



INTERNATIONAL LAW  
JOURNAL

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**WHITE BLACK  
LEGAL LAW  
JOURNAL**  
**ISSN: 2581-  
8503**

*Peer - Reviewed & Refereed Journal*

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **ENHANCING CORPORATE SOCIAL RESPONSIBILITY (CSR) TO ALLEVIATE THE PLIGHT OF LABOURERS IN INDIA**

AUTHORED BY - RISHABH KHATANA

## ***Abstract***

*The recent Covid-19 pandemic has disproportionately impacted various segments of society, with the unorganised industrial labourers bearing the brunt due to widespread job losses and the ensuing mass migration caused by nationwide lockdowns. While the Central and State Governments of India have implemented measures to alleviate the hardships faced by workers, including financial assistance and free ration distribution, the scale of the challenge remains vast.*

*In the context of the Supreme Court's interim order in WP(C) Diary No 10983 of 2020, which refrained from taking coercive action against employers failing to pay wages during the pandemic, many private entities have ceased wage payments altogether. This stance highlights the urgent need for a robust Corporate Social Responsibility (CSR) framework that can effectively respond to crises of such magnitude.*

*This article aims to explore the potential of leveraging CSR funds and other labour welfare resources to mitigate the sufferings of workers. It examines the submissions made by various stakeholders in the aforementioned writ petition and analyses the observations of the Supreme Court in its order dated 12th June 2020, advocating for a structured and government-prescribed framework to ensure the judicious utilisation of CSR funds for labour welfare during emergencies like the Covid-19 pandemic.*

**Key Words:** *Constitution, Pandemic, CSR, Labour Welfare, Workers, Supreme Court of India, Employer*

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## **COVID-19 PANDEMIC: AN OVERVIEW**

Corona virus disease 2019 (COVID-19) Pandemic has unprecedented global public health concern. The spread of this virus started from China and the first case of COVID-19 was reported in Hubei

(China) on 17 Nov 2019 and this virus was spread massively in Wuhan City of China in Dec 2019. The First case of COVID-19 in India was reported on 30th Jan 2019 and subsequently this gripped the Human Race in its Jaws world over and initially the China, Europe and USA was the worst hit but finally it spread in all countries world over and on 27.07.2020, the total cases reached to 1,66,35,927 and figure in India was 14,82,503.

The person with COVID-19 can have a wide range of symptoms that may be light to very severe in range. Such symptoms may remain for 2-14 days after getting infected with this virus. These symptoms may include Fever, Cough, Shortness of breath or difficulty breathing Chills, Repeated shaking with chills, Muscle pain, Headache, Sore throat, new loss of taste or smell, etc.

### **ADVERSE IMPACTS OF PANDEMIC**

To combat the disease, the Government of India imposed a lockdown in most districts of the 22 States and Union Territories where confirmed cases were reported from March 24, 2020 onwards. This complete lockdown may have contributed in given time to authorities to create infrastructure for fighting the pandemic and may also have contained its spread to some extent but this lockdown and disease has created havoc with economy and the major sufferers are workers who are otherwise also do not have any job or financial security. The economic impact of the 2020 corona virus pandemic in India has been largely disruptive. India's growth in the fourth quarter of the fiscal year 2020 went down to 3.1% according to the Ministry of Statistics. The Chief Economic Adviser to the Government of India said that this drop is mainly due to the corona virus pandemic effect on the Indian economy. Notably India had also been witnessing a pre-pandemic slowdown, and according to the World Bank, the current pandemic has "magnified pre-existing risks to India's economic outlook".

During the current pandemic, the economic downturn has greatly affected people from the lower socio-economic stratum (SES). The distressing media visuals of migrant labourers going to their native places from the cities on foot during the lockdown have been critically debated. Remittance of money to the home country, which many migrant Indian workers popularly do, is another way of poverty reduction, economic development and increase in GDP. About ₹ 1042500 crores was remitted to low and middle income (LMICs) countries of South Asia from countries of work (e.g. Gulf countries) in the year 2019. The disruption caused by COVID19 has had a significant impact on these remittance flows. There are an estimated 139 million migrants in the country, according to the World



Economic Forum. The International Labour Organization (ILO) predicted that due to the pandemic and the lockdown, about 400 million workers are now poverty-stricken. Most migrants in the country originate from Uttar Pradesh and Bihar, followed by Rajasthan and Madhya Pradesh. The cities of Mumbai and Delhi attract the highest number of migrants. While most men migrate for work, women migrate due to marriage.

