EMPLOYMENT VIS-À-VIS COVID-19 UNFORTUNATE COSEQUENCES ON BOTH SOCIAL AND ECONOMIC INSTRUMENTS

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ABSTRACT
Not only a particular nation but the whole world today has become victim of global pandemic i.e. Covid-19 or Novel coronavirus. India is also one which is suffering with the same and the resultant of such is nation wide lockdown by the government of India. With the implementation of the lockdown, several organisations and establishments whether they are private or public has been closed. As the period of lockdown has been increased time to time it lead to several consequences such as economic failures disturbing the country’s economy. Thus, in this article the author will discuss the covid-19 and employment issues with perspective of labour law and the objective behind such will be whether such issues are lawful or unlawful in the light of provisions of labour law.

Keyword: Covid-19; employment; labour law; labourer;pandemic

I. INTRODUCTION-
A Global Pandemic: Covid-19
Covid-19 has nowadays been proclaimed as apprised calamity not natural but man made by world health organisation. This pandemic has changed the lives of all the individuals across the world. It is supposed to be originated from Wuhan, china. This pandemic has huge impact on the all organisations including international, national and governmental. Likewise, labour organisations and economic sectors have also been affected through this. Since last one year this pandemic has made the people’s life worst, such as labours who are unable to fulfil their basic requirements due to lack of money and financial weakness. Not only unorganised sector but workers and employees of organised sectors are also facing several difficulties. Thus, this global pandemic has

1. Employment issues: Impact of Pandemic
Coronavirus has come along with various tragedies in our country and have influenced the health of lakhs of people all over the world. This pandemic has put great pressure on all zones of Indian economy. Not only India, but has changed the economy of entire world. Indian employment is classified into two sectors i.e. employment sector and labor sector and in both several issues have been raised. As the lockdown implemented, so it has altered the series of demand and supply in all around the world as after closure it was not possible to carry out the work in the industries. The resultant influenced the services of the employees, labors and workers. Both workers and employers have faced immense economic shortage due to closure of organizations, industries and manufacturing process. This economic deficiency gave an idea to the employers to terminate the employment of the labors and workers. They have started to reduce worker’s salary and wages. Because of the implementation of the lockdown, workers who live far from their native has left without wages and have no option of being employed. These employment issues has cut down the workforce of the workers and thus influenced their well beings. Therefore, in India this pandemic has its own economic outcome where employees and workers are facing several employment issues as they are being terminated, laid off and wages of theirs are getting deducted.

2. Effect of Employment issues:Termination and Reduction
This worst pandemic has resulted in termination of employment and reduction in worker’s wages due to which a large part of the man power has become unemployed. The percentage of population in India is around 1.3 billion and whole is suffering with immense capital difficulties. Approximately, 93 percent of man power or workforce is surviving with several troubles and 400 million of unorganised sector workers has passed with
survival test due to termination and reduction of salaries. The resultant of such issues are: labours are unable to go with their basic requirements of life, they used to migrate from hither to thither which results in their accidents and deaths due to which others are feeling them vulnerable. Such as an accident occurred when labours were migrated from Gujarat to Madhya Pradesh and on the way accident occurred which gave a negative influence all the labours. So here, one can conclude that the social interest of the labours is getting affected negatively and hence the objective of labour law i.e. to provide social security and welfare to the labours is not getting accomplished due to lack of support by the employers and the state as it is the responsibility of theirs to accomplish with the same.

So, what are the guidelines and measures has been provided by the constitution and government of India to fulfil the objective of labour law and how workers can get protected under labour law provisions with regards to such employment issues as it is very necessary to balance and safeguard their interest. So in this article author will be discussing about such employment issues of workers with provisions of labour law, when it amounts to illegal termination and how workers can deal with the same.

3. Constitution: A base of labour law

Constitution is the one which provides for the protection of labours and workers. It envisaged the provision that allowed the state and central government to make such statutes which provides for the security of labours and workers and also make it mandatory for them to make such guidelines which can create employment for them. Under part IV of the Indian constitution certain principles have been made regarding better health and environment for the workers and labours so that their welfare can be possible. Constitution is the one which provides responsibility to the state and employers to take care of their employees. It is the basic structure of every legislation and the law against constitution will surely be declared as void and hence with regards to it, labour laws have been enacted in our country with two basic objectives one is labour welfare and the other social security so that interest of the labours and workers can be protected.

