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India's labour law reforms without social dialogue are of concern: ILO's Corinne Vargha

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VARGHA

In May 2020, 10 central trade unions jointly wrote twice to Guy Ryder, the director general of the International Labour Organisation, drawing attention to the plight of migrant workers during the COVID-19 crisis as well as the government's dilution and suspension of labour laws. In May, several states—including Uttar Pradesh, Madhya Pradesh and Gujarat—introduced sweeping changes in labour laws such as increasing the working hours from eight to 12. The unions said the changes limited the workers' right to freedom of association and collective bargaining. Some of the changes, including the increase in working hours, were later withdrawn by some states, after protests from trade unions.

The Narendra Modi government also introduced four new labour codes that replaced 44 existing labour laws—The Code of Wages, the Industrial Relations Code, the Social Security Code, and the Occupational Safety, Health and Working Conditions Code. These codes diluted and repealed various longstanding legal provisions that ensured the rights and security of workers. Together, they exclude a vast section of informal workers, primarily women, from the ambit of existing laws and protections spelled out in the codes. They also exclude a large number of establishments from compliance and enforcement mechanisms.

In their letter to the ILO, the unions [pointed](https://www.livemint.com/news/india/ilo-expresses-deep-concern-over-labour-law-changes-appeals-to-pm-narendra-modi-11590394493866.html) (<https://www.livemint.com/news/india/ilo-expresses-deep-concern-over-labour-law-changes-appeals-to-pm-narendra-modi-11590394493866.html>) out that the labour law changes were made without adequate discussion and consultation with workers, which violated ILO's convention 144. This

convention, ratified by India in 1978, mandates a tripartite consultation process involving government, employers and workers. In its response on 22 May, the ILO assured the unions that Ryder, the ILO's DG, had "immediately intervened, expressing his deep concern." It added that the ILO had appealed to Modi to "send a clear message to central and state governments to uphold the country's international commitments and encourage engagement in effective social dialogue."

Nileena MS, a reporting fellow at The Caravan spoke to Corinne Vargha, the director of the ILO's International Labour Standards Department, on the recent changes in labour laws and India's response to workers' issues during the COVID-19 pandemic.

Nileena MS: In the ILO's monitor on the pandemic published (https://www.ilo.org/global/about-the-ilo/WCMS_740877/lang--it/index.htm) in April, the ILO had estimated about four hundred million workers in the informal economy in India were at risk of falling deeper into poverty. The report also emphasised the plight of domestic migrant workers who returned to their hometowns as a result of the lockdown. What do you think of India's management of labour issues during the pandemic?

Corinne Vargha: The pandemic has made us realise that while the virus can indeed affect everyone, not all workers are equally protected against it. The occupation alongside the contractual status are the determining factors. Normally, informal work will be a kind of a last resort for the workers to rely on in difficult times. This is why normally informal work tends to increase during economic and other crises. But this time was quite different due to the strong measures which have indeed restricted the movement of people and their economic activity. Therefore, informal work was no longer an option available out there.



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According to the ILO estimates, without any public support, the income losses of those who were working in the informal economy, including domestic migrant workers, came to be upto around 60 percent. [ILO estimated (https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/briefingnote/wcms_743534.pdf) that in the absence of income support measures, earnings for informal economy workers are expected to decline by 28 per cent in upper-middle-income countries, 82 per cent in lower-middle and low-income countries and 76 per cent in high-income countries.]

What has happened in India is that many of these domestic migrant workers were asked to go back home without much support. One can fully understand why this was happened and this potentially was inevitable. However, the ILO would advise attention be paid to ensure that there is strong income support provided to those domestic migrant workers. Of course, we know that the resources are limited and tight but these resources need to be invested in people and targeted at those vulnerable.

NMS: In August, a report

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around the table and design the measures with those who would potentially benefit from them.

NMS: In September, the Indian parliament passed the Industrial Relations Code which gives importance to individual settlements against the collective bargaining of trade unions and also restricts the workers right to strike. The parliament also passed the Occupational Safety, Health and Working Conditions Code which allows the government to exempt new establishments from labour laws. How do you look at these developments?

CV: For the ILO, from the very first day of the development of labour legislation, be it at national or international level, there has been an acknowledgement of the fact that the employment relations between workers and employers are unequal. The very purpose of freedom of association and the effective recognition of the right to collective bargaining is to place employers and workers on an equal footing in the labour market—precisely by protecting the rights of workers for freedom of association. This provides a remedy for the inequality of the bargaining power which is inherent in this employer-employee relationship.

One of the effects of the pandemic that we observe is that increased attention is being paid by trading partners and also consumers on the responsible business conduct and social responsibility. So, caring about people. The pandemic has made us all far more attentive to dignity and equal treatment. As trade goes on, certainly, we can expect an increased attention being paid to responsible business conduct.

Another important outcome of collective bargaining and freedom of association, according to the International Monetary Fund and Organisation for Economic Co-operation and Development studies, is that there is a strong correlation between bargaining power and the rise or decrease of inequality. The more decline in the bargaining power is, the higher the increase in inequality being observed. If you want to be promoting a more equal society, collective bargaining and freedom of association have demonstrated to be powerful and effective tools in delivering that.

