

The Annual Survey of State Laws in India

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Introduction

Owing to its history of promulgating and re-promulgating ordinances and violating the federal structure and the principle of separation of power, Bihar is often referred to as the place of origin of ordinance raj in India.³ The ailment runs so deep in the state that Dr. D.C. Wadhwa in an academic study on the issue of re-promulgation of ordinances in the state found that a total of 256 ordinances were promulgated and re-promulgated between 1967 and 1981. Of these, some lasted for as long as fourteen years. Further, he wrote a book based on this research, which was used in instituting a writ under article 32 of the Constitution. In *Dr. DC Wadhwa and Ors v State of Bihar and Ors*⁴ he sought to quash ordinances re-promulgated by the governor of Bihar without placing it before the state legislative assembly. Dr. Wadhwa succeeded in his petition and hoped that it would put an end to ordinance raj in India. However, the executive has been found to make use of ordinances to establish itself wherever centralized undemocratic forces are emergent.⁵ Bihar succumbed to its old pattern despite the judiciary's warning, as is evident from another litigation in 2017 on a similar issue as *DC Wadhwa*.⁶ The number of ordinances passed by the executive in Bihar has only seen a rise over the years, especially in the last decade.⁷ The most concerning factor in the incessant use of ordinances in the recent past is that most of the ordinances were not supported by any reasoning as was mandated in *Krishna Kumar Singh*.⁸

Quantitative Overview

In 2020, Bihar passed a total of 18 Acts of which three were Appropriation Acts and one was a municipal Act. Of the remaining 14 Acts, nine may be traced back to previously promulgated ordinances. The five Acts which did not originate from ordinances were: the Bihar State Higher Education Council Act, 2018 (passed in 2020), the Bihar Fiscal Responsibility and Budget Management (Amendment) Act, 2020, the Bihar Agriculture Land (Conversion for Non-Agriculture Purposes) (Amendment)

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3 The term "ordinance raj" was first used in *Dr. DC Wadhwa and Ors v. State of Bihar and Ors*, AIR 1987 SC 579.

4 1987 S(1) 798.

5 Hermann Pünder, "Democratic Legitimation of Delegated Legislation—A Comparative View on the American, British and German Law" 58(2) *International & Comparative Law Quarterly* 353-378 (2009).

6 *Krishna Kumar Singh and Anr v. State of Bihar and Ors*, (2017) 3 SCC 1.

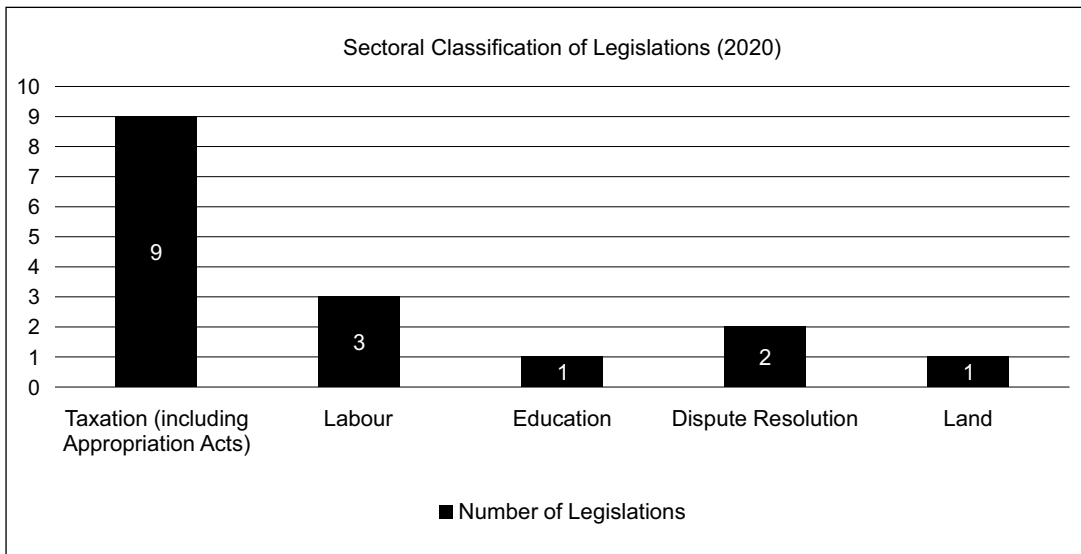
7 Editorial, "The Ordinance Raj" 56 (50) *Economic and Political Weekly* 7-8 (2021).