However, when we talk about present situation of pandemic such objective of labour law fails to be accomplished as workers are being terminated due to which unable to fulfil their basic requirements and feel insecurity as they are becoming unemployed due to act of the employers. So with regards to Labour law perspective what are the guidelines emphasised by the government to find out the solution to the employment issues and how the basic principle of constitution i.e. a welfare state is getting a conclusion, let the author discuss.

4. Government guidelines: A boon to labours

Government has provided various guidelines with regards to the objective of constitution and labour law that is to protect and safeguard the interest if the employees and workers. The ministry of labour and employment for the security of the workers has asked not to terminate the employees and workers specially to casual and contractual workers and also denied to deduct their wages to the employers of both organisations i.e. public and private so that harmonious relation can be made among them. Moving further, if due to lockdown any establishment is in closure then the workers of it must get proper wages and if any of the worker is taking leave for any purpose he must also be provided with full wages for that particular period as they are supposed to be on duty. Further for the period of lockdown ministry of home affairs asked to all the employers to give wages without reduction on precise date to their workers as it is the moral responsibility towards the employers to fulfil objective of the labour laws and hence they must pay wages properly to all the workers as workers are the basic unit of any establishments and are dependent on employers for their livings and well beings.

However, ministry of home affairs keeping in mind the objectives of the labour law and interest of the workers exercise their powers given under section 10(2)(1) of national disaster management, 2005 by ordering all the employers to pay wages on precise date without decrement to all the workers and the same is mandatory to be followed by all. Therefore, guidelines of the government somehow tries to fulfil the objective of the labour law and provide certain sort of solution to employment issues in such pandemic and thus have become a boon for the workers. Now, the question arises that whether such employment issues are legal or illegal with perspective of labour laws and what kind of workers are protected under guidelines of the government.

5. Employment issues: A labour law perspective

Due to the global pandemic Covid-19, several employment issues have been generated as termination of employment, reduction in wages, lay off etc. which results in non-fulfilment of objectives of labour law that is
labour welfare and social security so in order to go hand to hand with such objectives of labour law government has provided certain guidelines which becomes as a boon for workers. So in the light of provisions of labour law what kind of workers are getting protected under such measures will be given through interpretation of various terms under labour legislations. In recent case, Premier Employees Union Case, the court emphasised that the term worker used in government order includes all kinds of workers given under labour legislations such as industrial disputes act, factories act etc. And further said that the purpose of such order is to ensure the objectives of labour law by providing full wages to workers inperiod of lockdown also and hence, saying it the court made the conclusion that “no work no pay” principle has nothing to do with period of lockdown. Further whether such employment issues are lawful or unlawful with regards to labour law perspective and how such issues can be resolved with such legislation. Under this article author will be discussing all these heads.

As government guidelines put responsibility over the employers to take care of workers so, Under labour legislations also several laws has been enacted providing security to the workers and labours as it envisaged an obligation of duty of care over the employers. Government in their measures used the term worker for resolving employment issues but does not define the term thoroughly. So to reach at appropriate conclusion, it is necessary to take assistance of labour legislations defining the term worker and wages. Such as under:

**Industrial Disputes Act, 1947**

**Factories Act, 1948**

**Payment of wages Act, 1936**

**Contract labour(regulation and abolition) Act, 1970**

**Shops and management Act**

**Employee’s state Insurance Act, 1948**

**Workers protected from employment issues: A labour law insight**

The workers who are getting wages under Payment of wages Act and Industrial disputes act are being protected from such employment issues, let us throw light on the same.

The word **wages** has been defined thoroughly under labour legislation such as payment of wages act, 1936 which provides to whom wages have to be paid. It means that the government guidelines with respect to labour law includes only such kind of workers to whom wages is required to be paid without any reduction. As concern to the definition of wages, Section 2 clause iv and section 3 is there of this act stating that it is the obligation on the employers to pay wages to those workers working in factories, industries and establishments excepting those doing managerial, administrative and supervisory activities and as per section 1(6) their salary must not exceed to 24000 rs for a month and only these workers can be protected in perspective of labour law from employment issues under guidelines of government. Likewise stating about labour welfare in the matter of workmen versus binny, court held that terms of contract of employment and law statutes must be made for purpose of providing welfare to the needy and following the same, the term worker used in government order can be interpreted with regards to the term used in labour legislations such as workers, wages.

Further under industrial disputes act also definition of **wages** has been envisaged which is required to be paid only to a workman providing that it includes all kind of payment which can be denoted in cash and must be paid to a worker with regards to his employment either expressed or implied (Section 2rr).