Migrant workers majorly comprise of daily-wage labourers working in the manufacturing and construction industries. They are often denied adequate healthcare, nutrition, housing and sanitation since many of them work in the informal sector. They are mostly from rural areas but live in cities for work for most of the year. Many have no savings and lived in factory dormitories, which were shut due to the lockdown. Additionally, there was no central registry of migrant workers. Maharashtra has the largest number of migrants, according to the 2011 Census of India. Its state government imposed a lockdown on 20 March in Pune, Pimpri-Chinchwad, the Mumbai Metropolitan Region and Nagpur, leaving the migrant workers with no work.

### **AN ANALYSIS OF ORDER OF HON'BLE SUPREME COURT'S PASSED IN WP(C) 10983 OF 2020**

The Central Government while its Orders dated 20.03.2020 and 29.03.2020, in exercise of Powers under Section 10(2) (1) Of Disaster management Act 2005 directed all the employers be it in the industries or in the shops, commercial establishments, shall make payment of wages of their workers, at their workplace, on the due date, without any deduction, for the period their establishments are under closure during the lockdown. However these orders were challenged by different employers and employers' associations in the Supreme Court through WRIT PETITION (C) DIARY No. 10983 OF 2020 along with the following Writ Petitions:

W.P.(C) No. 500/2020

W.P.(C) No.498/2020

W.P.(C) No.480/2020

W.P.(C) No.484/2020

W.P.(C) No.501/2020

W.P.(C)..... Diary No(s).10981/2020

W.P.(C)..... Diary No(s).10993/2020

W.P.(C)..... Diary No(s).11018/2020

W.P.(C)..... Diary No(s).11041/2020  
W.P.(C)..... Diary No(s).11048/2020  
W.P.(C)..... Diary No(s).11094/2020  
W.P.(C)..... Diary No(s).11111/2020  
W.P.(C)..... Diary No(s).11180/2020  
W.P.(C) .... Diary No(s).494/2020  
W.P.(C)..... Diary No(s).11194/2020  
W.P.(C)..... Diary No(s).11223/2020  
W.P.(C)..... Diary No(s).11282/2020  
W.P.(C)..... Diary No(s).11309/2020  
W.P.(C)..... Diary No(s).11310/2020

In these Writ Petitions, the petitioners who are either employers or employers' Associations challenged the above referred Central Government Orders on the grounds that these orders are arbitrary, illegal, irrational and unreasonable and contrary to the provisions of law including Article 14, Article 19(1)(g). They also submitted that the Orders are unreasonable and arbitrary interference with the rights of petitioner Employers under Article 19(1)(g). They also claimed that these Orders are also contrary to the principles of Equal work Equal Pay and also No work No pay, for it does not differentiate between the workers who are working during the lockdown period in establishment such as the petitioner who have been permitted to operate during the lockdown period and the workers who had not worked at all.

They also claimed that the Home Secretary, Ministry of Home Affairs, Government of India, cannot invoke Section 10(2)(1) or any other provisions of Disaster Management Act, 2005, to impose financial obligations on the private sector such as payment of wages. The Central Government has the power to allocate funds for emergency response, relief, rehabilitation, mitigation of disasters under Disaster Management Act. The ultimate onus for any compensation towards workers shall ultimately be of Government and the said liability cannot be shifted upon the employers in the Private establishment. The impugned notifications have the effect of completely negating the statutory provisions under the Industrial Disputes Act, 1947. The respondent should not compel the employers to pay the wages for lockdown period but instead should utilise the funds collected by Employees State Insurance Corporation (ESIC) to make periodical payment to workers.

**SIGNIFICANT CLAIMS AND PRAYERS OF THE VARIOUS EMPLOYERS ARE SUMMARISED AS UNDER:**

1. One of the petitioners FICUS Pax Pvt Ltd (WP (C) D. No. 10983/2020) prayed for issuance of a writ, order or direction in the nature of mandamus or any other appropriate writ, order or directions, thereby directing the Respondents to subsidize the wages of workers to the tune of 70-80% for lockdown period by utilizing the funds collected by the Employees' State Insurance Corporation (ESIC) or the PM Cares Fund or through any other Government Fund/Scheme.

2. The another petitioner named B4S Solution Pvt Ltd (WP(C) 484 of 2020) prayed that petitioners be permitted to make payment of 50 percent of Basic Pay plus DA to its employees, pending the final disposal of the writ petition. They also prayed for waving the Provident Fund and the ESI as there has been no work rendered by the workers during this period of lockdown and the contribution deposited by the Petitioners for the month of March and April, 2020 may be refunded.

