

# COVID-19 and Labour Law: India

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### Abstract

The nation-wide lockdown due to COVID-19 has caused acute distress amongst the large informal workforce in India. India's federal system has meant that relief measures have been introduced both at the central and state level. However, these measures have largely been imposed without a consultative process and are piece-meal and sector-specific in their scope. Consequently, these measures extend to only a small slice of the labour force in the country and do not effectively guarantee the fundamental right to social security for all workers.

**Keywords:** Covid-19; Labour Law; Provident Fund; Cash Transfer; Informal Labour; Insurance; Social Security.

While the spread of COVID-19 constitutes an unprecedented global public health crisis, India's skeletal public health infrastructure, densely-populated settlements and a large informal workforce make the country particularly vulnerable to this pandemic. Not surprisingly, India responded with a stringent nation-wide lockdown even before the total number of detected cases of COVID-19 in the country had crossed 600<sup>1</sup>. In fact, a few individual states had announced separate lockdowns even before the national lockdown<sup>2</sup>.

### 1. The General Legal Framework for the National Lockdown

The Central Government invoked the Disaster Management Act 2005 (DMA) to impose this national lockdown. The National Disaster Management Authority (NDMA), the body responsible under the DMA, declared the pandemic as a disaster through an Order on 24 March 2020 and directed social distancing guidelines to be followed<sup>3</sup>. The Chairman of the National Executive Committee of the NDMA issued detailed guidelines

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<sup>1</sup> Vaishnavi Chandradekshar, '1.3 billion people. A 21-day lockdown. Can India curb the coronavirus?' *Science*, 31 March 2020,

<https://www.sciencemag.org/news/2020/03/13-billion-people-21-day-lockdown-can-india-curb-coronavirus>, accessed 20 April, 2020.

<sup>2</sup> 'Corona threat: West Bengal announces lockdown measures', in *The Hindu Business Line*, 22 March 2020.

<sup>3</sup> No. 1-29/2020-PP (Pt. II), dated 24 March 2020,

<https://ndma.gov.in/images/covid/ndmaorder240320.pdf>, accessed 19 April, 2020.

for the lockdown.<sup>4</sup> These guidelines directed the closure of all non-essential government offices, commercial and industrial establishments, transport services, hospitality services, educational institutions, places of worship, gatherings, etc<sup>5</sup>.

Apart from the measures under the DMA, several state governments have invoked the colonial era Epidemic Diseases Act, 1897 (EDA). Section 2 of EDA enables State Governments to take measures and prescribe regulations during the outbreak of an epidemic disease. Violation of such orders issued by state governments<sup>6</sup> attracts criminal sanction in accordance with Section 188 of the Indian Penal Code 1860<sup>7</sup>.

Besides, Section 144 of the Code Of Criminal Procedure 1973, which empowers Magistrates to issue orders in urgent cases to “prevent, obstruction, annoyance or injury” or “danger to human life, health or safety, or a disturbance of the public tranquillity, or a riot” has also been invoked in some states<sup>8</sup>.

## 2. Impact of the National Lockdown

While some questions have been raised about the constitutional permissibility of the national lockdown<sup>9</sup>, the immediate aftermath of the imposition of the lockdown highlighted its tragic cost. The most dramatic has been the mass exodus of migrant labourers from big cities to their homes in the hinterland. With more than 90% of Indian workers engaged in precarious work that lack adequate social security and paid leave<sup>10</sup>, many workers, especially daily wage labourers, found themselves without work and unable to afford food or shelter.

A survey of more than three thousand constructions workers concluded that 90% of the workers had lost their source of income due to the lockdown<sup>11</sup>. Another survey of stranded workers estimated that 89% of workers interviewed hadn't been paid by their employers up to the third week of lockdown and 50% of such workers had less than a day's food grains

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<sup>4</sup> No. 40 -3/2020-DM-I (A), dated 24 March 2020,

<https://www.mha.gov.in/sites/default/files/MHAorder%20copy.pdf>, accessed 19 April, 2020.

<sup>5</sup> Exceptions were made for defence, police, emergency services, healthcare, shops, banks, media, e-commerce dealing with essential goods, shops dealing with food, groceries, fruits, vegetables and dairy, power generation, petrol pumps and security services.

See <https://www.mha.gov.in/sites/default/files/Guidelines.pdf>, accessed 19 April, 2020.