The term **worker** used under the guidelines of government can be interpreted through labour legislations such as under factories act, industrial dispute act etc. According to Section 2 clause 1 of **factories act, 1948** any person who appointed either with knowledge or without of employer by any firm or otherwise for purpose of getting wages or not and working for manufacturing process and its part thereof except the individuals working under armed forces will be considered as workers. And as per provision of Section 2(s) of **Industrial disputes act**, only those people can be referred as workmen who do physical, talented, untalented, scientific etc. work in an establishment except those whose activities are directorial, executive and ministerial. Further it provides that wages must not exceed to 10,000 rs. for a period of one month.

The term closure refers to the forever shutting down of an establishment as per section 2(cc) of ID act however government guidelines are for those organisations who have not been permanent closing down and it also includes those workers working from home and thus, closure here denotes to partial closure and hence, all the
workers working from home are also getting protection from such employment issues as per labour law legislations.

Thus, with such interpretation of terms, one can conclude that only such kind of workers are entitled to be paid with wages by the employers and if the same will not be followed and such eligible workers are refrain to get employment which results in any kind of employment issues, this will lead to unlawful reduction and termination in the light of labour legislations. However, others can get terminated and their salary can be reduced by the employers.

6. Employment issues: when constitutes to be Unlawful

Employment issues include both termination and reduction in wages of employment. So in the light of labour legislations can the employees be terminated from their employment or such termination will lead to unlawful termination? If any of the employer deduct the wages and terminate the employment of such workers who are covered under government guidelines and protected by Indian labour legislations in such pandemic, it will lead to unlawful employment termination and reduction of wages and the consequences of the same would be industrial disputes as per section 2A of Industrial disputes Act. Illegal termination refers to such termination which is done without any reasonable cause. In general a termination done due to act of god cannot be said as unlawful but in light of provision of labour law until and unless certain requirements are fulfilled, the termination will lead to unlawful.

However, the workmen falls under Section 2(j) of industrial disputes act, can be terminated by way of retrenchment and lay off when there is economic deficiency on part of employers such as shortage of coal etc. but only by the contract of employment and applicability of standing order but no right regarding the same has been provided to employers under the Act and hence in such pandemic also the workmen can be terminated but only according the prescribed conditions given under contract of employment such as notice period, compensation and consent of government authorities is a necessary requirement to be accomplished for the same otherwise will be said as unlawful termination. And when such worker is engaged for 240 days in his service within one year, the employer is required to pay him compensation notwithstanding with the same will result in legal consequence against him. It means after laid off, worker must be provided with compensation otherwise it will lead to illegal termination. A.N. Shukul versus Philips Indian and others, 2009, in this particular case the court analysed that termination of employment of workers must be done in accordance of provisions of labour law that is proper notice and compensation must be provided to them. Non-compliance of the same will lead to unlawful termination and workers can approach to the court for the maintenance.

Labour laws provide that when an employer wishes to do something related to employment like to terminate or to reduce the wages of the workers, one has to provide notice for the same before 21 days and a non-workmen can be terminated according to terms of employment otherwise the same amounts to be unlawful. Like under shops and establishments act also, it is a requirement for the employers to provide an notice time period and reasonable cause behind the same before termination and reduction of wages i.e., in case a worker worked extended to three months, then 30 days prior notice must be provided and if worked less then 14 days prior notice must be provided. Therefore, in such scenario of covid-19 also the workers who are eligible to get wages under different legislations must be provided with such notice otherwise such employment issues will lead to be illegal in perspective of labour laws. In Align Components Pvt. Ltd Vs. Union of India, in this case court held that employers are at liberty to pay wages to the workers means they can reduce their wages provided that the provisions for the same given under labour legislations must be followed with such notice must be prior given to them.

Therefore, The employment issues depends upon the terms of contract of employment of each and every worker. Both the employers and workers must given their mutual consent on such term of employment. The terms of contract of employment also include Compensation and notice time period related provisions and in case such terms have not been complied with by the employer the same will lead to unlawful likewise employment issues arising due to pandemic may also lead to be illegal if such statutory requirements have not been fulfilled before termination and reduction of wages.

7. Payment of wages: An obligation overEmployers
One of the employment issue due to covid-19 pandemic is reduction in wages of workers. However, reduction must be there with mutual consent of both employers and workers as per labour law perspective and the reduction must not be followed with any kind of discrimination. For fulfilling the objectives of labour law, government also prohibited to reduce the wages of certain class of employed and they must be paid with full wages and non-compliance of the same will be considered as an offence under national disaster management act, 2005.

