers Cess Act, 1996	An Act to provide for the levy and collection of a cess on the cost of construction incurred by employers with a view to	Suspended in Uttar Pradesh for a period of 3 years.

	<p>augmenting the resources of the Building and Other Construction Workers' Welfare Boards constituted under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.</p>	
The Unorganized Workers' Social Security Act, 2008	<p>An Act to provide for the social security and welfare of unorganised workers and for other matters connected</p>	<p>Suspended in Uttar Pradesh for a period of 3 years.</p>

	therewith or incidental thereto.	
Code of wages Act, 2019	<p>The Act consolidates the provisions of four labour laws concerning wage and bonus payments and makes universal the provisions for minimum wages and timely payment of wages for all workers in India. The Payment of Wages Act, 1936, the Minimum Wages Act, 1948, the Payment of Bonus Act, 1965 and the Equal</p>	Suspended in Uttar Pradesh for a period of 3 years.

	Remuneration Act, 1976 are hereby repealed.	
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2.19 A reading of the provisions now suspended by the States would show that those are the key provisions, which ensure that the workers are not exploited in terms of working hours, wages and holidays. Those also ensure “collective bargaining power” and adequate mechanisms for the resolution of disputes affecting the rights of the workers. By taking away these provisions, practically, the states have abandoned the fate of the workers to the whims and fancies of the respective employers. It is against the scheme of labour laws and scheme of the Constitution of India.

2.20 It is trite that, the working class is the most affected section of people, due to the pandemic. They cannot be subjected to further suffering for aiding the capitalist interests in violation of the constitutional rights. The state governments cannot deviate from the mandate of law to protect the interest of the employers.

2.21 It is submitted that several state ordinances and notifications are under challenge in this writ petition. One of the grounds is

that the impugned laws are ultra vires the central legislations. The question of repugnance also arises in the instant case. Several substantial questions of law and violation of the fundamental rights are involved in the present case. Therefore, this Hon'ble Court has jurisdiction to entertain the instant case moved under Article 32 of the Constitution.

3. The Petitioner has not filed any other Writ Petition before this Hon'ble Court or any High Court seeking similar relief.

GROUNDS

SUSPENSION OF LABOUR LEGISLATIONS

THE INDUSTRIAL DISPUTES ACT, 1947

Madhya Pradesh

- A. The Industrial Disputes Act is enacted to make provision for the investigation and settlement of industrial disputes, and for certain other purpose. The Act promulgates Labour Court, Court of Enquiry, Board of Conciliation and Tribunal. As per Section 7A of the Act, the Tribunals have the power to hear any industrial dispute as defined under Section 2(k) including the matters specified in Second and Third Schedules. The

second schedule includes matters pertaining to wages, compensatory and other allowances, hours of work and intervals, bonus, rules of discipline etc. The third schedule includes matters such as propriety or legality of an order passed by the employer, application and interpretation of standing orders, illegality or otherwise of a strike or lock-out etc. Chapter II A of the Act enlists the requirements when an employee's service conditions are changed. As per Section 9A of the said chapter, without any notice, any change in service conditions cannot be introduced. Chapter III enumerates provisions with respect to reference of disputes to boards, courts or tribunals. Chapter IV speaks about procedure, powers and duties of authorities. Chapter V is with respect to Strike and Lock-outs. Section 22 in the said chapter prohibits an employee employed in a public utility service to go on strike without giving any notice of the specified period. Clause 2 of the said Section states that no employer carrying on any public utility service shall lock-out any of his workmen without giving them notice of the specified period. Section 24 defines illegal strikes and lockouts. Section V-A speaks about Lay-off and Retrenchment. Chapter V-B provides special provisions relating to lay-off, retrenchment and closure. Chapter V-C is pertaining to unfair labour practice and Chapter VI deals with penalties. The impugned laws are violative of the provisions of this legislation.

B. Exemptions are granted to the industries from the above said crucial provisions invoking the power under Section 36B of the ID Act. Section 36B of the ID Act reads:

“Power to exempt:

36B. Power to exempt.- Where the appropriate Government is satisfied in relation to any industrial establishment or undertaking or any class of industrial establishments or undertakings carried on by a department of that Government that adequate provisions exist for the investigation and settlement of industrial disputes in respect of workmen employed in such establishment or undertaking or class of establishments or undertakings, it may, by notification in the Official Gazette, exempt, conditionally or unconditionally such establishment or undertaking or class of establishments or undertakings from all or any of the provisions of this Act.”

C. In Madhya Pradesh, invoking the above said section, the notification dated 05.05.2020 is issued exempting the factories from the purview of the ID Act and Madhya Pradesh Industrial Relations Act, 1960. The exemption from ID the Act operates as follows:

D. The exemption is provided only for those establishments which will be registered and commenced in the next 1000 days of publication of the notification.

E. The provisions of Chapter V-A, and Sections 25N, 25O, 25P, 25Q and 25R of Chapter V-B of the Act still apply on all kinds of industries.

F. The exemption is provided on the condition that industries should make adequate provisions for the investigation and settlement of industrial disputes of the workmen employed by them.

G. A reading of the Section 36B along with the above conditions shows that the notification is ultra-vires of the Section for two reasons. Firstly, the section does not permit the state government to exempt any undertaking from the provisions of the Act unless there is adequate mechanism for investigation and settlement of disputes. It is a prerequisite mechanism. Secondly, the purpose of the section is not to give such a power to states to exempt the entire Act without any other alternatives, in a crisis like Covid-19 pandemic. The intention of Section is to preserve the investigating and settlement mechanism while a free hand is given to the states. By

bringing the impugned notification, the Government of Madhya Pradesh (hereinafter, “government of MP”) does the contrary to the intention of the legislature. By no far-fetched argument, one can contend that Section 36B allows a blanket nullification of investigating and settlement machinery for settling the industrial disputes. Therefore, clearly, the impugned notification is repugnant to Section 36B of the ID Act. For this reason, the notification is liable to be set aside to the said extent.

H. The Government of MP also erred in understanding the meaning of Section 36B which stipulates that the states will have to ensure that an alternative investigation and settlement mechanism is in place. Clearly, Section 36B imposes an obligation on the states to have such a mechanism. The government of MP, on the other hand, imposed it on industries to have such mechanisms. The notification states: “subject to the condition that adequate provisions are made by such industries for the investigation and settlement of industrial disputes of the workmen employed by them”. It is abundantly ambiguous. There is no further indication as to measure the scale of “adequate provisions for investigation and settlement” provided by these industries. The notification is, therefore, vague, arbitrary and ultra-vires of Section 36B of the ID Act.

I. As submitted above, Chapter V-A of theID Act provides for regulation of Lay-off and Retrenchment. The chapter defines continuous service, compensation for lay-off in certain situation, conditions precedent to retrenchment and compensation to workmen in case of closing of undertaking etc. However, prohibition of Lay-off is provided in Section 25M of Chapter V-B which is not included in the list of the sections in force. Section 25N provides for conditions precedent to retrenchment. Section 25O provides for closing down an undertaking. Section 25P provides for special provisions restraining closing down of undertaking. Section 25Q provides for penalty for lay-off and retrenchment without prior permission and Section 25R provides for penalty for closure. Though Section 25Q provides for penalty for laying off without prior permission as specified in Section 25M, since Section 25M is excluded from the list of the sections in force, lay-off is permitted. Therefore, the impugned notification issued by the government of MP permits the undertakings to lay-off the workers without any limit or regulation. However, the retrenchment of workmen is impermissible on earlier terms. This hits at the very root of stability of the job of the labourers. This makes the position of the labourers vulnerable and the bargaining power of the labour unions will be damaged to the most as the owners can put anyone in lay-off for an indefinite period without giving any reason whatsoever.

J. The impugned notification exempts the upcoming industries from the ambit of the ID Act, except for few provisions as stated above. With this, a crucial rule prohibiting unfair labour practice also gets vanished. Section 25T of Chapter V-C reads:

"25T. Prohibition of unfair labour practice.- No employer or workman or a trade union, whether registered under the Trade Unions Act, 1926 (16 of 1926), or not, shall commit any unfair labour practice."

K. Unfair labour practice is defined by Section 2(ra) as 'any of the practices specified in the fifth schedule.' The fifth schedule provides a list of the activities which disrupts the balance of labourer-management's relations and the activities which oppress the labourers. For example, Part I list includes activities such as threatening workmen with discharge or dismissal if they join a trade union, to discharge or dismiss workmen by way of victimisation, to transfer a workman with mala fide abuse of power, and to employ workmen as badli, casual or on temporary basis and to continue them as such for years with the object of depriving them of the status and privileges of permanent workmen. Part II provides a list of

activities on the part of workmen and Trade Unions which will be considered as unfair labour practice. Part I is crucial, since the same protects the labourers against the ill-actions of mighty managements. With the impugned notification, no labourer who is subjected to these unfair labour practices will be able to approach the Tribunal/Court seeking justice. This shatters the base of labour movements. This also weakens the position of a labourer as against his management in a dangerous way. With no protection, in a vulnerable situation of earning daily bread, a labourer turns to a bonded labourer.

Uttar Pradesh

- L. In Uttar Pradesh, clause 3 of the impugned ordinance states that “all factories and establishments engaged in manufacturing process shall be exempted from the operation of all labour laws for a period of three years..” subject to certain conditions. This would imply that the ID Act, as a whole is suspended. Therefore, except the conditions in clause 3, all the other provisions shall not operate. All the provisions relating to works committee, conciliation officers, boards of conciliation, courts of inquiry, labour courts, tribunals will not apply. (Please see sections 4 to 7B). Provisions on conditions prior to retrenchment (Section 25F), notice to close down undertaking (Section 25FFA), Procedure for retrenchment

(Section 25G), prohibition of lay-off (Section 25M) etc. lead to horrendous work conditions for the workers.

2. THE FACTORIES ACT, 1948

M. The Factories Act is a prominent legislation which focuses on regulating the working conditions of factories in India. The Act came into force on 1st April 1949. Its main focus is to ensure adequate safety measures and to promote the health and safety and welfare of the workers employed in factories. Chapter II deals with Inspecting Staff giving various powers under Sections 8 and 9. Chapter III deals with health standards mandating certain facilities in an undertaking. Chapter IV deals with safety measures and Chapter IVA deals with provisions relating to hazardous process. Chapter V deals with certain welfare provisions. Chapter VI states about working hours of adults and Chapter VII speaks about employment of young persons. Chapter VIII deals with annual leave with wages and chapter IX provides certain special provisions. Finally, Chapter X provides penalties and procedures. The provisions are crucial for maintaining the safety, health and welfare standards of the labourers.

N. The first preliminary chapter gives definitions and applicability. Section 5 gives the states the power to exempt any factory or

class or description of factories from all or any of the provisions of this Act in certain situations. However, none of the state governments have the power to issue notifications exempting factories from the purview of any of the provisions of the Factories Act, under the pretext of pandemic. According to the impugned notifications, suspending whole or part of the Factories Act, the State Governments are allegedly exercising the power under Section 5 of the Factories Act. Section 5 of the said Act reads as follows;

“5. Power to exempt during public emergency.. In any case of public emergency the State Government may, by notification in the Official Gazette, exempt any factory or class or description of factories from all or any of the provisions of this Act, [except section 67] for such period and subject to such conditions as it may think fit: Provided that no such notification shall be made for a period exceeding three months at a time.