3. The another petitioner named Chamber of Small Industry Association (WP (C) Diary No 11180 of 2020) prayed for Issue a writ of Mandamus to pass appropriate direction to the respondent to strike a balance between the interest of MSMEs and the interest of workers and employees in a manner that neither is unduly prejudiced.

4. On the other hand one of the petitioner representing the cause of both the employees who have been laid-off and the employers who are on the verge of bankruptcy du to lockdown prayed for issuance of the directions to the central govt for framing policy to mitigate the problems of the employees of the private sector as well as of the employers who are financially not in position to maintain the employees.

5. In addition to the above referred Writ Petitions some interventions applications were also filed by some employees and different employees' Unions like All India Central Council of Trade Union, Trade Union Centre of India and some other employees' Organisations and supported the orders of central govt. These interveners also submitted that right to wages is a pre-existing right which flows inter alia from the contract of employment as well as broader constitutional and statutory scheme flowing from Article 14 and 21 of the Constitution and encompassing Payment of wages Act,

Minimum Wages Act, The Contract labour (Regulation and abolition) Act and the Industrial Disputes Act, 1947. Nationwide lockdown and resultant closure of the workplace directly affected the sustenance and livelihood of members of the Employees Union. All measures taken by the Government of India are within its legislative competence. However these interveners opposed the prayer of the petitioner to utilise the ESIC fund.

6. The petitioners also contended that by way of impugned notifications an otherwise stable and solvent industrial establishment can be forced into Insolvency and loss of control of Business.

7. The another argument of the petitioners was also that The Home Secretary, Ministry of Home Affairs, cannot invoke Section 10(2)(1) or any other Section of Disaster Management Act, 2005, to impose financial obligations on the Private Sector. The Central Government under Disaster Management Act, 2005, has the power to constitute National Disaster Response Fund. Similarly, the State Disaster Response Funds have been constituted, which can be utilised for payment of any compensation towards workers which liability cannot be shifted upon the employers in Private establishments. The respondent should not compel the employers to pay the wages for the lockdown period but instead should utilise the funds collected by Employees State Insurance Corporation (ESIC) to make periodical payment to the workers.

8. The petitioners also argued that if the impugned order is read in the manner contended by the respondent, it would mean that the employer should be compelled to not only continue to retain their migrant workers but also their regular workers and also pay full wages at a time when the business is effectively closed, and there is no income. Failure to comply for any reason, including the complete absence of funds, would render them liable to prosecution. Such order is ex facie arbitrary and unreasonable. They also submitted that all industries and private establishments have different financial capacity; circumstances and all establishments cannot be grouped in one category for issuing a direction to pay wages to its employees during lockdown period and in possibility cannot be directed by any executive action.

From the above it emerges that the petitioners broadly are not inclined to pay the wages to their employees for the period of lockdown or for the period when their industrial activities are stopped on the ground that since there is no business they do not have financial resources to continue the payment. No-generation of financial resources by the employers during such period is a fact which cannot be

ignored but whether the liability for this period shall be of the Government is a question of Law as well of fact. As the fact of Non-availability of financial resources cannot be ignored similarly the plight of poor workers in case of Non-payment also cannot be ignored. Accordingly there are some decisions which are required to be assessed keeping primarily the larger public interest in to the consideration and such decisions which are in larger public interest become the need of the hour even though sometimes they may not strictly fit in the Legal framework.

The Hon'ble Apex Court initially vide its order dated 04.06.2020 directed that " In the meantime, no coercive action, against the employers shall be taken pursuant to notification dated 29.03.2020". Though this interim order expressly did not stay the orders of the Central Govt in respect of Payment of Wages to the employees during the lockdown period but practically took away the strength of enforceability of these orders and indirectly discouraged those employers also who were somehow making the payments (either part or full) from making any payment whatsoever to the workers.