8 *Supra* note 6.

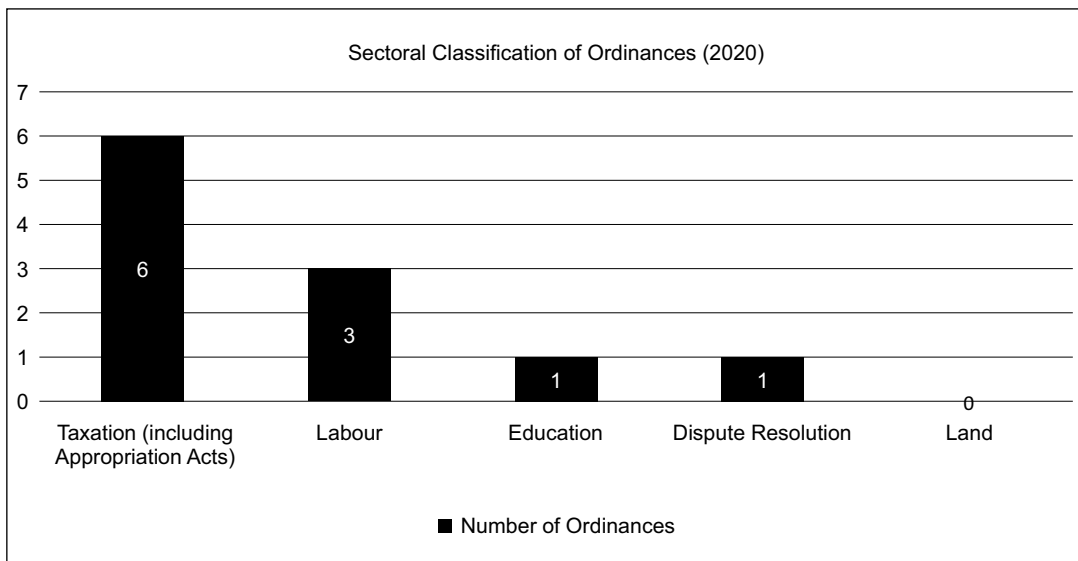
Act, 2020, the Bihar Public Works Contracts Disputes Arbitration (Amendment) Act, 2020, and the Companies (Bihar Amendment) Act, 2020.⁹

The total number of ordinances promulgated during the year was 12, which is a striking contrast to the total four ordinances promulgated between 2016 and 2019. Of these 12 ordinances, the highest attention was paid to the sector of tax where six ordinances were promulgated and nine legislations passed. Thereafter, the sector of labour saw ordinances and legislations, three each. The education sector too witnessed one ordinance and one legislation. In the dispute resolution sector, two ordinances were promulgated and one legislation passed. In the land sector, no ordinances were promulgated but one legislation passed. Apart from these sectors, the Companies (Bihar Amendment) Act, 2020 was also passed. However, the Act is unavailable in the public domain. While Policy Research Studies India (PRS India) recognizes it as being introduced and passed in the same year of 2020, *Manupatra* does not recognize it in the list of legislations passed. Consequently, the report does not analyze the Companies (Bihar Amendment) Act, 2020.

The state assembly sat for a total of 18 days of which 12 sitting days were observed before the lockdown and six after the lockdown. The period of 18 days is equal to the average number of sitting days observed in other states, while it is considerably lower than the average national sitting days which is 30. As compared to the state's average sitting days observed between 2016-2019, the data for the year 2020 mark a steep decline of nearly 47 percent.



9. The Bihar Municipal (Amendment) Act, 2020 originated in the Bihar Municipal (Amendment) Ordinance, 2020 but we have excluded it from the nine Acts passed that originated from an ordinance since municipal Amendment Acts are passed to make miscellaneous amendments that are necessary for smooth governance.



