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LABOUR LAWS AND THE ISSUE OF WAGES DURING COVID-19

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LABOUR LAWS AND THE ISSUE OF WAGES DURING COVID-19

The year 2020 is facing, what we may call in near future, the most wide spread and contagious virus outbreak of the century. The COVID-19, a novel virus has ended up paralysing more than half of the countries all over the world, developed, developing and middle income countries alike and has been rightly **declared as a pandemic by WHO**. The impact of COVID-19 outbreak isn't just limited to the health and disease spread amongst people but it has impacted all possible spheres of the present civilization.

The highly contagious nature of the virus, absence of a sure shot medicine and vaccine has compelled the authorities world-over, to resort to a **complete lockdown** in order to contain the spread. This lockdown in India has been invoked under **Epidemic Diseases Act 1897**. Thus, the COVID-19 has brought the whole world to a **standstill bringing the economic activity** to the minimum possible.

The ripples of COVID-19 are being felt in almost all the industries. This measure of lockdown however opened a Pandora box of unprecedented rights and liabilities of employers and workers associated with any **industry in private sector**. These are governed by various labour law statutes such as Industries Disputes Act, 1947. Both employers and workers are integral part of any industry and thus it is important to analyse the issues faced by both.



Earlier on, as soon as the lockdown was declared in the country for the initial phase of 21 days, the main problem glaring the country revolved around the issues of the workers/ labourers/ daily wage earners, etc. Even though the workers are the major workhorses of our economy, they are unfortunately the ones with a little to no financial security. With most of them barely earning minimum wages, the social-economic conditions of this group of people made them the most vulnerable to face the brunt of this lockdown and economic slowdown.

The problems faced by workmen:

1. Major haircuts in the salary and no salary at all.
2. Most labourers being migrant workers are staying on rent making the more vulnerable.
3. No food security.
4. Sudden nature of lockdown left them with no means of returning to their homes

In the light of the above scenario, on the face of it, it might seem only natural for one to conclude that the workers should receive full salary from their employers. After all it's a matter of just barely 1 month right? Moreover, the more humanitarian amongst us would support the idea of employer providing some income security to these vulnerable people who have nowhere to go and



no means of earning money left with them. It was probably with this very ideology that the Ministry of Labour and Employment issued an advisory on 20th march, 2020 requesting the employers to neither terminate nor cut wages of the employees and later the government came out with **an order on 29th March, 2020 (by Ministry of Home Affairs)** which directed States and Union Territories to ensure that all the employers (*industry, shopping complexes, etc*) **pay complete wages** to workers **even if no work was carried out during lockdown period**. This was done to mitigate the economic hardships faced by various people and to ensure social security during the COVID-10 outbreak.

However, this extreme direction by the government seems to be correct only when viewed through the **lenses of humanitarianism albeit a forced one**. This direction however fails to pass the test of various legal frameworks of the country and also falls short when analysed on basis of the general economic sense. It is in this context only that we need to throw light on the other end of the spectrum comprising of the employers – business, industry, etc.

The problems faced by the Employers:-

1. The sudden closure of the business bringing the income to almost zero.
2. Bare minimum work during lockdown period suddenly halting the ongoing projects
3. The global economic slowdown shadowing the future prospects also.



4. Adjusting to the new models of work (example: work from home, alternate day work) being floated during the lockdown period.
5. Trying to stay afloat during the period of lockdown.
6. Payment of basic salaries to the employees even though almost no recovery made during lockdown.
7. Uncertainty over returning to normalcy.
8. The responsibility of maintaining hygiene and proper sanitisation of the complex.

Thus, even though employers are the dominant players in the market having deep pockets and social security, one should not forget that they also the main drivers of economic activity, providing jobs to many, in the country. Further, the lockdown in the country has been continuously extended and in under Phase-4 as of now. The cases have increased to over 1 Lac and there seems to be no end to the pandemic any time in near future. Therefore, in this **period of uncertainty** and the prolonged period **of lock down** and **the economic slowdown**, the security of employers is as much important.

HOW WAS THE ORDER ISSUED AND VARIOUS LEGALITIES INVOLVED:

This global pandemic has been **notified as ‘a disaster’** by Government of India which allowed the central government to issue the said order under **Disaster**



Management Act, 2005. The said order has been issued under **section 10 (2)(i)** of the Disaster Management Act directing the states and union territories to ensure adequate arrangements of temporary shelter and provision of food for migrant workers who had already moved out / got stranded in such states and union territories amongst other directions. Along with this, keeping in mind the economic strain caused to all the vulnerable workers, the order directed the states and union territories to take measures to ensure that all employers pay salary to their workers without any haircuts in salary for the period their establishments are under closure during the lockdown. As a result of this lockdown, all the employers are now required to ensure full payment of salaries to their employees even if no work was done or no service was provided by them during the continued period of lockdown.

LEGALITIES INVOLVED:

Though the order seemed to be having well intent for the workers all over the country but it fails to stand the legal test of **arbitrariness** and **administrative excess**.

The purpose of the said Act is essentially to ensure effective management of disaster. This involves giving directions to any various authorities regarding measures to be taken in response to occurrence of any disaster. However, the



said power cannot be said to include the power to issue directions to any private sector establishment.

The plain reading of this text of the Section 10 of the Act clearly shows that the responsibility of disaster management response is put upon government only and by the virtue of this responsibility **government isn't authorised to direct any private establishment** to pay wages in response to disaster. This issue is completely governed by the employer-employee relationship.

Thus, the effective management of disaster **cannot entail directions by the government to private** employers to pay complete wages to all its employees. Further, such a power, as was exerted by the government while issuing the said order, has nowhere been exclusively given in whole Act. One can thus conclude that the order suffers from the **arbitrariness and is ultra-vires** the extent of the Act.

Even when one considers the humanitarian approach to this issue and consider the issue from the standpoint of an employer it would appear only reasonable to assume that the long-term effects of this order on the employers might prove to be much more disastrous in long-term. It also doesn't solve the main issue of the pandemic which hovers before the government which is the **drowning economy** and the revival of economic activity.



Further it seems apparent now that the government by issuing this order has **shifted its own responsibility** of ensuring the disaster response and proper management to the private sector which is highly excessive and arbitrary.

TEST OF CONSTITUTIONALITY:

The said order further fails to stand the test of the constitutional provisions ensuring fundamental rights under the **golden triangle** of **Article 14** - equal protection of laws as the said order only protects one section of people (*employees*) while undermining the rights of the other section (*employers*), **Article 19** as the freedom of profession and carrying out a business without any restrictions, and **Article 21** which ensures the right to life– the golden triangle.

It is for these above reasons only that recently the **Supreme Court, in a writ petition** filed by Karnataka-based company Ficus Pax Private Limited, which had challenged the constitutional validity of government notifications mandating full wage payments during lockdown, overturned the 29th March, 2020 order of Ministry of Home Affairs.

- In the above judgment the apex court has ordered government not to take any coercive action **against private companies unable to pay the full salaries** to their workers.
- The company had argued that government orders mandating full salary payment to workers **violated Articles 14 and 19 (1)(g)** of the



Constitution of India, which refer to equality before law and right to practise any profession, occupation or trade, respectively.

- It had further said that the order was in **contravention of the principles of 'Equal Work, Equal Pay' and 'No Work, No Pay'**, as it doesn't differentiate between the workers who are working during lockdown.

This move of Supreme Court is in right direction. Rights of one should not undermine the right of other and the way forward would therefore be to strike a balance between securing the rights of both employers and employees as both are integral parts of the society and for the economy.

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