<sup>6</sup> No. Corona-2020/CR-58/Aarogya-5 (Maharashtra), <https://aogya.maharashtra.gov.in/pdf/30.pdf>, accessed 19 April, 2020; No. HFW 54 CGM 2020 (Karnataka), [https://karnataka.gov.in/storage/pdf-files/covid%20\(3\).pdf](https://karnataka.gov.in/storage/pdf-files/covid%20(3).pdf), accessed 19 April, 2020.

<sup>7</sup> Section 188 of the Indian Penal Code provides penalty for “Disobedience to order duly promulgated by public servant”. Section 188, Indian Penal Code, 1860, <https://indiankanon.org/doc/1432790/>, accessed 19 April, 2020.

<sup>8</sup> *Haryana imposes section 144 to tackle coronavirus*, in *The Economic Times*, 20 March 2020.

<sup>9</sup> Gautam Bhatia, *An Executive Emergency: India's Response to Covid-19* Verfassungsblog, 13 April 2020, <https://verfassungsblog.de/an-executive-emergency-indias-response-to-covid-19/>, accessed 19 April, 2020.

<sup>10</sup> Amanat Khullar, *Remote work is not an option in India's huge informal economy* Quartz India, 17 March 2020, <https://qz.com/india/1819957/coronavirus-prevention-measures-dont-reach-indias-huge-informal-economy/>, accessed 18 April, 2020

<sup>11</sup> *42% of labourers don't have even a day's worth rations left: Survey*, in *The Hindu*, 6 April 2020.

left with them<sup>12</sup>. Indeed, the hunger and distress caused by the lockdown has reportedly caused more than 300 deaths across the country<sup>13</sup>. Some workers have also been forced into bonded debt as a result.<sup>14</sup> Beyond the immediate distress, it is also estimated that the long-term impact of the lockdown could push more than 100 million Indians below the World Bank-determined poverty line<sup>15</sup>.

### 3. Relief Measures for Workers in Response to the Lockdown

In recognition of the potentially catastrophic impact of the COVID-19 lockdown on the livelihood of workers, both the central government and the state governments have announced several measures for wage security and social security for workers.

#### 3.1 Directive on Payment of Wages by Employers

Initially, the Union Ministry of Labour and Employment issued an Advisory that called upon employers to refrain from termination of employment or reduction in wages during the COVID-19 lockdown<sup>16</sup>. This was followed by a mandatory Order issued by the Union Ministry of Home Affairs under the DMA on 29 March, 2020 that directed all employers to pay wages at the due date, without any deduction for the period of the closure due to the lockdown<sup>17</sup>.

The Central Government has also increased the wages for workers under its Mahatma Gandhi National Rural Employment Guarantee Scheme (MGNREGS), which offers up to 100 days of unskilled manual work per year on public works projects. However, critics have highlighted that routine annual increase on the wages have been repackaged as COVID-19 relief<sup>18</sup>.

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<sup>12</sup> Rajendran Narayanan, *What Migrant Workers Are Revealing In SOS Calls To Us* 12 April 2020, <https://www.ndtv.com/opinion/what-migrant-workers-are-revealing-in-sos-calls-to-us-2209556> , accessed 18 April, 2020

<sup>13</sup> Shivam Vij, *More than 300 Indians have died of the coronavirus, and nearly 200 of the lockdown* The Print, 13 April 2020, <https://theprint.in/opinion/more-than-300-indians-have-died-of-the-coronavirus-and-nearly-200-of-the-lockdown/400714/>, accessed 20 April, 2020

<sup>14</sup> Anuradha Nagaraj and Roli Srivastava, *No work, new debt: virus creates perfect storm for slavery in India* Thomson Reuters Foundation News, 13 April 2020, <https://news.trust.org/item/20200413065535-edq5n/>, accessed 20 April, 2020

<sup>15</sup> Sai Manish, *Coronavirus impact: Over 100 million Indians could fall below poverty line* 17 April 2020, [https://www.business-standard.com/article/economy-policy/coronavirus-impact-over-100-million-indians-could-fall-below-poverty-line-120041700906\\_1.html](https://www.business-standard.com/article/economy-policy/coronavirus-impact-over-100-million-indians-could-fall-below-poverty-line-120041700906_1.html) accessed 20 April, 2020

<sup>16</sup> Ministry of Labour and Employment, D.O. No.M-11011/08/2020 -Media, 20 March 2020, [https://labour.gov.in/sites/default/files/Central\\_Government\\_Update.pdf](https://labour.gov.in/sites/default/files/Central_Government_Update.pdf) , accessed 19 April, 2020.