[Explanation.--For the purposes of this section "public emergency" means a grave emergency whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or internal disturbance.]”

O. A reading of the above section would show that the state governments are given the power to exempt any factory or class or description of factories from all or any of the provisions of the Factories Act for a period not exceeding 3 months at a time only in case of a public emergency. The Section further clarifies by way of an explanation that "public emergency" means "a grave emergency whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or internal disturbance." No such public emergency is present in India which warrants exempting factories from the purview of the provisions of the Factories Act. Therefore, the notifications issued by the respondent states exempting factories from the purview of provisions of the Factories Act are ultra vires of Section 5 of the Factories Act and those are liable to be quashed. The impugned laws are violative of the provisions of this legislation.

P. According to the explanation given to the word "public emergency" in Section 5 of the Factories Act, only case of a war or external aggression or internal disturbance, which threatens the security of India or any territory of India can be treated as a public emergency. Only in such scenarios the state governments can exempt factories from the purview of the provisions of the Factories Act. The public health

emergency situation caused by the Covid-19 virus can in no way be treated as a threat to the security of India or any part of the territory of India. It is not a war. It is neither an external aggression nor an internal disturbance threatening the security of India or of any part of the territory of India. Therefore, there is no public emergency at present warranting suspension/exempting factories by invocation of Section 5 of the Factories Act.

Q. There is no room for any doubt about the fact that the present pandemic situation is in no way a war or any sort of an external aggression. Nor there is any security threat posed by the pandemic. The situation is declared as a pandemic by the World Health Organisation. The Central government and the state governments are empowered to make measures to prevent the outbreak of such diseases under Sections 2 and 2A of the Epidemic Diseases Act, 1897. The Disaster Management Act, 2005 also provides wide power to the Central and state governments to take adequate measures in such a situation. The lockdown presently implemented in the country, and all other measures taken to prevent the spread of the Covid -19 disease are exercising the power under these two Acts. Section 5 of the factories is not meant to be invoked to deal with a pandemic, which neither is a war, nor is an external aggression. The action of the state governments

amounts to violation of the fundamental rights, enabling exploitation of labour. This situation warrants interference of this Hon'ble Court.

R. The present situation cannot also be equated with the expression 'Internal disturbance'. In the explanation there are two examples given, namely, war and external aggression. Therefore, going by the principle *ejusdemgenries*, the expression 'internal disturbance' can only mean a situation like civil war or a grave 'law and order problem'. Sarkaria Commission set up in 1983, while dealing with the State Centre relations in connection with Article 355 of the Constitution of India, explained "internal disturbance" as follows:

"The scope of the term 'internal disturbance' is wider than 'domestic violence'. It conveys the sense of 'domestic chaos', which takes the colour of a security threat from its associate expression, 'external aggression'. Such a chaos could be due to various causes. Large-scale public disorder which throws out of gear the even tempo of administration and endangers the security of the State, is ordinarily, one such cause. Such an internal disturbance is normally man-made. But it can be Nature-made, also. Natural calamities of unprecedented

magnitude, such as flood, cyclone, earth-quake, epidemic, etc. may paralyse the government of the State and put its security in jeopardy."

S. In the case on hand there is no internal disturbance. The inconvenience caused to the public at large and the administration due to the strict lockdown guidelines imposed by the Central and state government cannot be termed as an internal disturbance. There is no situation of 'domestic chaos' as well. The security of the states is not being threatened. The current situation, allegedly the reason for the states to exempt factories from the purview of the Factories Act, cannot take the colour of "security threat". Since the words used in Article 355 of the Constitution of India and Section 5 of the Factories Act are similar, the very same meaning has to be adopted in the case of interpreting Section 5 of the Factories Act as well. The State and Central government are dealing with a pandemic covered and to be regulated by invoking the provisions under, the Disaster Management Act, 2005 and The Epidemic Diseases Act, 1897. By exercising the power under those Acts various measures are also being taken by the State and Central Government. Therefore, the present situation does not warrant invocation of Section 5 of the Factories Act by the States. It is pertinent to note that, the

pandemic situation is not even declared as a National Health Emergency in India.

- T. The factories had to shut down, or bring down its operations due to the lock-down regulations issued by the Central and state governments. The workers cannot be asked to bear the burden of this action by the Centre and the state governments by taking away the rights guaranteed to them by the Factories and other labour laws. Mere reduction of production in factories or even shutting down of the factories cannot be termed as 'public emergency'.
- U. The purpose of the Factories Act is not to deal with the economic impact over factories, created by the situations like pandemic. It was enacted "to consolidate and amend the law regulating labour in factories." as evident from the Preamble of the Act itself. Therefore, the state governments cannot invoke Section 5 of the Factories Act in the guise of reviving the Industries hit by the lockdown in place at the cost of the lives of the workers.
- V. None of the notifications are issued due to any threat to the security of India or any part of territory of India. All the impugned notifications are issued under the pretext of dealing

with the situation created by the pandemic. This cannot be treated as a grave situation threatening the security of India and warranting exemption of factories from the purview of the rights of the workers ensured by the Factories Act. It is evident from reading of the notifications itself that those are issued not to protect the security of India, but to enable the factories to make profit as they were making before the lockdown. Therefore, none of the reasons stated in the impugned notifications will constitute a 'public emergency' as stated in Section 5.

W. As per the newspaper report titled 'Parliamentary panel questions dilution of labour laws' by Sobhana K. Nair dated 12.05.2020, appeared in the in The Hindu, "the Parliamentary Committee on Labour has written to State governments demanding an explanation on dilution of labour laws during the ongoing coronavirus (COVID-19) pandemic." Section 5 has been clearly misinterpreted and made use of, at this situation by the State Government. It is to be noted that in the state of a health crisis that the country is going through, the state governments have taken undue advantage of the adversity by unethically dismissing the labour laws of the State. Therefore, it is evident that impugned notifications exempting the implementation of the provisions of the Factories Act are unjust, illegal and arbitrary.

Madhya Pradesh

X. In Madhya Pradesh notification is issued exempting the factories from all the provisions of the Factories Act, except Sections 6, 7, 8, 21-41H (about safety), 59, 65, 67, 79, 88 and 112 for 3 months from the date of the publication of the notification. This again is done, invoking Section 5 of the Factories Act.

Y. As already submitted, Chapter II contains provisions with regard to the Inspecting Staff. It gives an insight as to the responsibilities and duties of the superior managing hierarchy to look into the needs, safety and health of the workers in the factories. It enables a space for consideration of the welfare of the workers and thereby, making sure they are not exploited or unhappy with the working conditions. The Act via Section 8 appoints Inspectors and via Section 9 gives various powers to them to inspect and investigate the factories in the State. This enables to keep a check on the officials of a factory and also provides them with a platform for criticism and correction. But, without a mechanism to address the grave concerns of the working class now, it will lead to the exploitation and abuse of the poor labourers. The chapter also provides for a certifying surgeon to be allotted to make sure that the health and safety

of the workers are taken care of. Without the same, the workers are being denied of the basic right to health while working in hazardous conditions in a factory. The notification issued by Government of MP takes away the benefit of the chapter except for Section 6, 7 and 8 which deals with registration of factories, notice by the occupier and Inspectors. The State therefore, clearly excluded Section 10 which deals with certifying surgeons which deprives the labourers the very right to health.

Z. Chapter III of the Factories Act is of utmost importance as it deals with health from Sections 11-20 which prescribe the benchmark to be adhered to with respect to Cleanliness, Disposal of wastes and effluents, Ventilation and temperature, Dust and fume, Artificial humidification, Over-crowding, Lighting, Drinking water, Latrines and urinals and Spittoons. The health of factory workers is always at stake since they are in continuous exposure to outdoor environment. With the pandemic ongoing, it is mandatory that such workers are subject to the above-mentioned health standards. Social distancing being one of the obligatory norms to be followed to ensure non-spreading of Covid-19, it is fatal if these standards are compromised.

AA. The Government of MP expressly excluded the said chapter in its entirety. This is the most heinous action on the part of the said respondent in the current situation of pandemic. This is violative of right to life and liberty guaranteed under Article 21 of the Constitution of India.

BB. Chapter V with Sections 42-50 of the Act deal with the welfare of the workers. The chapter enumerates various facilities that are to be provided for the workers, such as: facilities for washing, storing and drying clothing, sitting, providing first-aid appliances, canteens, shelters, rest-rooms and lunch rooms, and creches. On the face of it, these facilities are essential requirements that any factory or working unit can do away with. The workers have all rights to such facilities. Failure to provide such amenities will increase the risk of spread of Covid-19 by promoting unhygienic work environment, that too for no fault of the workers. Although this chapter gives power to the State Governments to make any alternative rules that may provide for the welfare of the workers, a completely opposite step has been adapted, at the moment.

CC. The Government of MP has done away with this chapter in its entirety. Taking away these rights from the labourers will reduce their lives to mere existence. This is diametrically

contrary to the principles evolved under Article 21 of the Constitution of India.

DD. Chapter VI is yet another crucial aspect of the Act. It deals with the working hours of adults (Sections 51-66). Section 54 states that daily working hours of a worker shall not exceed 9 hours in a day. Section 51 states that total number of working hours in a week shall not exceed 48 hours. Section 59 talks about extra wages for overtime wherein it states that a worker working for more than 9 hours a day or for more than 48 hours a week is entitled to be paid wages at the rate of twice his ordinary rate of wages. Section 55 also states that an interval of 30 minutes is to be provided for every 5 or 6 hours. The chapter also enumerates provisions regarding weekly holidays, compensator holidays, night shifts, notice of periods of work for adults, and related aspects.

EE. The notification issued by the Government of MP has retained only Section 59 which prescribes the wages for overtime and done away with the entire chapter, except for Section 65. Section 65 is the power of exemption given to the states. As compared to others, with this exemption, there is no upper limit for working hours prescribed in the State. This literally makes the labourer break their bones. This violates not only

the scheme of the Central Act and international standards, but also breaches the very humanity concerns.

FF. Chapter VII, consisting of Sections 67-77 is exclusively for protection of young persons. The chapter makes it mandatory that no young person who has not completed their fourteenth year shall be required or allowed to work in any factory. The Act is also strict about employing such young persons. According to the provisions, they have to obtain certificate of fitness and have lesser working hours.

GG. The notification issued by the Government of MP, except for Section 67, which prohibits the employment of young persons, exempts the undertakings from the need to comply with the provisions of the chapter. With this, though the prohibition is retained, precautionary measures to prevent such employment will not be in place.

HH. Chapter VIII is regarding provisions with reference to annual leave with wages. It consists of Sections 78 to 84. The working labourers are prone to sickness like any other human being and they are also eligible to paid leave on several occasions just like anyone else. Section 79 specially lays down that any worker is entitled to a paid leave once every

twenty days of work. It is incorporated with Section 80 which states that they are required to be paid the standard wage and even in some cases prior to taking leave which is indicated in Section 81. The chapter also provides for a wages recovery method in Section 82.