**HOWEVER WHILE TAKING ALL THE ASPECTS IN TO CONSIDERATION, THE HON'BLE APEX COURT VIDE ITS ORDER DATED 12.06.2020, DIRECTED FOLLOWING INTERIM MEASURES:**

i) The private establishment, industries, employers who are willing to enter into negotiation and settlement with the workers/employees regarding payment of wages for 50 days or for any other period as applicable in any particular State during which their industrial establishment was closed down due to lockdown, may initiate a process of negotiation with their employees organization and enter into a settlement with them and if they are unable to settle by themselves submit a request to concerned labour authorities who are entrusted with the obligation under the different statute to conciliate the dispute between the parties who on receiving such request, may call the concerned Employees Trade Union/workers Association/ workers to appear on a date for negotiation, conciliation and settlement. In event a settlement is arrived at, that may be acted upon by the employers and workers irrespective of the order dated 29.03.2020 issued by the Government of India, Ministry of Home Affairs.

ii) Those employers' establishments, industries, factories which were working during the lockdown period although not to their capacity can also take steps as indicated in direction No.(i).

iii) The private establishments, industries, factories shall permit the workers/employees to work in their establishment who are willing to work which may be without prejudice to rights of the workers/employees regarding unpaid wages of above 50 days. The private establishments, factories who proceed to take steps as per directions (i) and (ii) shall publicise and communicate about their such steps to workers and employees for their response/participation. The settlement, if any, as indicated above shall be without prejudice to the rights of employers and employees which is pending adjudication in these writ petitions.

iv) The Central Government, all the States/UTs through their Ministry of Labour shall circulate and publicise this order for the benefit of all private establishment, employers, factories and workers/employees.

### **IMPACT OF THESE INTERIM ORDERS ON WORKERS**

From the above deliberations it appears that instead of forcing the employers to pay the wages to workers during the lockdown period providing them financial support through other funds/schemes is being emphasized by various parties to the petitions. The Hon'ble Apex Court has also emphasized on amicable settlements of the payment of wages during lockdown period through negotiation/conciliation etc and is not inclined to force the employers to pay the wages for the lockdown period.

It is also emerging from the confirmed/unconfirmed media/social media reports that those employers who under the fear of prosecution were making some payments (Part or full) have also stopped making such payments to the workers and those who earlier promised to pay in times to come have started refusing for making such payments. These circumstances along with non-availability of any special fund for such contingent situations have resulted in precarious situation for the workers.

### **SIGNIFICANCE OF CSR FUND IN SUCH CIRCUMSTANCES TO MITIGATE THE MISERIES OF WORKERS**

The relevant statutory provision governing CSR is Section 135 of Companies Act 2013

#### **1. Applicability of Section 135**

As per section 135(1) of Companies Act, 2013, following Companies having,

- Net worth of Rs. 500 crore or more

- Turnover of Rs. 1000 crore or more
- Net profit of Rs. 5 crore or more

Shall constitute Corporate Social Responsibility committee of the board consisting of 3 or more directors, out of which 1 director shall be independent director.

## **2. Role of CSR Committee**

- Formulate and recommend to the Board, a Corporate Social Responsibility Policy
- Indicate the activities to be undertaken by the company as specified in Schedule VII. Such activities may include eradication of extreme hunger & poverty, promotion of education, promoting gender equality and empowering women, ensuring environmental sustainability and etc;
- Recommend the amount of expenditure to be incurred on the activities specified above.
- Monitor the Corporate Social Responsibility Policy of the company from time to time.

## **3. Amount to be spent on CSR Activities**

As per Companies Act, 2013, the Board of every Company, as referred in Section 135(1), shall ensure that company spends atleast 2% of average net profits of the company made during the 3 immediately preceding Financial Years.

## **4. Amendments' in Section 135 of Companies Act, 2013**

The Companies (Amendment) Act, 2019 amended section 135 dealing with Corporate Social Responsibility. The Companies (Amendment) Act, 2019 received President's Assent and was published in Official Gazette on 31st July, 2019. The Amendments made are:

**A.** To calculate CSR expenditure, average net profit of 3 immediately preceding financial year had to be considered. But, there used to be concerns on how to calculate CSR expenditure for a company which is newly incorporated or which has not completed 3 years of its operations and satisfies any one of the condition as specified u/s 135(1).

With the recent amendment, there is clarity with respect to the above. As per amendment act, Company who has not completed a period of three financial years since its incorporation shall consider the average net profits earned by it during financial years after incorporation.

**B.** Prior to amendment act, if a company has not spent the earmarked CSR expenditure; it had to disclose the reasons in its board report at the annual general meeting of the company.

**In this regard, Amendment Act provides that:-**

Unspent amount at the end of Financial Year which is not related to ongoing project, the Company has to transfer such unspent amount to a Fund specified in Schedule VII, within a period of 6 (six) months of the expiry of that financial year.