<sup>17</sup> Ministry of Home Affairs, No. 40-3/2020-DM-I (A), 29 March 2020, [https://www.mha.gov.in/sites/default/files/MHA%20Order%20restricting%20movement%20of%20migrants%20and%20strict%20enforcement%20of%20lockdown%20measures%20-%2029.03.2020\\_0.pdf](https://www.mha.gov.in/sites/default/files/MHA%20Order%20restricting%20movement%20of%20migrants%20and%20strict%20enforcement%20of%20lockdown%20measures%20-%2029.03.2020_0.pdf), accessed 19 April, 2020.

<sup>18</sup> Nidhi Jacob, Utsav H Gagwani & Shreya Khaitan, *India's COVID19 Financial Package: Rehashed Existing Programmes, Little New Spending?* IndiaSpend, 27 March 2020, <https://www.indiaspend.com/indias-covid19-financial-package-rehashed-existing-programmes-little-new-spending/> , accessed 20 April, 2020.

### 3.2 Relief under Provident Fund Scheme

The Central Government has also announced that it would pay the provident fund contribution (twenty-four per cent of their wages) under the Employees' Provident Funds & Misc. Provisions Act, 1952 for three months for establishments having one hundred or fewer employees and in which at least ninety per cent the employees draw monthly wages less than Rs.15000<sup>19</sup>. The Employees' Provident Fund Organisation (EPFO), the body administering the Employees' Provident Fund (EPF) Scheme, has further clarified that this benefit would be available only for employees for whom contributions have been received for any period during the last six months<sup>20</sup>.

The Central Government has also allowed non-refundable withdrawal of an amount up to a maximum of three months' wages or three-fourth of the standing amount in an employee's Provident Fund Account, whichever is less<sup>21</sup>. The EPFO has declared that it has already processed about 1.37 lakh claims disbursing an amount of Rs. 279.65 crores<sup>22</sup> under this facility<sup>23</sup>.

### 3.3 Sector-specific Cash Transfers to Workers

In addition to introducing new measures under the Provident Fund scheme, cash transfers directed at specific categories of workers have been announced. The Central Ministry of Labour and Employment has issued an Advisory to the state governments directing them to transfer cash to registered construction workers out of the funds accumulated under the Welfare Fund set-up by the Building and Other Construction Workers Act, 1996 (BOCWA)<sup>24</sup>. Accordingly, many states have announced cash transfers for construction workers registered under the BOCWA<sup>25</sup>. Various state governments have also announced cash transfer measures for the support of registered street vendors,

<sup>19</sup> Ministry of Labour and Employment, 'EPFO puts in place Online Mechanism to credit EPF and EPS Accounts of Subscribers as per PM Garib Kalyan Yojna' 11 April 2020, <https://pib.gov.in/newsite/PrintRelease.aspx?relid=201178>, accessed 20 April, 2020

<sup>20</sup> EPFO, 'A Scheme to implement the PMGKY package for credit of employee's & employer's share of EPF & EPS contributions (24% of wages) for three months by Govt. of India' [https://www.epfindia.gov.in/site\\_docs/PDFs/Circulars/Y2020-2021/SchemeCOVID\\_24\\_10042020.pdf](https://www.epfindia.gov.in/site_docs/PDFs/Circulars/Y2020-2021/SchemeCOVID_24_10042020.pdf)

<sup>21</sup> Notification GSR 225(E), 27 March, 2020, [https://labour.gov.in/sites/default/files/EPF\\_scheme%2C1952.pdf](https://labour.gov.in/sites/default/files/EPF_scheme%2C1952.pdf), accessed 20 April, 2020.

<sup>22</sup> Lakh and crore are units in the Indian numbering system. A lakh is equal to one hundred thousand and a crore is equal to ten million.

<sup>23</sup> EPFO, 'EPFO settles 1.37 lakh COVID-19 claims in less than 10 days' 9 April 2020, [https://www.epfindia.gov.in/site\\_docs/PDFs/Updates/PR\\_COVID19advance.pdf](https://www.epfindia.gov.in/site_docs/PDFs/Updates/PR_COVID19advance.pdf), accessed 20 April, 2020.