- II. The Government of MP has exempted factories from the entire chapter except for Section 79. This leaves the labourers in a vulnerable condition. This amounts to forced labour, prohibited under the Constitution of India.

- JJ. Sections 85 to 91 under Chapter IX speaks about the powers that is granted to the State Governments regarding various aspects such as application of the Act to certain premises, exemption of public institutions, prohibition of employment on account of serious hazard, providing notices in case of occurrence of certain dangerous instances or diseases etc. It also gives power to the State Governments to direct inquiry into cases of accident or disease, to take samples and to conduct safety and occupational health surveys. Basically, the Act is liberal enough to grant State Governments such powers, in order to facilitate and ensure smooth functioning of the industry, according to the needs of each State. These provisions are clearly misused.

KK. The notification issued by the government of MP retains Section 89, which speaks about notice on certain diseases. All other special provisions promised for the welfare of the labourers are discarded.

LL. Chapter X (Sections 92-106) lists down the events that would attract penalties. The chapter is elaborate in nature. Some of the serious offences that would invite penalties are for obstructing Inspector, for contravening the provisions of the Act, for permitting double employment of child, and for using false certificate of fitness. Suspending an essential chapter would only pave way for more fraudulent activities and misuse of the provisions of the Act, and the offenders would only get away with it without being penalised. It would also lead to other constitutional issues such as violation of the fundamental rights. Such a situation is not what the nation is anticipating, given the circumstances. The governments of UP and MP have done away with the entire chapter. This is blatantly illegal and violative of the fundamental rights of the labourers.

Uttar Pradesh

MM. The State of Uttar Pradesh issued ordinance exempting the factories in the state from all the Labour Laws for the period of three years, provided that the factories fulfil the following conditions:

- (a) The name and details of all employed workers shall be entered electronically on attendance register prescribed in section-62 of the Factories Act, 1948.
- (b) No workers shall be paid less than minimum wages as prescribed by UP Government.
- (c) The wages to the workers shall be paid within the time limit prescribed under section- 5 of Payment of Wages Act, 1936.
- (d) The wages to workers shall be paid only in their bank accounts.
- (e) The provisions of Factories Act, 1948 and Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 relating to safety and security of the workers shall remain applicable.

(f) The workers shall not be allowed or required to work for more than eleven hours per day and the spread over of the work shall not be more than twelve hours per day.

(g) For any death or disability due to accident arising out of and in the course of employment compensation shall be paid in accordance with Employees Compensation Act, 1923.

(h) The provisions of the various labour laws relating to the employment of children and women shall remain applicable.

(i) The provisions of Bonded Labour System (Abolition) Act, 1976 shall remain applicable.

NN. With this several crucial protections available to the labourers will be vanished. The ordinance purported by the Government of UP has taken away whole of chapter II which provides for Inspecting Staff. It is not clear as to the provision with respect to certifying surgeon is in place or suspended. Moreover, s. 5 of the Factories Act authorises suspension for only 3 months, whereas the suspension in UP is for 3 years. This is impermissible and ultra vires.

OO. The impugned ordinance issued by the Government of UP is not clear whether Chapter III provisions which deal with Health Standards are intact. The ordinance only states that the provisions relating to 'safety and security' are intact. It is ambiguous on maintaining the above standards, which may lead to dangerous consequences.

PP. The Government of UP vide the Ordinance has done away with Chapter V which deals with Welfare provisions in its entirety. Taking away these rights from the labourers will reduce their lives to mere existence. This is diametrically contrary to the principles evolved under Article 21 of the Constitution of India.

QQ. The notification issued by UP, wrongly invoking section 5 of the Act has suspended the Act and also imposed new conditions under chapter VI. It states that daily hours of work have been increased to 12 and that weekly hours have been increased to 72 hours. It also states that wages for overtime shall be paid in proportion to the existing wages. As discussed, section 5 of the Act has been wrongly invoked by the State and thus it is in utter violation that the said conditions are now imposed.

RR. The notification issued by the Government of UP has blatantly ignored the function of paid leave and especially Section 82, due to which many may not be paid by their employers during sickness leave or otherwise. The notification issued by Government of UP does not retain even one provision from the entire chapter. This is a violation of the basic ethical standards and pushes down a struggling worker even further down. The government of UP also takes away the entire chapter with respect to special provisions. Moreover, in UP, several other legislations are also suspended as shown in the tabulation while stating the facts of the case.

(c) Haryana, Assam, Punjab, Gujarat, Rajasthan ,Himachal Pradesh, Uttarakhand and Goa.

SS. The impugned notifications/ordinances/orders issued by the States of Gujarat, Rajasthan, Haryana and Himachal Pradesh, Uttarakhand, Uttar Pradesh, Madhya Pradesh, Assam, Punjab, and Goa exempting factories from the purview of the provisions of the Factories Act are ultra vires of the provisions of the Factories Act. They are unjust, illegal, and arbitrary. The States of Gujarat, Himachal Pradesh and Uttarakhand have exempted factories from the purview of Sections 51 (Weekly hours), 54 (Daily hours), 55 (Intervals for rest) and 56

(Spreadover) of the Factories Act, which fall under Chapter VI of the said Act dealing with "Working Hours of Adults". State of Haryana has exempted factories from the purview of Sections 51, 54 and 56 of the Factories Act. State of Rajasthan does not specify which all the exempted provisions are. As per the notification issued by the State of Rajasthan exempted factories from the purview of "Provisions of working hours of adult workers of Factories Act". States of Gujarat, Rajasthan, Haryana and Himachal Pradesh, Uttarakhand have exempted factories the provisions of the Factories Act, under the pretext of exercising power under Section 5 of the Factories Act. Whereas the states of Haryana, Assam, Punjab, and Goa have issued the impugned notification under the pretext of exercising power under Section 65 (2) of the Factories Act. State of Assam has also exempted shops from the purview of Section 6 of the Assam Shops and Establishments Act, 1971 under the pretext of extending power under Section 5 of the said Act. Such action is illegal. State of Madhya Pradesh and Uttar Pradesh have issued ordinances suspending the Factories Act except few sections. All these impugned notifications/ordinances/orders issued by the States of Gujarat, Rajasthan, Haryana and Himachal Pradesh, Uttarakhand, Uttar Pradesh and Madhya Pradesh exempted factories from the purview of provisions of the Factories Act are liable to be quashed/struck down.

TT. Invoking Section 65(2) of the Factories Act, the states of Haryana, Assam, Punjab and Goa have issued notifications extending the working hours. The same is arbitrary, illegal and violative of the Central law scheme. The states of Haryana, Assam, Punjab, and Goa have issued the impugned notification exempting factories from the section of the Factories Act as given below. The said action is unjust, illegal, arbitrary and those notifications are ultra vires to Section 65 of the Factories Act;

State	Sections Exempted
Haryana	Ss. 51 (Weekly hours), 54 (Daily hours), and 56 (Spreadover)
Assam	Ss. 51 (Weekly hours), 52 (Weekly holidays) 54 (Daily hours), and 56 (Spreadover)
Punjab	54 (Daily hours), and 56 (Spreadover)
Goa	Ss. 51 (Weekly hours), 52 (Weekly holidays) 54 (Daily hours), and 56 (Spreadover)

Section 65 reads:

“Section 65: Power to make exempting orders. –

(1) Where the State Government is satisfied that, owing to the nature of the work carried on or to other circumstances, it is reasonable to require that the periods of work of any adult worker in any factory or class or description of factories should be fixed beforehand, it may, by written order, relax or modify the provisions of section 61 in respect of such workers therein, to such extent and in such manner as it may think fit, and subject to such conditions as it may deem expedient to ensure control over periods of work.

(2) The State Government or, subject to the control of the State Government the Chief Inspector may, by written order, exempt on such conditions as it or he may deem expedient, any or all of the adult workers in any factory or group or class or description of factories from any or all of the provisions of sections 51, 52, 54 and 56 on the ground that the exemption is required to enable the factory or factories to deal with an exceptional pressure of work.

(5) Any exemption granted under sub-section (2) shall be subject to the following conditions, namely:

- (i) the total number of hours of work in any day shall not exceed twelve;
- (ii) the spread over, inclusive of intervals for rest, shall not exceed thirteen hours in any one day;
- (iii) the total number of hours of work in any week, including overtime, shall not exceed sixty;
- (iv) no worker shall be allowed to work overtime, for more than seven days at a stretch and the total number of hours of overtime work in any quarter shall not exceed seventy-five.

Explanation. - In this sub-section "quarter" has the same meaning as in sub-section (4) of section 64."

Meaning given to quarter in Section 64 (4) is as follows;

"Explanation.- "Quarter" means a period of three consecutive months beginning on the 1st of January, the 1st of April, the 1st of July or the 1st of October."

WW. The impugned notifications violate the above said Section.

It is evident from the reading of the above sections that Section 65 can be invoked to exempt the factories from the conditions in Sections 51,52, 54, and 56 alone, only on the ground that the exemption is required to enable the factory or factories to deal with an exceptional pressure of work. The phrase “exceptional pressure of work” cannot be interpreted to mean supporting the factories to deal with the restrictions imposed during the lock down, by violating the rights of the labour. Currently, it is not to deal with the “exceptional pressure of work” that the Section 65 (2) of the Factories Act is invoked. The State of Haryana is acting against the very scheme of Lockdown measures as well. The state governments cannot act in a partisan way and act in an arbitrary manner, unmindful of the rights of the labourers. Therefore, issuance of notification under the pretext of exercising power under Section 65 (2) of the Factories Act, is ultra vires, unjust, illegal and arbitrary.

XX. Without prejudice to the above contentions it is submitted that the impugned notification issued by the State of Haryana is vague with respect to the operation of Section 65 (3), and the notifications issued by Assam and Punjab also do not satisfy the conditions stipulated in Section 65 (3) of the Factories Act. Even if it is assumed though not admitted, that other impugned notifications also are issued by exercising the

power under Section 65 (2) of the Factories Act, those notifications also will be unjust, illegal and arbitrary since the conditions there in are violative of Section 65 (3) of the Factories Act. None of the State Governments mentioned above have satisfied the following conditions specified in Section 65 (3) of the Act;

The spread over, inclusive of intervals for rest, shall not exceed thirteen hours in any one day;

The total number of hours of work in any week, including overtime, shall not exceed sixty;

No worker shall be allowed to work overtime, for more than seven days at a stretch and the total number of hours of overtime work in any quarter shall not exceed seventy-five.

YY. Apart from that, Section 55 of the Factories Act cannot be exempted from the purview of Section 65 (2) of the Factories Act, but all respondent States, except State of Haryana, Assam, Punjab, and Goa have exempted the factories from the purview of the same. For these reasons also, the impugned notifications issued by the States of Haryana, Assam, Punjab, and Goa are liable to be quashed. It is pertinent to note that State of Goa has not violated the letter of

Section 65. Though the notification is not directly contradictory to the Section 65, invoking the said power in the current situation is violative of the fundamental rights of the labourers. The labourers already suffer from poverty, malnourishment and lack of adequate health facilities. Extending working hours of the said class at this stage, therefore, is violative of the fundamental rights of the labourers under Article 21 of the Constitution of India.