Sectoral Analysis

Education

Bihar passed one legislation and promulgated one ordinance in the area of education in 2020. The Bihar State Higher Education Council Act (BSHEC Act), 2018 passed in 2020 established a state higher education council (SHEC) in the state. The law was enacted in furtherance of the National Education Policy (NEP), 1986 of the government of India which recommends that the state-level planning and co-ordination of higher education be done through the SHEC. Additionally, Rastriya Uchchar Shiksha Abhiyan (RUSA) of the government of India (ministry of human resource development) also requires states to form an SHEC for increasing the gross enrolment ratio (GER) and improving the quality of education. The establishment of BSHEC is a step in the right direction as earlier there was no body at the state level to co-ordinate the functioning of state universities. In the absence of such a body the state government conducted and controlled the functioning of universities through circulars, meetings and seminars. After this legislation, all the pending draft ordinances and regulations in different universities of Bihar, as well as the draft statutes, will now have to be directly referred to the SHEC for examination. After deliberation, the SHEC would send them to Raj Bhawan for final approval with its comments. After this legislation, Bihar governor's secretariat wrote to all the vice-chancellors, education department officers, and the SHEC for compliance to ensure a smooth and faster workflow. Hitherto, the universities sent their ordinances, statutes, and regulations directly to the chancellor's secretariat for approval, which often consumed a lot of time and led to long pendency. According to a senior official, around 73 ordinances, regulations, and draft statutes, many related to distance education courses being run by different universities, are pending and would be referred to the SHEC for examination.¹⁰

10. Arun Kumar, "Bihar Raj Bhawan vests SHEC with power to vet varsity statutes, ordinances", *The Hindustan Times*, Feb. 05, 2021, available at: <https://www.hindustantimes.com/cities/patna-news/bihar-raj-bhawan-vests-shec-with-power-to-vet-varsity-statutes-ordinances-101612518818794.html> (last visited on Jan. 28, 2022).

BSHEC would also act as the body through which state universities receive funding. For instance, all the funds under RUSA, with centre-state sharing of 60:40, are routed to the state institutions through the BSHEC.¹¹ This gives the central government an overriding position to control the funding of state institutions. Moreover, RUSA funding has declined drastically in the recent past. RUSA was allotted only 300 crores in the budget allocation of 2020-2021, a 78 percent decrease from the previous year. Further, the linking of RUSA funds to NAAC score has led to an increase in the financial control exercised by the centre over the state.¹² The Bihar State Higher Education Council (Amendment) Ordinance, 2020 was promulgated to introduce a change in section 6 (2) of the BSHEC Act, 2020. The ordinance allows the reappointment of vice-chairman by the state government up to a maximum period of two terms (up to a maximum of 15 years). The state government has the power to appoint and reappoint.

The provision may have strengthened the power of the state government but it most certainly increases possibility of corruption as an incompetent person may hold on to the position for too long. The Bihar government notified the appointment of Prof. Kameshwar Jha for the second term at BSHEC. The position of SHEC vice-chairman (VC) had remained vacant for over one and a half years since the term of Jha, the first vice-chairman of the SHEC, which had ended on March 28, 2019. Jha got a second term in view of the new provision in the BSHEC Act, 2018, which was notified by the governor in January, 2020 after a long wait of one and a half years.¹³

The *D.C. Wadhwa case*¹⁴ clearly states that ordinances should be passed in exceptional circumstances. The governor promulgated the ordinance stating in the preamble that the ordinance is being revived by him as the state legislature could not enact the previous ordinance and that the circumstances exist which render it necessary for him to revive the previous ordinance to extend the reappointment of the VC up to two terms. The said 'exceptional' circumstances have not been stated in the preamble to the ordinance. The state government clearly did not intend to legislate on this matter, but the central government influenced the governor to revive the ordinance, in effect, diluting the autonomy of the state when no such exceptional circumstances were present. Such instances where the governor is used as "an agent of the centre" is a recurring issue that has led to the establishment of several committees since independence, most of which have been ineffective in catalyzing reforms to improve the federal structure of the nation.¹⁵

The BSHEC Act is passed by the state and its purpose is to implement the RUSA scheme. However, since RUSA is a central scheme, it is the centre-level policy which ultimately controls the funding and functioning of state higher educational institutions. Education falls in the concurrent list of the Constitution. However, with the BSHEC and the implementation of the NEP 2020, and RUSA, the final decision on funds and powers lies with the centre with restricted freedom to the state. It may also be noted that the university grants commission (UGC), the central regulator of higher education in India,

11. Arun Kumar, "Bihar govt notifies appointment of BSHEC vice chairman and three VCs as members", *The Hindustan Times*, Sep. 25, 2020, available at: <https://www.hindustantimes.com/education/bihar-govt-notifies-appointment-of-bshec-vice-chairman-and-three-vcs-as-members/story-88whXq2L3uQuac3PGMYsMO.html> (last visited on Jan. 28, 2022).