In accordance with such provisions of labour law, during the period of lockdown also employers are obliged to make payment of wages to workers until and unless proper notice has not been provided regarding the deduction of wages as provided under schedule forth of the act to such workers and in case the establishment is not under operation and the reason behind it is not known to workers then also payment must be made to them. The same has also been emphasised by the ministry of labour and employment so that the labour law objectives can be fulfilled and solution to such employment issues can be find out. In Twin City Industrial Employers Association Vs. Union of India, the court complied with the orders of government in order to give relief to the workers of minor and medium business and thus, ordered the employers to make full payment of wages to all the workers.

8. Rights of the workers: Against Employment Issues

The employment issues such as termination and reduction of wages in employment result in least welfare of the workers and labours. In case of such employment issues, labour law provides several remedies to the workers. They can approach for adjudication and conciliation against such unlawful termination, a worker who is not eligible for protection under government guidelines can ask remedy under contract of employment as well as in shops and establishment act of their particular state. Multiple journalist organizations versus Union of India, in this case multiple media have approached to the court for reduction in the salaries and termination of employment against the order of the government and made the contention that provision of industrial disputes such as notice, compensation and consent of government has not been followed with prior to their termination.

Further, if their terms of contract has been neglected they can move towards the civil courts and under such courts specified under shops and establishment act asking for proper wages and compensation for illegal termination. If eligible workers are being terminated unlawfully they can ask for reason behind it and if not satisfied can approach to the court and can make complaint against employers. Like in the case of Delhi Transport corporation versus DTC Majdoor sabha 1991 AIE 101, Court by applying the natural justice principle said that every worker has right to be heard against his unfair termination and they can make contention that proper notice and reason behind same has not been provided to them. Further they can file complaint in labour department of state and they have also option of negotiation with the employers. Thus, following remedies are available to the workers with perspective of labour law against employment issues arising due to covid-19.

9. Compensation to infected workers

Due to this pandemic, several workers has been suffered with serious health issues. In due course of employment which is also a matter of concern under employment issues. As in India, labour laws make it compulsory for the employers to give compensation to the workers get injured during course of employment thus, in such scenario also compensation must be provided to infected workers so that interest of labour law can be safeguarded. If the same is not complied with, Civil Actions can also be taken provided that onemust suffer with personal wound due to employment issues.

10. Penal Consequences: Non-Compliance of the order

The ministry of home affairs has provided an order under section 10 of disaster management act not to deduct the wages of the workers and not to terminate them from employment. Any person going against such order has to face several consequences for the same as for non-compliance, the person would be punished under section 188 of Indian penal code, 1860 and thus in the way, In alok Srivastava versus union of India, the court held that if the order of government will not be followed and complied with, then the punishment will be provided under section 188 of Indian penal code and thus, in such pandemic also, labours are being protected by the government as well as by the Indian labour legislations. Therefore, the objectives of labour law is somehow accomplished.

11. A way forward

However, with regards to such issues the government need not only to make obligation over the employers to make payment to workers but government and labour departments itself should also take some steps for resolving
such issues may be by providing financial support, funds for paying to workers etc. Likewise, in Nagreeka Exports Ltd. Vs. Union of India, the contention was made by the petitioners that disaster management act provides to the government also to make funds for the protection of the workers and not give powers to them to ask the employers to make full payment to the workers and hence we can conclude that both state and employers must work for welfare of labours or in any other way in order to ensure the purpose of labour law and to maintain harmonious relations between employers and workers. Similarly, it has been held in the case of ficus pvt ltd. And others versus union of India, that the disputes arise among the workers and employers must be resolved through mutual negotiations and when unlawful termination is done by the employers then also harmonious relationship must be maintained among them.

II. CONCLUSION

From this Article, it can be concluded that coronavirus has affected country’s economy at large including both organised and unorganised sectors. Due to deficiency in the economic sectors and instability of employers, employment issues have been generated such as termination of employment, reduction in wages of workers which resulted in their least welfare as they are not able to fulfil their basic requirements and thus this lead to non fulfilment of objectives of labour law as consequences of such issues are unemployment. Thus, in order to accomplished with the same, government has provided certain guidelines for resolving employment issues in light of provisions of labour law. In this Article, author has discussed employment issues with perspective of labour laws by interpreting the term worker used in government guidelines and also analysed whether such employment issues are legal or illegal and what remedies are available to workers in case of unlawful employment issues under labour legislations. Hence, The main cause behind illegal termination is lack of reason behind the same and absence of proper notice.