NMS: Several states had suspended labour laws during the COVID-19 induced lockdown, and the new labour codes replace all existing labour laws in the country. These were done without following the tripartite consultation as per the ILO convention 144. The central trade unions had written to ILO raising this issue. How does the ILO respond to such a move from a member country?

CV: Indeed, around ten Indian trade unions brought their concerns about the deletion of workers protection being carried out without any consultation in a number Indian states to the attention of the ILO director general. There have indeed been enough steps taken by various states to suspend labour laws and this would result in freezing of collective bargaining, undoing of occupational safety and health regulation, further extending working hours, dismantling of key protection rights of migrant workers and the suspension of labour inspection and enforcement of key labour regulations. These are really serious concerns which have fully captured the attention of our director general.



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These concerns were therefore conveyed by the ILO director general to the prime minister Modi in a letter in May 2020—the ILO director general appealed to the leader of biggest democracy in the world, and a founding member of the ILO, to send a clear message to the central and state government that the international commitment should be upheld and the international standards should be enforced and that

social dialogue should be encouraged. So, this is an issue of concern for us and we have appealed to the PM to make sure that social dialogue is being used because it has been proven as an effective tool for coming out of the crisis stronger and more resilient, and [to] build a more egalitarian and cohesive society.

NMS: The Industrial Relations Code also considerably reduces the scope of protection against arbitrary retrenchment, closure and lay-offs as the employer needs to seek government permission to fire employees only if it employs more than 300 workers. This means that a majority of workers in this country will be subjected to a hire-and fire policy. What is the ILO's take on this?

CV: The guidance we follow in advising governments when this question comes up is convention 158 on termination of employment. All of these standards are the products of tripartite consultations at [an] international level. It doesn't require at all that the governments give permission for collective redundancy. It calls for two things: the government to be notified and workers to be consulted. The government needs to be notified because massive redundancies of that type will have tremendous impact on the community it has affected. So, this would call for a public response and public management of the consequence of such massive redundancy plans. This is why notifying the government would be enable the government to anticipate and take the measures required to accompany the workers during that period.

The second requirement about the workers consultation is also to engage with workers in consultation ahead of the redundancy plan to look for all possible alternative measures. What can be done to avoid the redundancy and the secondly what should be done to accompany the redundancy.

One should be driving any public policy response based on how can we, as a state, protect our workers from poverty. The near intention of the convention on these types of issues is to ensure that not only the individual employer, but also the state together take a number of

accompanying measures to support the workers throughout this period so that they have some income protection during the time they are looking for another job. So, income support typically through unemployment schemes.

But, also, that the government promises to help workers find a new job either through reskilling or placement. This is important because the state cannot impose on a company to keep its workers if economically it is not in a situation where it can be done. So, companies should be allowed to downsize their workforce as per their needs, but at the same time the workers need to be protected from falling into poverty as a result of that decision. Hence, the importance of early notification, anticipation, consideration of alternative measures and anticipation of accompanying measures so that these workers can be supported through their transition from that employment to another.

NMS: In its [report \(https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new_delhi/documents/publication/wcms_753465.pdf\)](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new_delhi/documents/publication/wcms_753465.pdf) on the [Wage code \(http://egazette.nic.in/WriteReadData/2019/210356.pdf\)](http://egazette.nic.in/WriteReadData/2019/210356.pdf) bill passed by the Indian parliament in August 2019, ILO had highlighted the lack of clarity on aspects such as fixing the minimum wage, frequency of wage revision and the mechanism to apply it to domestic workers. What are your suggestions in addressing these issues?

CV: There are three main suggestions, especially when it comes to domestic workers. First is that the current definition contained in the minimum wage provision is silent regarding the inclusion of private households. That lack of clarity actually leads to unpredictability about the minimum wage which covers domestic workers and those in the informal economy.

The same is true for schedule E of the Wage code [where various occupations have been classified under various skill categories as eligible for higher wages, without a clear rationale of how these categories have been arrived at]. The ILO is calling for a review of

schedule E so that all occupations would be included in the list contained in that schedule and their skill content can be classified appropriately. Because the current framing of schedule E also leaves room for clarity on whether domestic workers and those in childcare occupation, predominantly women, are covered or not. So, that would require clarification by reviewing the occupations that are in the schedule E list.

The third suggestion of the ILO on this is to also ensure that there is adequate representation of these workers in the advisory boards both at the central and state levels. It is really important that people who understand their concerns, problems and perspective engage in those discussions, otherwise the decisions taken might overlook what they may need.

NMS: Trade unions in India have been protesting against the wide discretionary powers conferred on the central and state governments for diluting labour laws. The codes weaken the enforcement mechanism by narrowing down the scope of labour inspections. For instance, the OSHW code does not provide for the power of inspectors as per ILO conventions such as free entry of inspectors at any time without prior notice and as frequently as possible to ensure enforcement of labour laws. From a labour legislation perspective, how do you look at such provisions?