12. Shreya Roy Chowdhury, "Reality of Reforms: Education Policy and a Bihar College", *CAREERS 360*, Feb. 07, 2020, available at: <https://news.careers360.com/reality-of-reforms-education-policy-and-bihar-college> (last visited on Jan. 28, 2022).

13. *Supra* note 11.

14. *Supra* note 4.

15. Rakhahari Chatterji, "Recurring controversy about Governor's role in state politics", *Observer Research Foundation*, June 6, 2020, available at: <https://www.orfonline.org/expert-speak/recurring-controversy-governor-role-state-politics-67433/> (last visited on April 18, 2022).

also plays a key role in the functioning of BSHEC. According to section 11, the powers and functions of the BSHEC are to be in accordance with the guidelines of the UGC. According to the new NEP, 2020, the UGC will be replaced by the higher education commission of India (HECI) which is aimed at facilitating the funding and financing of higher education on more transparent criteria.

Land

The Bihar Agriculture Land (Conversion for Non-Agriculture Purposes) Amendment Act, 2020 was introduced to make conversion fees (from which industries were previously exempted) applicable to agricultural land being converted to non-agricultural land for industrial use. This innovative step was expected to help keep a check on industries by following procedure for both permission and payment of fees. It was also expected to reduce the number of industries exploiting the exemption and ensure fairness in all sectors as industries would also be required to pay the conversion fee. Thus, the amendment could limit industries from being set up due to the payment of conversion fees and might help in tackling the corruption taking place during land allotment and while providing permissions to private industries. Bihar is among the few states to have such a law as it gives the freedom to make inter-departmental interventions to competent authorities like Bihar state pollution control board, department of urban development, department of industries and department of environment and forest.

In recent times, the state government has been acquiring land for various industrial projects belonging to the state as well as central governments. According to a survey, between 2005 and 2013, the state acquired nearly 27370.2 acres of land. In the last couple of years of this period, the land was mostly acquired for either national highways or thermal power projects. It may be noted that the state land amounts to nearly 2.88 per cent of the total landmass of the state but is responsible for supporting around 8.58 per cent of the total population. This makes the Bihar Agriculture Land (Conversion for Non-Agriculture Purposes) Amendment Act, 2020 timely. Further, it considerably addresses the shortcomings arising from outdated records, untrained workforce, lack of suitable infrastructure, and the absence of efficient land usage policies. The Bandhopadyay commission had already suggested to the state to investigate the problems relating to contract farming, provide the *bataidars* with legal safeguards, and assess the excess land held illegally by the estates and other landed classes.¹⁶ The amendment promises to structurally address these issues and compensate for the missing organizational regulation in a state which was the first to witness the enactment of major legislations relating to land reforms.¹⁷

Dispute Resolution

The Bihar Right to Public Grievance Redressal (Amendment) Act, 2020 (BRPGRA) amends section 2 (a) of the BRPGRA, 2015 with the effect that matters related to ration cards will also be included in the

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16. Few other recommendations made by the commission included an improved safeguarding of the *khasmahal* land, regularly updating the land records, filling up vacancies in the land reform department, and making the mutation process mandatory and more simplified. The report noted that the state lacks *bataidari* rights, has an improper system of land revenue, and the accumulation of land within the possession of few estates which caused its land reform efforts to fail. See PTI, "Panel suggests major land reform steps in Bihar", *The Times of India*, April 13, 2008, available at: https://economictimes.indiatimes.com/news/economy/policy/panel-suggests-major-land-reform-steps-in-bihar/articleshow/2948750.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst (last visited on January 28, 2022).
 17. Chandragupt Institute of Management Patna, "Land Governance Assessment Framework for Bihar" (2014), available at: <https://www.landportal.org/library/resources/land-governance-assessment-framework-bihar-india> (last visited on January 28, 2022).

right of public grievance redressal as provided under the BRPGRA, 2015. It is administered by Bihar Prashasnik Sudhar mission (Bihar administrative reforms mission) under the general administration department. The principal Act has often been hailed to be successful in introducing a platform for grievance redressal in Bihar. The government, in a report on the Act notes:

“The BRPGRA focused clearly on the processes that produced what the citizens (consumers) wanted: redressal, not just disposal of the case. The past systems were not backed by a legal right. It was not unusual for the complainant to file the same grievance again. The focus on processes to produce a result desired by the resident of Bihar is one of the most significant changes that BRPGRA has brought about.”¹⁸

However, the Act required changes on the ground level to achieve its full potential. The amendment has been made in this light to meet the long-standing demand of people to have a speedy resolution of ration-card related matters. This is also relevant due to the state government schemes and policies which are dependent on the issuance and use of ration cards. Other than this, the central government scheme ‘One Nation, One Ration Card’ also requires a valid ration card for availing food grain under the National Food Security Act. It may be noted that both the state and the central government schemes which require the beneficiary to hold a ration card, also require, by default, that ration card be linked to the beneficiary’s *Aadhar* card. Thus, the privacy of an individual is put at risk by the centre though the state.