<sup>24</sup> Ministry of Labour and Employment, 'Labour Ministry Issues Advisory to all States/UTs to use Cess fund for Welfare of Construction Workers' 24 March 2020, <https://pib.gov.in/PressReleasePage.aspx?PRID=1607911>, accessed 19 April, 2020.

<sup>25</sup> For a compilation of measures announced by different states, see 'Interventions of States in Response to COVID-19 Outbreak' Dvara Research, 25 March 2020, <https://www.dvara.com/research/resources/notes/interventions-of-states-in-response-to-covid-19-outbreak/>, accessed 20 April, 2020.

registered-auto-drivers, registered daily-wage workers, and for self-employed workers registered with Shops and Establishment Welfare Boards<sup>26</sup>.

### 3.4 Insurance and Ex Gratia Compensation for Health Workers and Workers in Essential Service

The other major category of relief announced is individual insurance and compensation announced for health workers and frontline workers engaged in essential services. The Central Government has announced an ‘accident insurance cover of Rs 50 lakh per health worker.’<sup>27</sup> Similar measures announced by State governments have supplemented this insurance cover. For example, the West Bengal Government has announced an additional insurance for care workers another 10 lakhs<sup>28</sup>. The state government of Assam has announced an insurance cover of Rs. 50 lakhs for police personnel and all other frontline officials of departments directly engaged in the fight against Coronavirus<sup>29</sup>. The Union Government has also approved ex-gratia monetary compensation to workers involved in the purchase and transfer of food grains, in case of death due to COVID-19 infection<sup>30</sup>.

## 4. Limits of a Piecemeal Approach: Massive Gaps in Protection

The welfare measures announced for the benefit of workers may appear substantial at first glance. However, a scrutiny of the reach of the announced measures shows that they barely cover a fraction of the workforce in this country.

For example, the EPF scheme ordinarily applies only to establishments with at least 20 workers. Given that less than 10% of the establishments in India hire more than 10 employees<sup>31</sup>, an overwhelming majority of establishments and employees are outside the ambit of the EPF scheme. Further, the reach of such cash transfers to registered informal workers is massively compromised by the low extent of registration of workers with various statutory welfare boards. A survey of construction workers by a non-governmental

<sup>26</sup> Dvara Research, *ibid*.

<sup>27</sup> Ministry of Finance, ‘Finance Minister announces Rs 1.70 Lakh Crore relief package under Pradhan Mantri Garib Kalyan Yojana for the poor to help them fight the battle against Corona Virus’ 26 March 2020, <https://pib.gov.in/PressReleasePage.aspx?PRID=1608345>, accessed 18 April, 2020.

<sup>28</sup> Namarata Acharya & Arup Roy Chowdhury, ‘West Bengal stayed one jump ahead of Centre on coronavirus detection, in *Business Standard*’ 3 April 2020.

<sup>29</sup> Press Trust of India, ‘Coronavirus in Assam: Police personnel, govt’s frontline staff to get Rs 50 lakh insurance each’ *Business Today*, 6 April 2020, <https://www.businesstoday.in/current/economy-politics/coronavirus-in-assam-police-personnel-govt-frontline-staff-to-get-rs-50-lakh-insurance/story/400230.html>, accessed 19 April 2020.

<sup>30</sup> Ministry of Consumer Affairs, ‘Food & Public Distribution, Government approves ex-gratia compensation for more than one lakh FCI employees in case of death due to COVID-19’ 10 April 2020, [https://prsindia.org/files/covid19/notifications/2419.IND\\_DFPD%20FCI%20Compensation%20to%20Workers\\_April%2010.pdf](https://prsindia.org/files/covid19/notifications/2419.IND_DFPD%20FCI%20Compensation%20to%20Workers_April%2010.pdf), accessed 20 April, 2020.

<sup>31</sup> Ministry of Statistics & Programme Implementation, ‘Abstract of the Sixth Economic Census 2013-2014’ <http://www.icssrdataservice.in/datarepository/index.php/catalog/146/study-description>, accessed 19 April, 2020.

organisation found that 94% of the workers were not registered under the BOCWA<sup>32</sup>. Only around 6% of the informal workers are estimated to have registered under the Unorganised Workers Social Security Act 2008<sup>33</sup>. Consequently, state-capacity to deliver the cash transfer to affected workers is severely constrained. The effects of the limited state-capacity has been exacerbated by the piece-meal sector-specific approach that only covers a few select categories of informal work. As a result, the vast majority of workers in India remain untouched by relief measures announced.