3. CODE ON WAGES, 2019

Uttar Pradesh

ZZ. In Uttar Pradesh, clause 3 of the impugned ordinance states that "all factories and establishments engaged in manufacturing process shall be exempted from the operation of all labour laws for a period of three years." subject to certain conditions. Clause 3(c) says that the wages shall be paid to the workers within the time limit prescribed under s. 5 of the Payment of Wages Act, 1936. The Payment of Wages Act, 1936 is a central legislation which stand repealed by the Code on Wages, 2019. As per s. 69 of the Code, the Payment of Wages Act is repealed. Since the Code is suspended (since it comes within the purview of all labour laws) and since the Payment of Wages Act is repealed, there is no statutory obligation for the factories and establishments to give timely

wages to their employees. Therefore, the ordinance has essentially led to abolition of minimum wages for labourers in these establishments. This is violative of Articles 14, 15 and 21 of the Constitution.

OTHER LAWS

Madhya Pradesh

Madhya Pradesh Industrial Relations Act, 1960.

AAA. The impugned notification also brought changes to the applicability of Madhya Pradesh Industrial Relations Act, 1960. The notification stated that the provisions of the said Act shall not apply to the 11 Industries in the fields specified therein. There is no period specified for this exemption. The industries which are granted exemption from the provisions of Madhya Pradesh Industrial Relations Act, 1960 are:

Textile, including cotton silk, artificial silk, staple fibre, jute and carpet.

Iron and Steel.

Electrical goods.

Sugar and its by products, including (i) the growing of sugarcane on farms belonging to or attached to concern engaged in the manufacture of sugar, and (ii) all agriculture and industrial operation connected with the growing of sugarcane or the said manufacture.

Cement.

Electricity generation transmission and distribution.

Public Motor Transport.

Engineering including manufacture of Motor Vehicle.

Potteries including refractory goods, fire bricks, sanitary wares, Insulators, tiles, stoneware pipes, furnace lining bricks and other ceramic goods.

Chemical and chemical products industry.

Leather tanneries, including Leather products.

BBB. Most of the major industries are exempted from the purview of the Act. Madhya Pradesh Industrial Relations Act, 1960 is enacted to regulate the relations of employers and employees in certain matters, to make provision for settlement of

industrial disputes and to provide for certain other matters connected therewith. The Act provides for constitution of Labour Courts, Arbitration and Conciliation proceedings between the management and the labourers or their Unions. The Act also provides for a Court of Enquiry. The Act provides a mechanism to recognise Representative Unions and Association of Employees as well. The Act also provides for penalty for the violations of the provisions of the said Act. This entire Act is not made applicable to the above said industries. Consequently, the above said Industries are left with no dispute resolution mechanisms at all with the earlier exemption already given for the provisions under the ID Act.

CCC. The impugned notification takes away the protection against unfair labour practice and a grievance redressal forum. This is a double edged-sword cutting the rights of the labourer in two ways. This also reduces the status of the labourers almost into bonded labourers since they will have to break their bones for meeting both ends together. It is pertinent to note that 'access to justice' is a fundamental right of all. By taking away the Labour Courts/ Tribunals, this fundamental right is deprived for the labourers. With the limited resource, the labourers cannot be expected to approach civil courts for remedy against the mighty managements. This will consequently, violate the

fundamental rights of the labourer under Articles 19(1)(c), 21 and 23 of the Constitution of India.

DDD. Contract Labour (Regulation and Abolition) Madhya Pradesh Rules, 1973.

EEE. Notification dated 05.05.2020 amends Contract Labour (Regulation and Abolition) Madhya Pradesh Rules, 1973 in exercise of power conferred upon the state vide Section 35 of Contract Labour (Regulation and Abolition) Act, 1970. The Section gives power to the State to formulate rules with respect to number of aspects like the manner in which establishments can apply for registrations, the levy of fees for registration, the manner in which the investigation is to be conducted while granting the license, the form of license, the terms of renewals etc. The amendment is with respect to three rules, namely Rules 21, 26 and 27. Rules 21 and 26 only changes the mode of application and submission from physical medium to online. However, Rule 27 is problematic as the same gives an arbitrary, unregulated power to the contractors and leaves no check over the contractors. Rule 27, prior to amendment read as follows:

"27. Period of licence. - Licence granted under Rule 25 or renewal under Rule 29 shall expire on the 31st day of December, following the date of its grant or renewal."

The amended Rule 21 reads:

"27. Validity of the licence: Licence granted under rule 25 of (sic) renewed under rule 29 shall be valid for the period of the contract for which the application is made."

FFF. A reading of the above rule makes it clear that once the licence is allowed or renewed; there is no need for further renewal till the contract is terminated. This gives ample discretion to the Contractors in implementing the provisions of the Act and Rules. If the renewal was required each year, at the time of renewal, there was a possibility of Inspection or Inquiry for the purpose of determination of renewal. When there is no such requirement for renewal with the amended rule, the violations of the provisions go largely unchecked. Any license is provided with regular provisions of renewal. The purpose of renewal of any license is to have a check on the terms and conditions of license. If the very requirement of renewal is removed, the licensee goes beyond any supervision. This may lead to several unnoticed violations of the provisions. This is bad in law. There is no nexus of the

said change with the object sought to be achieved by the Act i.e. regulating Contract Labour practice. The amended Rule goes against the purpose of the Act.

Ordinance:

GGG. The Madhya Pradesh Labour Laws (Amendment) Ordinance, 2020 issued by the Government of Madhya Pradesh on 06.05.2020 is arbitrary, illegal and violative of the fundamental rights of the labourers. The ordinance is brought to bring changes to two state legislations, namely, Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961 and The Madhya Pradesh Shram Kalyan Nidhi Adhiniyam, 1982. The ordinance is violative of the fundamental rights of the labourers under Sections 19(1)(c), 21 and 23 of the Constitution of India.

The Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961.

HHH. The first part of the ordinance amends Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961. The ordinance substitutes the words "more than fifty" in Section 2(1)(a) with the words "more than hundred". Section 2(1)(a) of

the Act speaks about application of the Act. Prior to the amendment, the Act applied to undertakings where the number of employees is more than fifty. The said threshold level is increased to hundred employees now. This Act was enacted repealing the Madhya Pradesh Industrial Workmen (Standing Orders) Act, 1959 and to bring appropriate changes as per the Madhya Pradesh Industrial Relations Act, 1960 and the Indian Trade Unions (Madhya Pradesh Amendment) Act, 1960. These three laws together put up an integrated scheme of laws. This Act provides Sections 7 and 8 in which representative of employees or employer can suggest changes to the standing orders issued. Even when the appeals are filed or disputes with respect to interpretation of standing orders, the affected parties, the employer or employee/representatives of employees shall be heard by the authorities. When this crucial Act is taken away from the small undertakings where there are less than 100 workers, the labourers in the said undertakings will lose their voice and participation. This goes against the purpose of the Act.

- III. There is no reason or justification in substituting the words "more than fifty" to "more than hundred" in the impugned ordinance issued by the government of MP. There is no difference between a labourer working in an undertaking having more than fifty employees and a labourer working in an

undertaking having more than hundred employees. When the protection is available to a labourer working in an undertaking having more than hundred employees, the same has to be available to the other labourers working in undertaking having less than hundred employees. The ordinance classifies labourers without any reason, having no nexus with the object sought to be achieved by the statute. Therefore, it is violative of the fundamental rights of the labourers under Article 14 of the Constitution of India.

The Madhya Pradesh Shram Kalyan Nidhi Adhiniyam, 1982

JJJ. The impugned ordinance issued by the government of MP amends The Madhya Pradesh Shram Kalyan Nidhi Adhiniyam, 1982 as well. Section 28 clause (1) exempts industrial entities classified as 'Micro Industry' under the Micro, small and Medium Enterprises Development Act, 2006. Section 28(2) states that notwithstanding such an exemption, the exemption may be withdrawn by the state government either partially or fully, if it is satisfied that it is so required in the interest of workers. By way of the impugned order, an additional clause has been added as clause (3). It reads:

"(3) The State Government may, by notification, exempt any establishment or any category of establishments from any or

all of the provisions of this Act, subject to such condition, as may be specified in the notification.”

KKK. It is pertinent to note that the provision which has been added now, was the original text of Section 28 with the heading 'Exempt'. However, the same was deleted and clauses (1) and (2) were added by Act No. 20 of 2014. Madhya Pradesh Shram Kalyan Nidhi Adhiniyam provides for constitution of a labour welfare board collecting funds from each undertaking in the prescribed mode. Section 11(2) of the Act provides that the utilisation of funds shall be towards expenses such as community necessities, educational facilities for children, women and adults, corporate activities of social nature, recreational activities, home industries and subsidiary occupation for women and unemployed persons. If by virtue of the impugned ordinance, if the funds are not collected from the industries, the same would deprive the labourers from getting the benefit of the Act for the above said purposes. The benefits of the very beneficial legislation are taken giving ample discretion to the state government. An executive order can take away the benefits of an entire legislation with the above said exemption. Any law vesting such ample, unbridled and unregulated power with the executive will be considered as arbitrary. As it is settled, manifest arbitrariness is a ground to invalidate a statute (Please See, *Shayara Bano v. Union of*

India, (2017) 9 SCC 1infra). Therefore, the ordinance dated 06.05.2020 is liable to be quashed.

CONSTITUTIONAL PROVISIONS

The impugned laws are violative of Articles 14, 15, 19, 21 and 23 of the Constitution.

LLL. It is submitted that labour falls within the concurrent list of Seventh Schedule of the Constitution. (Please see Entry Nos. 20, 21, 22, 23, 24, 36). Aspects such as regulation of labour in mines, incorporation and winding up of corporations industries, industrial disputes concerning union employees etc. come in the Union list. The Central labour legislations are passed invoking powers under the respective subjects in the Union list.

Article 23(1) of the Constitution states as follows:

“(1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.”