The second amendment introduced in Bihar in the area dispute resolution is the Bihar Public Works Contracts Disputes Arbitration (Amendment) Act, 2020 to the Bihar Public Works Contracts Disputes Arbitration Tribunal Act, 2008. The amendment lays down the maximum term for holding office and gives power to the state government to remove the chairman and other members of the tribunal for certain corrupt and other acts.¹⁹

Labour

Bihar has introduced many amendments to central labour legislations with the objective of attracting investment in the state to deal with the economy slowing due to the pandemic. Most of the ‘reforms’ take away rights held by workers. Sundar and Sapkal, in *Labour Laws and Governance Reforms in the Post-reform Period in India: Missing the Middle Ground? Essays in Honour of Prof. KP Chellaswamy (2020)*, have analyzed the reforms and encapsulated them within four major reasons cited by state governments that introduced labour law reforms during the pandemic: (a) Labour shortage due to migration during the pandemic (b) Labour flexibility to attract companies quitting China (c) Overcome economic crisis due to pandemic (d) Allow employers to protect existing jobs and create new jobs. They also highlight the real reason behind the timing of introducing the reforms, which is either the impossibility of or difficulty in organising protests against the reforms during a pandemic. Their study also challenges the use of the term “reform” for anti-labour, regressive amendments. India ranks so low in ITUC Global Rights Index that workers in India have been categorised as experiencing “no guarantee of rights”.

18. Government of Bihar, “Samadhan: Bihar Right to Public Grievance Redressal Act” 7 (2017).

19. A similar ordinance was promulgated by the union government in November 2020 to amend the Arbitration and Conciliation Act, 1996 which has now been passed as the Arbitration and Conciliation (Amendment) Act, 2021.

The Contract Labour (Regulation and Abolition) (Bihar Amendment) Act, 2020 amends sections 1 (4) (a) and 1 (4) (b) of the Contract Labour (Regulation and Abolition) Act, 1970, increasing the minimum number of workmen required for an establishment to fall under the purview of the Contract Labour (Regulation and Abolition) Act, 1970. The amendment gives more freedom to establishments to increase output at the expense of the workers' rights. The central objective of the amendment was to uplift Bihar's economy from the adversities inflicted by COVID-19 by increasing industrial and economic activities. The Amendment Act replaces the Contract Labour (Regulation and Abolition) (Bihar Amendment) Ordinance, 2020 (Bihar Ordinance No-06- 2020). The states of Madhya Pradesh, Uttar Pradesh, Kerala, Punjab, Himachal Pradesh, Uttarakhand, Haryana and Gujarat also passed similar amendment laws to provide relief to industries during the lockdowns imposed due to the COVID-19 pandemic.²⁰ Raising the ceiling of minimum number of workers required in an establishment before the regulatory law applies will remove workers in many industrial establishments from the protective purview of labour law. Establishments with lower number of employees will thus not be liable to their employees under labour law. The requirements of registration, and licensing would no longer apply to them. And they would have no obligations of providing minimum wages and other facilities for employees' welfare. Such amendments are beneficial for employers as they can get more output without concomitant legal duties and liabilities. It will also result in the informalisation of the Indian workforce preventing them from accessing benefits relating to employment, health and safety, skills, and income.²¹ Employees in other states where similar amendments were passed have protested against the amendments as they violate multiple rights of workers. Such laws may affect centre-state coordination as these amendments to central labour laws are passed by states on the insistence of the centre.²²

The Industrial Disputes (Bihar Amendment) Act, 2020 amends section 25K of the Industrial Disputes Act, 1947. Section 25K of the Industrial Disputes Act, 1947 lays down the criteria for special provisions relating to lay-off, retrenchment and closure to be applicable to industrial establishments. In Section 25K, the words "one hundred", was substituted by the words "three hundred". The amendment also laid down that the provisions relating to closure of establishments would not be applicable to industrial establishments with less than three hundred workers. Additionally, it gave power to the state to exempt new industries from all the provisions of the act for a period of thousand days.²³ Similar to the previous amendment, this amendment also increased the minimum number of workers required in an establishment for the special provisions to be applicable. It allowed industrial establishments to be exempt from any liability if their workers were laid off or retrenched without prior notice. By this amendment workers were also deprived of the right to form unions, The amendment only benefitted the employers by reducing their legal liabilities and by bringing the employees under their closer regulation.