Most significantly, it appears that the Order of the Ministry of Home Affairs issued under the DMA directing employers to pay wages without any deduction for the period of the lockdown is being widely flouted. News reports from across the country indicate that workers, especially contract workers, have either not been paid at all or been paid only a part of the wages<sup>34</sup>. On the other side, the financial crunch caused by the lockdown has affected the ability of the employers to pay the requisite wages<sup>35</sup>. The All India Manufacturers Organisation (AIMO), an industry body representing some 100,000 small manufacturers, claim that most of their members would be unable to pay wages in the absence of support from the government<sup>36</sup>. Indeed, a petition has also been filed in the Supreme Court challenging the validity of the order directing full payment of wages during the lockdown<sup>37</sup>. In the absence of governmental support for businesses, wage security for workers would remain severely imperilled.

There has also been a palpable lack of dialogue and consultation with trade unions and civil society organisations representing informal workers. Even though there have been reports of engagement with business chambers<sup>38</sup>, the relief measures have largely been announced without any meaningful consultative process with the affected workers.

The welfare measures announced for workers as part of COVID-19, therefore, are inadequate. The piece-meal approach to labour welfare fails to address the protection needs for vast sections of the labour force adversely affected by the COVID-19 lockdown. In as much as the right to livelihood and social security has been recognised as a fundamental

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<sup>32</sup> Seema Chishti, 'Survey shows 42% have no ration left for the day, let alone duration of lockdown' in *Indian Express*, 6 April 2020.

<sup>33</sup> Kathyayini Chamaraj, *Will the SS Code ensure universal social security?*, India Together, 9 September 2019, <http://www.indiatogether.org/universal-ss-human-rights>, accessed 19 April, 2020.

<sup>34</sup> Vijayta Lalwani, 'We are trapped': Hunger is on the rise in Haryana's industrial belt' Scroll.in, 12 April 2020, <https://scroll.in/article/958838/we-are-trapped-hunger-is-on-the-rise-in-haryanas-industrial-belt>, accessed 20 April, 2020; Niharika Sharma, 'Coronavirus crisis triggers layoffs, pay cuts, and hiring freeze across Indian industries' Quartz India, 17 April 2020, <https://qz.com/india/1837566/coronavirus-triggers-layoffs-across-indian-it-startup-aviation/>, accessed 19 April, 2020.

<sup>35</sup> Harsha Raj Gatty, 'B'uru lockdown: Garment workers face uncertainty, factory owners unwilling to pay wages' Citizen Matters, 3 April 2020, <https://bengaluru.citizenmatters.in/bengaluru-garment-factory-workers-wages-coronavirus-lockdown-union-gatwu-43925>, accessed 16 April, 2020.

<sup>36</sup> 'Coronavirus: Small businesses in India struggle to pay wages amid lockdown' India Today, 8 April 2020, <https://www.indiatoday.in/business/story/coronavirus-small-businesses-in-india-struggle-to-pay-wages-amid-lockdown-1664610-2020-04-08>, accessed 16 April, 2020.

<sup>37</sup> Sanya Talwar, 'Plea In SC Challenges Validity Of Government Order Directing 100% Payment Of Wages During Lockdown By Commercial Establishments' Livelaw.in, 18 April 2020, <https://www.livelaw.in/top-stories/plea-in-sc-challenges-validity-of-government-order-directing-100-payment-of-wages-during-lockdown-by-commercial-establishments-155433>, accessed 20 April, 2020.

<sup>38</sup> Chitra Narayanan, *Covid-19 impact: PM must consult with trade unions for workers' revival package, says labour economist*, in *The Hindu Business Line*, 8 April 2020.

right in Indian constitutional law<sup>39</sup>, more substantive and universalised social security measures, formulated through a participatory process, are the need of the hour.

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<sup>39</sup> Calcutta Electricity Supply Corporation (India) Ltd. v. Subhash Chandra Bose AIR 1992 SC 573; Regional Director, ESIC v Francis D'Costa AIR 1995 SC 1811.