MMM. The impugned laws, by suspending welfare and health measures of workers and by increasing work hours constitute forced labour. The term must be viewed not in a limited sense where the employees are physically threatened to work. It must be extended to situations where they have abysmal bargaining power and where their economic status compels them to work beyond their normal working hours. A wide interpretation of 'forced labour' is already subscribed to by this Hon'ble Court in People's Union for Democratic Rights v. Union of India AIR 1982 SC 1473. By explicitly rejecting the submission that 'exacting labour by passing some remuneration' will be sufficient to bring the practice of forced labour, this court held:

"The learned counsel appearing on behalf of the respondent laid some emphasis on the word 'similar' and contended that it is not every form of forced labour which is prohibited by Article 23 but only such form of forced labour as is similar to 'begar' and since 'begar' means labour or service which a person is forced to give without receiving any remuneration for it, the interdict of Article 23 is limited only to those forms of forced labour where labour or service is exacted from a person without paying any remuneration at all and if some remuneration is paid, though it be inadequate, it would not fall within the words 'other similar forms of forced labour'. This contention seeks to unduly restrict the amplitude of the

prohibition against forced labour enacted in Article 23 and is in our opinion not well founded. It does not accord with the principle enunciated by this Court in *Maneka Gandhi v. Union of India* (AIR 1978 SC 597) that when interpreting the provisions of the Constitution conferring fundamental rights, the attempt of the court should be to expand the reach and ambit of the fundamental rights rather than to attenuate their meaning and content. It is difficult to imagine that the Constitution makers should have intended to strike only at certain forms of forced labour leaving it open to the socially or economically powerful sections of the community to exploit the poor and weaker sections by resorting to other forms of forced labour. Could there be any logic or reason in enacting that if a person is forced to give labour or service to another without receiving any remuneration at all it should be regarded as a pernicious practice sufficient to attract the condemnation of Article 23, but if some remuneration is paid for it, then it should be outside the inhibition of that Article? If this were the true interpretation, Article 23 would be reduced to a mere rope of sand, for it would then be the easiest thing in an exploitative society for a person belonging to a socially or economically dominant class to exact labour or service from a person belonging to the deprived and vulnerable section of the community by paying a negligible amount of remuneration and thus escape the rigour of Article 23. We do not think it would be right to place on the language of Article 23 an interpretation

which would emasculate its beneficent provisions and defeat the very purpose of enacting them. We are clear of the view that Article 23 is intended to abolish every form of forced labour. The words "other similar forms of forced labour" are used in Article 23 not with a view to importing the particular characteristic of 'begar' that labour or service should be exacted(sic) without payment of any remuneration but with a view to bringing within the scope and ambit of that Article all other forms of forced labour and since 'begar' is one form of forced labour, the Constitution makers used the words "other similar forms of forced labour." If the requirement that labour or work should be exacted without any remuneration were imported in other forms of forced labour, they would straightaway come within the meaning of the word 'begar' and in that event there would be no need to have the additional words "other similar forms of forced labour." These words would be rendered futile and meaningless and it is a well-recognised rule of interpretation that the court should avoid a construction which as (sic) the effect of rendering any words used by the legislature superfluous or redundant. The object of adding these words was clearly to expand the reach and content of Article 23 by including, in addition to 'begar', other forms of forced labour within the prohibition of that Article. Every form of forced labour 'begar' or otherwise, is within the inhibition of Article 23 and it makes no difference whether the person who is forced to give his labour or service to another is

remunerated or not. Even if remuneration is paid, labour supplied by a person would be hit by this Article if it is forced labour, that is, labour supplied not willingly but as a result of force or compulsion. Take for example a case where a person has entered into a contract of service with another for a period of three years and he wishes to discontinue serving such other person before the expiration of the period of three years. If a law were to provide that in such a case the contract shall be specifically enforced and he shall be compelled to serve for the full period of three years, it would clearly amount to forced labour and such a law would be void as offending Article 23. That is why specific performance of a contract of service cannot be enforced against an employee and the employee cannot be forced by compulsion of law to continue to serve the employer..."

NNN. In this view, several of the impugned provisions having the effect of non-payment for labour for overtime, arbitrary increase in work hours, permission for unfair labour practices etc. constitute forced labour under the Constitution. The impugned laws are liable to be set aside as violative of Article 23 of the Constitution.

OOO. Article 19(1)(a) of the Constitution guarantees the right to freedom of speech and expression. Article 19(1)(b) holds that

citizens shall have the right to assemble peacefully and 19(1)(c), the right to form associations or unions. The impugned laws in Madhya Pradesh have suspended Chapter III of the Madhya Pradesh Industrial Relations Act that deals with 'Recognition of Representative Unions and Associations of Employers.' This has the effect of dismantling the recognition of existing trade unions and employee associations and lack of recognition to forming new ones. The suspension, therefore directly violates the right to form associations of the labourers. In Madhya Pradesh, again Section 25T of Chapter VC of the Industrial Disputes Act which prohibits unfair labour practice is suspended. As stated above, Part I list of the fifth schedule includes activities such as threatening workmen with discharge or dismissal if they join a trade union. Suspending these provisions would mean absence of protection for the right to association, which previously existed. Taking away this right fails to meet any of the restrictions laid down under Article 19(4) which are sovereignty and integrity of India, public order or morality. No such restriction applies in the instant case.

PPP. It is a settled position that the right to form an association includes the right to its continued function. This was categorically held by this Hon'ble Court in *DamyantiNaranga v. The Union Of India*, AIR 1971 SC 966:

"Any law, by which members are introduced in the voluntary Association without any option being given to the members to keep them out, or any law which takes away the membership of those who have voluntarily joined it, will be a law violating the right to form an association. If we were to accept the submission that the right guaranteed by Art. 19 (1) (c) is confined to the initial stage of forming an Association and does not protect the right to continue the Association with the membership, either chosen by the founders or regulated by rules made by the Association itself, the right would be meaningless because, as soon as an Association is formed, a law may be passed interfering with its composition., so that the Association formed may not be able to function at all. The right can be effective only if it is held to include within it the right to continue the, Association with its composition as voluntarily agreed upon by the persons forming the Association. This aspect was recognised by this Court though not in plain words, in the case of O. K. Ghosh and Another v. E. X. Joseph [1963] Suppl (3)S.C.R. 789."

QQQ. It is submitted that the impugned laws are either notifications or ordinances and not statutes. It was held by this Hon'ble Court in In Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India [(1985) 1 SCC 641 as cited in Shayara Bano v.

Union of India, (2017) 9 SCC 1 that “this Court said that a piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent legislature. A subordinate legislation may be questioned under Article 14 on the ground that it is unreasonable; ‘unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary.’” Therefore, the impugned laws are less immune from a constitutional challenge.

Further, in *Shayara* (supra), it was held:

“The test of manifest arbitrariness, therefore, as laid down in the aforesaid judgments would apply to invalidate legislation as well as subordinate legislation under Article 14. Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary. We are, therefore, of the view that arbitrariness in the sense of manifest arbitrariness as pointed out by us above would apply to negate legislation as well under Article 14.”

RRR. It is submitted that the impugned laws are passed without adequate determining principle and are irrational. The relaxation of labour welfare measures is disproportionate and excessive and are liable to be set aside under the manifest arbitrariness test.

SSS. It is also submitted that the right to health has been interpreted as part of the right to life under Article 21 of the Constitution. (Please see *Sunil Batra v. Delhi Administration*, AIR 1978 SC 1675) Article 42 calls upon the state to secure just and humane conditions of work and Article 39(e) to secure the health and strength of workers. Suspending the health and safety measures have a direct detrimental impact on the health of workers. For example, increasing the weekly work hours from 48 to 72 hours in the states of Gujarat, Himachal Pradesh, Rajasthan, Uttar Pradesh and increasing the daily work hours from 9 to 12 hours admittedly adversely affect health conditions.

TTT. The right to minimum wage has been also been held to be an integral part of the right to life by this court in *Peoples Union for Democratic Rights v. Union of India* 1982 AIR SC 1473. On social security and insurance, please see *Murlidhar Dayandeo Kesekar v. Vishwanath Pande Barde*, (1995) Supp 2 SCC 549, *Regional Director, ESI Corporation v. Francis De Costa*,

AIR 1995 SC 1811, L.I.C. of India v. Consumer Education and Research Centre, (1995) SCC (5) 482.

INTERNATIONAL LEGAL FRAMEWORK

UUU. The impugned laws are also violative of the international framework on labour laws. India is a party to several international conventions regulating health and welfare, hours of work, equal remuneration etc of workers. (For a detailed list, see https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:102691)

India is a party to the ILO Forced Labour Convention, 1930 (No. 29) and is bound by its provisions. It defines forced labour as follows:

"all work or service which is exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily."

VVV. The Labour Exploitation Accountability hub, a portal that aims to improve government accountability in matters of trafficking, slavery and forced labour notes:

"Forced labour and human trafficking for labour exploitation are pervasive issues in India. Forced labour and debt bondage

are common practice across the primary, secondary and tertiary economic sectors in India, with widely reported cases in significant number of industries, including brick kilns, carpet weaving, embroidery, textile and garment manufacturing, mining, manual scavenging, and agriculture.” (<https://accountabilityhub.org/country/india/>).

Article 23, therefore must be seen in the context of a significant unorganised labour sector in the country. The constitutional compatibility of the impugned laws cannot be seen isolated from the social context in which they operate.

WWW. Part III, Chapter 1, Report III (Part 1B) of International Labour Conference, 101st Session, 2012 in its report titled ‘Giving globalisation a human face’ states:

“252. Freedom from forced or compulsory labour is a cornerstone of the decent work concept and one of the most basic human rights coming within the competence of the ILO. The two fundamental ILO Conventions on the subject – Conventions Nos 29 and 105 – are the most widely ratified of all the ILO instruments. Principles embodied in these Conventions have found universal acceptance and endorsement and have become an inalienable part of the core

fundamental rights of human beings. They have been incorporated in various international instruments, both universal and regional. The prohibition of the use of forced or compulsory labour in all its forms is considered now as a peremptory norm of international law on human rights; it is of an absolutely binding nature from which no exception is permitted.

253. Conventions Nos 29 and 105 aim at guaranteeing to all human beings freedom from forced labour, irrespective of the nature of the work or the sector of activity in which it may be performed. The two instruments effectively supplement each other, and their concurrent application should contribute to the complete elimination of forced or compulsory labour in all its forms.

254. Since the last General Survey on the subject in 2007, the Committee has noted with satisfaction a number of cases of progress, which cover measures taken, both in legislation and in practice, to ensure better observance of the Conventions in various countries of the world. The Committee has noted, in particular, the repeal or amendment of certain legislative provisions allowing the exaction of forced or compulsory labour for purposes of production or service. It has also noted

the repeal or amendment of provisions authorizing the imposition of forced or compulsory labour as a means of political coercion or education, as a punishment for holding or expressing political views, as a punishment for various breaches of labour discipline or for having participated in strikes."(emphasis added)

India is also party to the Hours of Work(industry) Convention,1919. Article 10 of the same says:

"In British India the principle of a sixty-hour week shall be adopted for all workers in the industries at present covered by the factory acts administered by the Government of India, in mines, and in such branches of railway work as shall be specified for this purpose by the competent authority."

XXX. It is submitted that even a standard which was, prevalent in 1919 is not complied with, by the impugned laws. The increase of weekly work hours to 72 hours clearly contravene Article 10.

YYY. The impugned laws are also in violation of the provisions of International Covenant on Economic, Social and Cultural Rights entered into force in 1976, which also is ratified by India. Art. 6(1) says: "6(1) The States Parties to the present

Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right." This right is severely endangered as a result of the impugned laws. Article 7 says:

"The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.”

Provisions regarding leisure, limitation of working hours, safe and healthy conditions, fair wages- all stand violated under the impugned provisions as explained in detail in earlier grounds.

Hence, the impugned laws are bad in law.

ZZZ. It is settled that “the provisions of the Treaties/Conventions which are not contrary to Municipal laws, be deemed to have been incorporated in the domestic law” as held in T.N. Godavarman Thirumulpad v. Union of India (2012) 4 SCC 362. (Also see Jolly George vs. Bank of Cochin (1980) 2 SCC 360, Gramaphone Company of India vs. Birendra Baldev Pandey (1984) 2 SCC 534.). Therefore, the impugned laws cannot violate international labour standards which India has ratified and made part of the municipal law.