Fund specified under schedule VII are:

1. Contribution to the Prime Minister's national relief fund.
2. Any other fund set up by the central govt. for socio-economic development and relief and welfare of the schedule caste, tribes, other backward classes, minorities and women;

**Unspent amount on ongoing CSR projects:**

1. The company within a period of 30 (thirty) days from the end of the financial year has to transfer the unspent contribution amount to a special account to be opened in any scheduled bank, to be called 'the Unspent Corporate Social Responsibility Account'.
2. The amount so transferred to the designated account, is to be utilized in pursuance of its obligation towards the Corporate Social Responsibility Policy within a period of next 3 (three) financial years from the date of such transfer.
3. If the Company fails to utilize the said amount, it is required to transfer the same to a Fund specified in Schedule VII, within a period of 30 (thirty) days from the date of completion of the third financial year.

**C.** The Amendment Act has introduced penal provisions for non-compliance in reporting, utilization and transfer of the unspent CSR amount;

- The company shall be punishable with fine which shall not be less than INR 50,000 but which may extend to INR 25 lacs.
- Every officer of the Company who is in default shall be punishable with imprisonment for a term which may extend to 3 (three) years or with fine which shall not be less than INR 50,000 but which may extend to INR 5 lacs, or with both.



In view of various prayers of the different petitioners in respect of utilisation of ESIC Fund, PM Care Fund, other funds of Central/State Governments and in view of observations by Hon'ble Supreme Court of India and in view of the above Statutory Provision related to CSR Fund and its utilisation, Researcher feels that by devising a suitable mechanism and thereby amalgamating the part of CSR Fund, part of ESIC Fund, some part of other labour Welfare Funds and some part of PM Cares Fund, a separate dedicated Labour Welfare Contingency Fund can be created and its utilisation as of now can be divided in to Two Phases which can be categorised as immediate short-term measures (Specifically to address the situation which has arisen due to COVID-19 Pandemic) and Long-term measures (Wherein a detailed policy framework can be created through which any future situation like the current Pandemic or economic breakdown or global recession etc can be addressed so as to mitigate the miseries of workers.

## **CONCLUSION & RECOMMENDATIONS**

The Covid-19 pandemic has exposed significant vulnerabilities within India's labour sector, particularly impacting unorganised industrial workers who faced job losses and financial hardships due to nationwide lockdowns. Despite governmental efforts, the crisis has underscored the urgent need for a more resilient and responsive framework to safeguard the welfare of workers during emergencies.

Based on the analysis of the Supreme Court's interim order and the submissions made in WP(C) Diary No 10983 of 2020, the following comprehensive set of short-term and long-term measures are recommended to enhance the role of Corporate Social Responsibility (CSR) and other welfare funds in mitigating the miseries of labourers:

### **Short-Term Measures (During the initial phase of recovery up to 50% industrial momentum):**

- **Mandatory Basic Wages:** The Central Government should invoke the Disaster Management Act to mandate companies to pay at least 25% of basic wages to all workers.
- **Utilisation of CSR Funds:** The Central Government should direct companies to allocate a minimum of 50% of their available CSR funds to compensate for the outstanding wages, equivalent to 25% of basic wages.

- **Government Contribution:** Both Central and State Governments should contribute up to 25% of the wages through their existing welfare schemes.
- **Utilisation of Welfare Funds:** The remaining 25% of wages can be sourced from the PM Care Fund, ESIC Fund, or other labour welfare funds to ensure comprehensive coverage.

**Long-Term Measures (For sustained welfare enhancement):**

- **Amendment to Companies Act 2013:** A revision of Section 135 and Schedule VII should be undertaken to mandate companies to reserve 25% of their annual CSR fund contribution as a Contingent Fund specifically for their workers. This fund should be exempted from the restrictions of Minimum Net Worth, Turnover, and Net Profit.
- **Amendment to ESIC Act:** Modifications should be made to the ESIC Act to allocate a certain percentage of both employer and employee contributions towards a Contingent Fund for labour welfare. This allocation should not necessitate an increase in subscription from either party.
- **Implementing these recommendations** will not only provide immediate relief to the distressed labourers but also establish a more resilient and sustainable framework for corporate social responsibility and labour welfare in India, capable of effectively responding to future crises. It is imperative for the Central and State Governments to collaborate with private entities and stakeholders to ensure the judicious utilization of funds and the effective implementation of these measures for the holistic development and welfare of the labour force.

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