CV: This is again an area of concern for the ILO and its supervisory bodies. Concerning labour inspection, in particular, it is really interesting to see that already last year the ILO committee of experts—which is one of the independent bodies reviewing compliance of member states with their international obligations, a group of 20 experts which includes renowned Indian members—issued a general observation on the importance of labour inspection. They felt that it is critical for the member states to be reminded of the central role labour inspectors play in ensuring that there is compliance with and enforcement of national labour legislation. They have already expressed concerns about decisions taken by a number of member

states to exempt a number of establishments from inspection or to reduce the means for an effective operational delivery of inspectors.

Clearly, any measures that is leading to exempting or limiting or reducing the power of labour inspectors would not be considered as in compliance with the international guidance contained in convention 81 (https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C081). The convention 81 on labour inspection has been ratified by India. There is an ongoing dialogue between the government of the India and the ILO supervisory system with respect to the full implementation of that convention. We can expect that the committee of experts will be looking very closely at these developments when it will next review the implementation of convention 81 on labour inspection by India. In the light of the established position, one can expect that the concern might be raised in relation to these developments as well.

NMS: How do you look at India's current performance in implementation of labour rights when compared to other ILO members?

CV: It is a very delicate question and very hard to compare. India does reasonably well if we are looking at ratification of ILO conventions. India has ratified 47 ILO conventions, which is not entirely at the OECD level of ratification, but above the average [level] of participation in the region. If we look closer to what has been ratified, one can notice that India has over thirty-five years, ratified only four conventions. We see a slowing down in the ratifications. This is certainly a dialogue we will be very keen in engaging with India about what conventions have been ratified so far and the most modern instruments adopted by the organisation since then and which could be of interest to India.

When we look at the implementation and compliance, one can praise India for having engaged fully with the ILO supervisory system and engaging in a permanent dialogue with us. Everything starts with dialogue. That is something India should be commended for, submitting reports on time and engaging in dialogue with various

bodies which discuss compliance of members states with their international obligations.

We have had a number of discussions in the last year on issues of bonded labour, equal pay and labour inspection. We have discussions around important issues which are pointing that there is room to make progress in [ensuring] full compliance in some areas. There are issues of concerns but through dialogues we are working towards improving the situation and that is really what I want to highlight.

At the same time, the recent law reforms without social dialogue is of concern and certainly the ILO would encourage reactivating strong social dialogue in the design of all the crisis measures and measures to support business in these really difficult times. As much as support to business is required, it is equally important that workers are protected from falling into severe poverty during this period.

NMS: Even as the world reels under the economic constraints caused by the COVID-19 pandemic, India has entered into a recession. What are the measures that India should take to ensure the implementation of workers' rights?

CV: For the ILO, the advice to all members state has been that the crisis response should be based on four pillars. First, to stimulate your economy and the employment. Second, support your enterprise jobs and incomes. Third, protect the workers in their workplace and fourth, rely on social dialogue for resolution. These are really the four pillars on which the ILO is advising the members states to build their crisis response.

NMS: Has there been any follow up or update on the communication between the ILO director general and the Indian government?

CV: There was no dialogue, at least to my knowledge on these issues. At that time, the letter was sent we observed in the press that the reforms got suspended [in some of the states] for a while.

There might be a need for reforming Indian labour legislation, so by no means are we suggesting that laws should not be reformed. Our point is when you are taking up these important reforms, you do that following a number of key principles. One of which is to engage in social dialogue and consultation so that all the perspectives can be put on the table and debated.

The second key principle is to uphold your international obligations, so the legal reforms should be also respectful of conventions ratified by India. These are the two critical principles that need to be upheld when engaging in labour reforms and we know that India has for many years now had the labour reforms on its agenda. And like anywhere else in the world, this is a difficult process and precisely because you need to be arbitrating between contradictory interests in this case and maintain some equal bargaining power as well. All the more, it is important to engage with everyone so that you can get an outcome that is then going to be implemented and respected by both by employers and workers themselves.

NMS: You have repeatedly emphasised the need for social dialogue and consultation with all stakeholders including the workers. However, as the central trade unions have pointed out, that is not happening in India. In such a situation, what is the procedure followed by the ILO to address this?

CV: There are different ways in which the ILO office engages with the member states. We have permanent dialogue and exchange. Clearly the preferred way of engagement is through dialogue and cooperation. Then, if these types of issues and concerns are raised in the context of the ILO supervisory system, we have a number of bodies that do regular review of how the member states comply with their international obligations. If an issue is raised in the context of their regular review, then this issue will be examined by these supervisory bodies. For instance, the convention 81 on labour inspection will be reviewed this year by a committee of experts. The convention 144 on

tripartite consultation is due for review in 2021. That is the dialogue between the member countries and the ILO supervisory system.

In the meantime, in our regular engagement of our colleagues—we have an office in Delhi—with the government, we would be certainly keep promoting and offering support to ensure that there is tripartite consultation. We would also provide any technical support in helping develop a crisis response along the lines of the four pillars and certainly offer all our assistance.

This interview has been edited and condensed.

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