PRAYERS

- i) To issue a writ of mandamus directing the first respondent to ensure the strict implementation of the Central Laws such as the Industrial Disputes Act, 1947, the Factories Act, 1948, the Code of Wages Act, 2019 and all the Central Laws as indicated in Annexure P10 on labour issues, by discarding Annexures P1 to P6, P8 to P13 and the impugned part of Annexure P7 issued by the respondents no. 4 to 13 illegally and arbitrarily;
- ii) To issue a writ of certiorari striking down/quashing Annexures P1 to P6, P8 to P13 as unjust, illegal, arbitrary and violative of fundamental rights of labourers under Article 19(1)(C), 21 and 23 of the Constitution of India;
- iii) To issue a writ of certiorari striking down/quashing Annexure P7 except the amendment made to Rules 21 and 26 of Contract Labour (Regulation and Abolition) Madhya Pradesh Rules, 1973 as unjust, illegal, arbitrary and violative of fundamental rights of labourers under Article 19(1)(C), 21 and 23 of the Constitution of India;

AND FOR THIS ACT OF KINDNESS, THE PETITIONER AS IN DUTY BOUND SHALL EVER BE GRATEFUL.

Drawn by:

Adv. Aruna A.

Adv. Thulasi K. Raj

Adv. Maitreyi S. Hegde

Adv. Laila Thasnim

Adv. Vinayak G. Menon

Settled by:

Adv. Kaleeswaram Raj



DRAWN ON: 5.2020

NISHE RAJEN SHONKER

FILED ON: 18.5.2020

ADVOCATE FOR THE PETITIONER

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

WRIT PETITION (CIVIL) NO. / 2020

IN THE MATTER OF:

Nandini Praveen Petitioner

Vs.

Union of India Respondents

AFFIDAVIT

I, Nandini Praveen,

State, do hereby solemnly affirm and declare as under:

1. That I am the Petitioner in the above matter and as such I am fully conversant with the facts of the case and am competent to swear this affidavit.
2. That I have read and understood the contents of paragraphs 1 to of the accompanying WP at pages to and the List of Dates at pages B to and I say that the facts stated

therein are true and correct to my knowledge. Parties are same as they were before the Courts below.

3. That the contents of the I.A. are true and correct and nothing false has been stated therein.
4. That the Annexures filed with the WP are true and correct copies of their respective original.

DEPONENT

VERIFICATION:

I, the above named deponent do hereby verify that the contents of paragraphs 1 to 4 of this affidavit are true and correct to the best of my knowledge and belief and nothing material has been concealed there from. Verified on this 16th day of May, 2020 at Ernakulam.

DEPONENT

APPENDIX

Constitution of India

Article 14. Equality before law The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

Article 15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

Article 23. Prohibition of traffic in human beings and forced labour

(1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law

(2) Nothing in this article shall prevent the State from imposing compulsory service for public purpose, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them

ANNEXURE P/1

Government of Rajasthan
Factories and Boilers Inspection Department
No.F3(15) Legal/F&B/2020/188
Dated 11.4.2020

Order

In the wake of the national public emergency due to covid-19, for the purpose of extending working hours to 12 hours per day for 3 months, to reduce manpower requirement in factories manufacturing essential food and grocery supplies(all exempted category of Factories by GOR/GOI). The State Government hereby exempt for three months from the date of this order upto the extent/conditions mentioned below:-

1. To achieve the dual objective of restoring full supply of essential goods and ensure a minimal presence of people in manufacturing and distribution facilities it is allowed that the usual “8 hours of working per day” as per Factories Act,1948 be exempted for next 3 months to allow “maximum 12 hours of working per day” for all essential goods manufacturing and distribution factories (all exempted

category of Factories by GOR/GOI). The additional 4 hours a day shall be paid as overtime subject to an overtime limit of 24 hours per week. This would allow to run the majority of operations for 6 days with a reduction of close to 33% of people passing through the facility on a daily basis.

2. Secondly, it would also limit the movement of the people from work to home and back during the day by half. Instead of having people to move to and from work in the morning and evening this would happen only once during the day hours and once during night. The late night movement also applies for a three shift pattern.
3. The above measures of allowing working hours increase from “8 Hours per day” to “12 Hours per day” will enable operation to full capacity of most essential goods factories with around 60-65% of normal manpower.
4. All precautionary measures advised time to time by the GOI/GOR for sanitisation and principle of social distancing and less contact etc shall be strictly adhered to.

Dr Niraj Kumar Pawan

Secretary Labour,
Employment, Skill &
Entrepreneurship.

Factories & Boilers
inspection,
Rajasthan,Jaipur

Copy to the following for information and necessary action:-

1. DS to Chief Secretary,GOR,Jaipur
2. SA to Hon'ble State Labour Minister,GOR
3. PS to Secretary, Labour & Employment, GOR,Jaipur
4. PS to Add.Chief Secretary,Industrial Department,GOR,Jaipur
5. PA to Labour Commissioner,GOR,Jaipur
6. Addl.Labour Commissioner,GOR,Jaipur
7. All Area Officers and Programmers, Factories and Boilers
Inspection Department

Chief
Inspector of Factories and Boilers

Rajasthan,Jaipur

ANNEXURE P/2

Gujarat

Notification

Labour and Employment Department

Sachivalaya, Gandhinagar

Date: 17th April, 2020.

Factories Act, 1948.

No. GHR/2020/56/FAC/142020/345/M3: WHEREAS the Government of India has declared Lockdown across India to fight against the world wide pandemic "Coronavirus";

AND WHEREAS the Government of India has decided to provide certain relaxations for industrial and commercial activities from 20th April, 2020;

AND WHEREAS the Government of Gujarat has decided that these relaxations will not be applicable to areas declared as hotspots or containment zones in different cities of the State and the commercial activities and businesses can start functioning from 20th April, 2020 but with due procedures of safety and social-distancing;.

NOW, THEREFORE, In exercise of the powers conferred by Section 5 of the Factories Act, 1948 (LXIII of 7948), the

Government of Gujarat hereby directs that all the factories registered under the Factories Act, 1948 shall be exempted from various provisions relating to weekly hours, daily hours, intervals for rest etc. of adult workers under section 51, section 54, section 55 and section 56 with the following conditions from 20th April till 19th July 2020,-

- (1) No adult worker shall be allowed or required to work in a factory for more than twelve hours in any day and Seventy Two hours in any week.
- (2) The Periods of work of adult workers in a factory each day shall be so fixed that no period shall exceed six hours and that no worker shall work for more than six hours before he has had an interval for rest of at least half an hour.
- (3) No Female workers shall be allowed or required to work in a factory between 7:00 PM to 5:00 AM. (4) Wages shall be in a proportion of the existing wages. (e.g, If wages for eight hours are 80 Rupees, then proportionate wages for twelve hours will be 120 Rupees).

By order and in the name of the Governor of Gujarat,

(Jvotsna Chauhan)

Deputy Secretary to Government
To, The Manager,

Government Central Press, Gandhinagar.

With a request to publish the notification in the Extra-Ordinary Gujarat Government Gazette Part IV-B and the copies of printed notification may please be distributed as under:

- (i) The Labour and Employment Department, Sachivalaya, Gandhinagar, 05 Copies
- (ii) The Commissioner of Labour, Gujarat State, Gandhinagar, 05 Copies
- (iii) The Director Industrial Safety and Health, Gujarat State, Ahmedabad....., 05 Copies

ANNEXURE P/3

No.21/07/2015-5L/503

Government of Punjab Department of Labour

(LabourBranch)

Notification

The 20th April, 2020

In the wake of the crisis due to COVID-19 pandemic, curfew has been imposed in Punjab and there are restrictions on the movement of labour, leading to shortage of labour. There is a need for relaxing certain provisions of the Factories Act. 1948 by extending the working hours for optimum utilization of labour in the factories which have been allowed to operate under the guidelines issued by State of Punjab dated 18.04.2020 and Government of India dated 15.04.2020.

2. Therefore, in exercise of powers under section 65 of the Factories Act, 1948, it is directed that the factories which have been allowed to operate under the guidelines issued by State of Punjab and Government of India, the total numbers of hours of work allowed in any day shall be a maximum of 12 hours, instead of a maximum of 9 hours provided under section 54 of the

Factories Act, 1948. It is further directed under section 65 of the Factories Act that spreadover shall not exceed 13 hours in one day instead of a maximum of ten and half hours provided under section 56 of Factories Act. For additional hours of work, the workers shall be provided wages at the rate of twice his ordinary rate of wage as provided for overtime in section 59 of Factories Act, 1948. All precautionary measures advised from time to time by the Government of India and Government of Punjab for sanitization and principles of Social Distancing and Less Contact etc. shall be strictly adhered to.

3. These orders shall be in force for three months from today

Vijay Kumar Janjua IAS

Principal Secretary.

Government of Punjab.

Department of Labour

ANNEXURE P/4**LABOUR & EMPLOYMENT DEPARTMENT NOTIFICATION**

Shimla-171002,

The 21st April, 2020

Shram (A)4-3/2017.—In exercise of powers conferred under section 5 of Factories Act, 1948 (Act No. 63 of 1948), the Governor of Himachal Pradesh is pleased to order that all the factories registered under Factories Act, 1948 shall be exempted from the provisions of section 51 (weekly hours), section 54 (daily hours), section 55 (interval of rest) and section 56 (spread hours) w.e.f. 21st April, 2020 to 20th July, 2020, subject to the following conditions:—

1. No adult worker shall be allowed or required to work in a factory for more than twelve hours in any day and Seventy Two hours in any week.
2. The periods of work of adult workers in a factory each day shall be so fixed that no period shall exceed six hours and that no worker shall work for more than six hours before he has had an interval for rest of at least half an hour.
3. Wages in respect of increased working hours as a result of this exemption shall be in proportion to existing minimum wages fixed by Government of Himachal Pradesh under Minimum Wages Act, 1948.

4. Provisions of section 59 regarding overtime wages shall continue to be applicable without any change. By order, Sd/- Addl. Chief Secretary (Lab. & Emp.).

LABOUR &EMPLOYMENT DEPARTMENT NOTIFICATION

Shimla-171002,

The 21st April, 2020

Shram (A)4-3/2017.—Due to outbreak of COVID-19 and in order to combat this challenge, the Governor of Himachal Pradesh in exercise of powers conferred under section 5 of Factories Act, 1948, is pleased to suspend this department's notification of even number dated 1st May, 2017 and orders that all the factories registered under Factories Act, 1948 shall employ adult women workers from 6:00 AM to 7:00 PM only, w.e.f. 21st April, 2020 to 20th July, 2020. By order, Sd/- Addl. Chief Secretary (Lab. & Emp.).

ANNEXURE P/5**UTTARAKHAND GOVERNMENT****Labour Division**

No.: /VIII/20_91(Labour)/2008 T.C.-1

Dehradun: Dated 28th April 2020

Notification

Due to unprecedeted circumstances there is a need for relaxtion in Factories Act 1948 and related rules with respect to Overtime in factories of those industries that were given restrictive permission by State Government & permission by District Administration to continue functioning so that demand for essential services such as medicines/other necessities could be met even during the lockdown caused by the spread of world epidemic Covid 2019.

Therefore, drawing powers from section 5 of the Factories Act , in light of Public Emergency relaxation is being granted to factories registered under Factories Act, with respect to section 51,54,55 & 56 of the said Act subject to the following conditions:

1. Everyday, work would be done in two shifts of 11 hours each with there being an interval of 1 hour between two shifts. In this manner everyday overtime for 3 hrs would be estimated. The payment for which is to be done as per the rules.

2. The workers working in both shifts can work maximum 6 days in a week. And the maximum limit for overtime is 18 hrs per week.
3. This notification is only applicable to those industries which have been permitted to run by State Govt./District Administration in light of the situation caused by Covid-19. Industries have to follow the instructions given by State Govt./ District Administration after 1.04.2020 with respect to social distancing & sanitization and they also have to follow the safety measures mentioned under Factory Act.
4. For the purpose of using the overtime relaxation, no discrimination would be done by the employer.
5. This notification would be in force from the date of its publication and would remain in force for 3 months.
6. The rules & instructions given with respect to lockdown due to Covid-19 in the Home Minister of India's Letter No.40-3/2020-DM-1(A) dated 15.04.2020, Letter No.40-3/2020-DM-1(A) dated 16.04.2020 and Letter No.40-3/2020-DM-1(A) dated 19.04.2020 and any future instructions or rules given by Home Minister, Government of India & State Govt. due to Covid-19 have to be followed and upheld in its entirety by all industries/institutions/divisions.

Harbans Singh Chug

(Secretary)

No.286/VIII/2020-91(labour)/2008 TC-1 then dated

Copy served with respect to the following for information and necessary action:

1. Personal Secretary, Chief Minister of Uttarakhand
2. Principal Personal Secretary, Labour Minister Uttarakhand.
3. Personal Secretary, Chief Secretary, Uttarakhand Government
4. All Upper Chief Secretary/Principal Secretary/Secretary/Secretary in Charge, Uttarakhand Govt.
5. Inspector General of police, Uttarakhand
6. All Division Commissioners/ District Officers, Uttarakhand.
7. Labour Commissioner, Uttarakhand, Haldiauni.
8. Guard File.

By Order

(Devendra Singh Chouhan)

Under Secretary

ANNEXURE P/6

Govt. of Haryana

57-2020/Ext.]~~पंचमी~~ CHANDIGARH, WEDNESDAY, APRIL 29, 2020

(VAISAKHA 9, 1942 SAKA)

HARYANA GOVERNMENT

LABOUR DEPARTMENT

Notification

The 29th April, 2020

No. 2/17/2020-2Lab.—In the wake of crisis due to COVID-19 pandemic, there are restrictions on the movement and deployment of workers and shortage of workers and there is a need for relaxing certain provisions of the Factories Act, 1948 by extending the working hours for optimum utilization of labour in the factories which have been allowed to operate under the guidelines issued by Government of Haryana and Ministry of Home Affairs, Government of India from time to time. Therefore, In exercise of the powers conferred under Sub-section (2) of the Section 65 of the Factories Act, 1948, (X no. 63 of 1948), the Governor of Haryana is pleased to order that all the factories registered under Factories Act, 1948 shall be exempted from the provisions relating to weekly hours, daily hours etc. of adult

workers under Section 51, Section 54 and Section 56, subject to the following conditions:- (i) The total number of hours of work in any day shall not exceed twelve, subject to the conditions stipulated under Sub-section (3) to Section 65 of the Factories Act, 1948. (ii) This exemption will not provide any immunity from any other section or rules of this Act or any other State/Central Government legislation. (iii) This exemption will be valid till 30th June, 2020. (iv) The wages for the overtime period will be paid as per Section 59 of the Factories Act, 1948. (v) The instructions issued by Government of India and Government of Haryana from time to time regarding COVID-19 including social distancing, sanitization etc. shall be strictly followed.

VINEET GARG, Principal Secretary

to Government, Haryana,

Labour Department.

8752—C.S.—H.G.P.,

Pkl.

ANNEXURE P7**Madhya Pradesh Gazette**
(Extra-Ordinary)

Published by Authority

Department of Labour

Mantralaya, Vallabh Bhawan, Bhopal

Bhopal, dated 05.05.2020

No. 954-02-2020-A-16

In supersession of this department's notification No. F-4(E)-1-2016-A-XV dated 28th March, 2017(published in Madhya Pradesh Gazette dated 21st April, 2017), and in exercise of the powers conferred under sub-section (1) of Section 8 and Section 112 of the Factories Act, 1948 (No. 63 of 1948), the State Government, hereby, notify to recognize the Third Party Certification for non-hazardous category factories employing upto 50 Workers as per the Business Reform Action Plan, 2016 under the Industrial Policy and Promotion, Ministry of Commerce and Industries, Government of India.

Such factories which submit the certification report carried out by a Third Party authorized by the Labour Commissioner, Madhya Pradesh regarding compliance of the Factories Act, 1948 (No. 63 of 1948) to the Inspector having

jurisdiction, before 31st January of every year, shall be exempted from routine inspection process, Provided inspection of such factories shall only be carried out with prior permission of Labour Commissioner, Madhya Pradesh in case of Serious/Fatal Accident or complaint information received thereto. The factories those fail to submit their compliance certification report before the prescribed deadline of 31st January of every year shall not be entitled for such exemption.

By order and the name of Governor of Madhya Pradesh

Sd/-

(Ashok Shah)

Principal Secretary

ANNEXURE P8**UTTARAKHAND GOVERNMENT**

Labour Division

No.: /VIII/20_91(Labour)/2008 T.C.-1

Dehradun: Dated 5th May 2020

Notification/Amendment

Under Notification No.286/VIII/20_91(labour)/2008 TC-1 dated 28.04.2020, drawing powers from section 5 of the Factories Act , in light of Public Emergency relaxation was granted to factories registered under Factories Act, with respect to section 51,54,55 & 56 of the Factories Act 1948 and related rules for Overtime in factories of those industries that were given restrictive permission by State Government & permission by District Administration to continue functioning so that demand for essential services such as medicines/other necessities could be met even during the lockdown caused by the spread of world epidemic Covid 2019.

After much contemplation the following amendments in the above mentioned notification dated 28.04.2020 has been granted acceptance by the Governor :

1.In continuous processing industries for production unit, work would be done everyday in 2 shifts of 12 hour each, out of which 4

hours would be accounted for as overtime and wages for the same would be paid accordingly.

2. The workers working in both shifts can work maximum 6 days in a week. And the maximum limit for overtime is 24 hrs per week.

3. In any given day, the work would be spread in such a manner that every worker would mandatorily be given a break/rest of 30 minutes after working for 6 hrs.

4. This notification would be in force from the date of the previous notification.

The above amendment would only be applicable on Continuous Process Factories. The other conditions of notification dated 28.04.2020 would remain unchanged.

Harbans Singh Chug

(Secretary)

No.294/VIII/2020-91(labour)/2008 TC-1 then dated

Copy served with respect to the following for information and necessary action:

1. Personal Secretary, Chief Minister of Uttarakhand

2. Principal Personal Secretary, Labour Minister Uttarakhand.

**3. Personal Secretary, Chief Secretary, Uttarakhand
Government**

**4. All Upper Chief Secretary/Principal Secretary/Secretary/
Secretary in Charge, Uttarakhand Govt.**

5. Inspector General of police, Uttarakhand

**6. All Division Commissioners/ District Officers,
Uttarakhand.**

7. Labour Commissioner, Uttarakhand, Haldiauni.

8. Guard File.

By Order

(Devendra Singh Chouhan)

Under Secretary

Annexure P9

MADHYA PRADESH ORDINANCE

(NO. 5 or 2020)

**THE MADHYA PRADESH LABOUR LAWS (AMENDMENT)
ORDINANCE, 2020**

**[First published in the 'Madhya Pradesh Gazetie (Extra-
ordinary)", dated the 6th May, 2020.]**

Promulgated by the Governor in the seventy first year of the
Republic of India.

**An Ordinance further to amend the Madhya Pradesh
Industrial Employment (Standing
Orders) Act, 1961 and the Madhya Pradesh Shram Kalyan
Nidhi Adhiniyam, 1982.**

Whereas, the State Legislature is not in session and the Governor of Madhya Pradesh is satisfied that circumstances exist which render it necessary for him to take immediate action;

Now, Therefore, in exercise of the powers conferred by clause (l) of Article 213 of the Constitution of India, the

Governor of Madhya Pradesh is pleased to promulgate the following Ordinance:-

1. (1) This Ordinance may be called the Madhya Pradesh Labour Laws (Amendment) Short title and Ordinance, 2020.
- (2) It shall come into force from the date of its publication in the Madhya Pradesh Gazette.
2. During the period of operation of this Ordinance, the Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961 (No. 26 of 1961) and the Madhya Pradesh Shram Kalyan Nidhi Adhiniyam, 1982 (No. 36 of 1983) shall have effect subject to the amendments specified in Sections 3 and 4.

PART.I

AMENDMENT TO THE MADHYA PRADESH INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT, 1961 (No. 26 OF 1961)

In the Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961 (No. 26 of

196I), in clause (a) of sub-section (I) of Section 2, for the words "more than fifty", the words "more than 100" shall be substituted.

PART-II

AMENDMENT TO TIIE MADHYA PRADESH SHRAM KALYAN NIDHI ADHINIYAM, 1982

(No. 36 OF 1983)

4. In the Madhya Pradesh Shram Kalyan Nidhi Adhiniyam, 1982 (No. 36 of 1983), after sub-section (2) of Section 28, the following sub-section shall be added, namely:-

"(3) The State Government may, by notification, exempt any establishment or any category of establishments from any or all of the provisions of this Act, subject to such condition, as may be specified in the notification.".

Bhopal

LAL JI TANDON

Dated the 5th May 2020

Governor

Madhya Pradesh

Annexure P10

**THE UTTAR PRADESH TEMPORARY EXEMPTION FROM
CERTAIN**

LABOUR LAWS ORDINANCE, 2020

(U.P. ORDINANCE NO - OF 2020)

(Promulgated by The Governor In The Seventy First Year OF The
Republic Of India)

**AN
ORDINANCE**

To exempt factories and other manufacturing establishments
application of certain labourlaws for a period three years.

WHEREAS the state legislature is not session the Governor
is satisfied that circumstances exists which render it necessary for
him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by
clause (1) of Article 213 of the Constitution of India, Governor is
pleased to promulgate the following Ordinance:-

CHAPTER-I

PRELIMINARY

Short Title, extent and

Commencement 1 - (1) This Ordinance may be called the Uttar Pradesh Temporary Exemption from Certain Labour Laws Ordinance, 2020

(2) It extends to the whole of Uttar Pradesh.

(3) This Ordinance shall come into force on the date of its publication in the Gazette.

Definitions 2- In this Ordinance, unless the context otherwise requires:-

(a) "Factory" means any premises defined as factory in section 2(m) of the Factories Act, 1948.

(b) "Manufacturing" means the process as defined manufacturing process under Section 2 (k) of the Factories Act.

(c) "Minimum wage" means the wage prescribed by State Government.

(d) "Wages" means all remunerations defined as wages in Section 2 (h) of the Minimum Wages Act, 1948.

(e) "workers" means a person defined as worker in section 2(l) of the Factories Act, 1948.

CHAPTER- II

TEMPORARY EXEMPTION AND CONDITIONS THEREOF

Temporary Exemption- 3- All factories and establishments engaged in manufacturing process shall be exempted from the operation of all Labour Laws for a period of three years, subject to the fulfillment of the following conditions:

- (a) The name and details of all employed workers shall be entered electronically on attendance register prescribed in section-62 of the Factories Act, 1948.
- (b) No workers shall be paid less than minimum wages as prescribed by UP Government.
- (c) The wages to the workers shall be paid within the time limit prescribed under section- 5 of Payment of Wages Act, 1936.
- (d) The wages to workers shall be paid only in their bank accounts.
- (e) The provisions of Factories Act, 1948 and Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 relating to safety and security of the workers shall remain applicable.

(f) The workers shall not be allowed or required to work for more than eleven hours per day and the spread overof the work shall not be more than twelve hours per day.

(g) For any death or disability due to accident arising out of and in the course of employment compensation shall be paid in accordance with Employees Compensation Act, 1923.

(h) The provisions of the various labour laws relating to the employment of children and women shall remain applicable.

(i) The provisions of Bonded Labour System (Abolition) Act, 1976 shall remain applicable.

**Consequences for the
breach of conditions of
exemptions**

4- For any breach of the conditions provided in section 3 action will be taken in accordance with the provisions of existing relevant Acts.

CHAPTER – IV

MISSCELLANEOUS

Power to make rules

5- The State Government may, by notification, make rules for carrying out the purposes of this Ordinance.

Power to remove difficulties

6- (1) If any difficulty arises in giving effect to the provision of this Ordinance, the State Government may, by notification, make such provisions, not in consistent with the provisions of this ordinance as appear to be necessary or expedient for removing the difficulty.

(2) Every order made under sub-section (1) shall be laid as soon as may be, before both Houses of the State Legislature.

Repeal and Savings

7- Notwithstanding anything contained in this Ordinance, the previous operations of various Labour Laws shall not be affected.

ANNEXURE P11**Uttar Pradesh Shasan****Shram Anubhag – 3**

In pursuance of the provisions of clause (3) of Article 348 of the Constitution the Governor is pleased to order the publication of the following English translation of notification no. 13 / 2020/562/- XXXVI-03-2020- 30 (Sa.)/2020TC, dated a May, 2020.

NOTIFICATION**No. 13/ 2020/ 502/ XXXVI – 03 (Sa.)/ 2020TC**

Dated Lucknow, 08.May, 2020

WHEREAS due to pandemic of Covid-19 Government of India has declared lockdown and other stringent measures to fight against the pandemic resulting occurrence of internal disturbance amounting to public emergency in the entire country including State of Uttar Pradesh.

NOW, THEREFORE, in exercise of the powers conferred by Section 5 of the Factories Act, 1948 (Act no. 63 of 1948) the Government of Uttar Pradesh hereby directs that all the factories registered under the Factories Act, 1948 shall be exempted from various provisions relating to weekly hours, daily hours, overtime, intervals for rest etc. of adult workers under section 51, section 54, section 55, section 56 and section 59 with the following conditions from 20th April till 19th July 2020 :-

- 1) No adult worker shall be allowed or required to work in a factory for more than twelve hours in any day and Seventy two hours in any week.
- 2) The periods of work of adult workers in a factory each day shall be so fixed that no period shall exceed six hours and

that no worker shall work for more than six hours before he has had an interval for rest of at least half an hour.

3) Wages shall be in proportion of the existing wages. (e.g. If wages for eight hours are 80 Rupees, than proportionate wages for twelve hours will be 120 Rupees).

By Order,

(Suresh Chandra)

Pramukh Sachiv

Annexure P12**GOVERNMENT OF ASSAM****LABOUR WELFARE DEPARTMENT****JANATA BHAWAN: D1SPUR: GUWAHATI- 6.****ORDER BY THE GOVERNOR NOTIFICATION**

Dated Dispur, the 8th May, 2020.

No. GLR.170/2019/Pt./4: In exercise of the power conferred by Sub-Section (2) of Section 65 of the Factories Act, 1948, the Governor of Assam is pleased to grant exemption to the adult worker of all factories in the State of Assam from the provisions of Section 51, 52, 54 and 56 of the Factories Act and in exercise of the power conferred under Section 5 of the Assam Shops and Establishments Act, 1971, the Governor of Assam is pleased to exempt the provisions under Section 6 of the Assam Shops and Establishments Act, 1971 with effect from 08.05.2020 to deal with the exceptional pressure of work due to COVID-19 Pandemic.

1. Total nos. of hours of work in any one day shall not exceed twelve hours.
2. The spread over, inclusive of intervals for rest shall not exceed thirteen hours in any one day.

Employers and employees may mutually agree to extension of working hours upto a maximum of 12 hours, subject to payment of overtime wages to the employees/workers. The mutual agreement shall remain valid upto maximum of 3 (three) months from the date of issue or withdrawal of this notification whichever is earlier.

Necessary protocols for social distancing and personal hygiene must be maintained strictly at work places as per the guidelines issued by Govt of India as well as Govt. of Assam.

Sd/-J.B.Ekka, IAS

Principal Secretary to the Govt. of Assam,

Labour Welfare Department, Dispur,

Guwahati-6.

Memo No. No. GLR.170/2019/Pt./4-A Dated Dispur,
the 8th May, 2020

Copy to:

1. The Principal Secy. to the Hon'ble Chief Minister, Assam for kind appraisal of Hon'ble Chief Minister.
2. The SO to Chief Secretary, Assam for kind appraisal of the Chief Secretary.
3. The Private Secretary to Home Minister, Govt of India, North Block, New Delhi-110001 for kind information w.r.t. the DO letter no.160/HMO(R)/2020, dated 04.05.2020.
4. The Private Secretary to the Minister of State, Labour Welfare, Govt of Assam for kind appraisal of the Hon'ble Minister
5. The PS to Additional Chief Secy. to the Govt. of Assam, Home& Political Department, Dispur, Guwahati-6 for kind appraisal of Additional Chief Secretary.
6. The Commissioner, Guwahati Municipal Corporation for information and necessary action.
7. The Labour Commissioner, Assam, Gopinath Nagar, Guwahati-16 for information and necessary action.

8. The Chief Inspector of Factories, Assam, Betkuchi, Lokhra, Guwahati.40 for information and necessary action.
9. The DIPR, Assam, Dispur, Guwahati-6. He is requested to give wide publicity through the T.V, A.I.R. and Daily Newspaper.
10. All concerned Officers/Inspectors.
11. The Deputy Director, Assam Govt. Press, Bamunimaidan, Guwahati-21 for information. He is requested to take necessary action for publication of the notification in Assam Gazette and send 100 copies to this department.

By order etc.,
Deputy Sc y. to 4, of Assam,
Labour Welfare Department,
Dispur.

ANNEXURE P13

Reg. No. G-2/RNP/GOA/32/2018-20

RNI No. GOAENG/2002/6410

Panaji, 8th May, 2020 (Vaisakha 18, 1942)

SERIES II No. 6

OFFICIAL GAZETTE**GOVERNMENT OF GOA**

PUBLISHED BY AUTHORITY

EXTRAORDINARY**GOVERNMENT OF GOA**

Department of Labour

Inspectorate of Factories and Boilers

Order

No. CIF/092(Part-2)/S-II/IFB/2020/191

Whereas, in the wake of the current crisis on account of COVID-19 pandemic, there are restrictions on movement of workers leading to shortage of worker thereby causing the factories to deal with an exceptional press of work.

And whereas, in order to enable the factories to deal with said exceptional press of work in view of said crisis, there is a need for relaxing certain provisions of The Factories Act, 1948 (Central Act No. 63 of 1948) (hereinafter called the "said Act") thereby extending the working hours for optimum utilization of the workers in the factories which have been allowed to operate under the guidelines issued by the Ministry of Home Affairs, Government of India and the Government of Goa from time to time.

Now therefore, in light of the above and in exercise of the powers conferred by sub-section (2) of Section 65 of the said Act, the Government of Goa hereby exempts all of the adult workers working in all of the factories situated in the State of Goa, who are not holding positions of supervision or management and/or not employed in a confidential position within the meaning of sub-section (1) of Section 64 of the said Act, from the provisions of Sections 51, 52, 54 and 56 of the said Act, for a period upto 31st July, 2020 with effect from the date of publication of this Order in the Official Gazette, subject to the following conditions, namely:-

- i) the total number of hours of work in any day shall not exceed twelve;
- ii) the spread over, inclusive of intervals for rest, shall not exceed thirteen hours in any one day;
- iii) the total number of hours of work in any week, including overtime, shall not exceed sixty;
- iv) no worker shall be allowed to work overtime, for more than seven days at a stretch and the total number of hours of overtime work in any quarter shall not exceed seventy five;
- v) no worker shall work for more than five hours before he has had an interval for rest of atleast half an hour;
- vi) where a worker works in a factory for more than forty-eight hours in any week, he shall, in respect of overtime work, be entitled to wages at the rate of twice his ordinary rate of wages in accordance with the provisions prescribed under Section 59 of the said Act;
- vii) if a worker is required to work on weekly holiday(s), he shall be allowed to avail compensatory holiday(s) for having worked on weekly holiday(s), within the month in which the holidays were due to him or within the two months

immediately following that month in accordance with the provisions prescribed under Section 53 of the said Act;

- viii) the instructions issued by the Ministry of Home Affairs, Government of India and the Government of Goa from time to time regarding COVID-19 pertaining to social distancing, sanitization, etc. shall be strictly followed.

By order and in the name of the Governor of Goa.

Vivek P. Marathe, Chief Inspector & ex officio Joint Secretary (Factories and Boilers).

Altinho, Panaji, 7th May, 2020.

VAKALATNAMA
(S.C.R. Order IV Rule-18)
IN THE SUPREME COURT OF INDIA
(Civil/Criminal Appellate Jurisdiction)

In the matter of:-

Petitioner(s)

Versus

Respondent(s)

Vakalatnama

I Petitioner/Respondent No. appoint and retain Mr. Nishe Rajen Shonker , Advocate, Supreme Court to act and appear for me/us in the above petition/appeal and on my/our behalf to conduct and prosecute (or defend) the same and all proceedings that may be taken in respect of any application connected with the same or any decree or order passed therein including proceedings in taxation and applications for review to file and obtain return of documents, and to deposit and receive money on my/our behalf in the said petition/appeal and in applications of review, and to represent me/us and to take all necessary steps on my/our behalf in the above matter.

I agree to ratify all acts done by the aforesaid Advocate(s) in pursuance of this authority.

Nandita

(signed)
Petitioner(s)

NT ZHAIER

Accepted

Mr. Nishe Rajen Shonker, Advocate-on-Record
The address for service of the said Advocate(s) is
Tower 3 Flat. 101, Supreme Towers, Noida Sector 99- 201304

MEMO OF APPEARANCE

To
The Registrar,
Supreme Court of India,
New Delhi.

Sir.

Please enter my appearance on behalf of the petitioner(s)
New Delhi

Now D
Dated:

Dated.

(Advocate(s) for the Petitioner(s)/Appellant(s)/