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20. Raj Dev Singh, *et al*, "State-wise Relaxation Of Labour Legislations Amidst COVID-19", *Mondaq*, June 4, 2020, *available at*: <https://www.mondaq.com/india/employment-and-workforce-wellbeing/946064/state-wise-relaxation-of-labour-legislations-amidst-covid-19>- (last visited on Jan. 28, 2022).
 21. KR Shyam Sundar and R S Sapkal, "Changes to labour laws by state governments will lead to anarchy in the labour market" 55(23) *EPW Engage*, June 06, 2020, *available at*: <https://www.epw.in/engage/article/changes-labour-laws-state-market-anarchy-labour-market> (last visited on April 18, 2022).
 22. Somesh Jha, "Centre passes the baton on to States for initiating labour law reforms", *The Business Standard*, May 20, 2020, *available at*: https://www.business-standard.com/article/economy-policy/centre-passes-the-baton-on-to-states-for-initiating-labour-law-reforms-120052001439_1.html (last visited on April 18, 2022).
 23. Similar ordinances were passed in Himachal Pradesh which increased this threshold limit to 200 workers and Karnataka, Gujarat, Goa, Odisha, and Punjab which increased it to 300 workers. Laws passed by Assam (excluding tea industries) and Goa allow the state government to exempt any new industrial establishment or undertakings from all or any provisions of the act for the first 1,000 days from the date of establishment of such new industries.

The Factories (Bihar Amendment) Act, 2020 amends section 2(m) of the Factories Act, 1948 to increase the threshold of minimum workers required. It also gives power to the state to exempt new factories from all the provisions of the act for a period of 1000 days. The amendment is similar to the other two labour amendments, and aims to increase the industrial and economic activities by providing new opportunities for industrial investment to aid speedy recovery from the ill-effects of the pandemic, even if at the cost of the rights of the workers.²⁴

Financial/Fiscal/Taxation

In 2020, Bihar passed a total of nine Acts and ordinances under the financial/fiscal/taxation category. Both the state and the centre have the power to make laws under the financial aspects in the concurrent list. Acts such as the Bihar Fiscal Responsibility and Budget Management (Amendment) Act, 2020 was passed after receiving consent from the centre on the same. The Bihar Taxation Laws (Relaxation of period of limitations Provisions) Act, 2020 was passed in line with the Taxation Laws (Relaxation of period of limitations Provisions) Ordinance, 2020 passed by the central government. Similarly, the Bihar Goods and Service Tax (Amendment) Act, 2020 also followed the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020. The government also passed three Appropriation Acts for 2020 (not analysed in this survey as Appropriation Acts are passed by states on a regular basis for smooth governance).

The Bihar Fiscal Responsibility and Budget Management (Amendment) Act, 2020 amends Section 9 (2) (b) (3) of the Bihar Fiscal Responsibility and Budget Management Act, 2006. This would enable the state to borrow an additional Rs 4.28 lakh crore from the centre. The earlier limit for state borrowings was set at Rs 6.4 lakh crore. Putting together the extra allowed borrowing, the total limit reaches to Rs 10.68 lakh crore. However, any request for loan from the state may only be passed if the finance commission deems it fit.²⁵ The increased borrowing limits have come with the attendant condition²⁶ that the state implement reform priorities laid down by the central government.²⁷ The Constitution of India allows the union government to place barriers on state borrowing as long as the state owes it money. However, by placing conditional borrowing limits, the union government is using the vast financial powers awarded to it under the Constitution to intrude into policy areas that are firmly with the states.

An increase in the state government's borrowing limit to five percent of Gross State Domestic Product (GSDP) will help absorb the expected plunge in their revenue receipts, and avoid a severe cutback in capital expenditure. Four percent of the loan availed by the state was to be spent on development work

24. The amendments are similar to other labour law amendments in Himachal Pradesh, Goa, Punjab, Gujarat, Assam and Odisha, and have also increased the threshold for any premises to be considered as a factory.

25. PTI, "Houses pass Bill to help Bihar govt borrow Rs 5,688 cr from the market", *The Business Standard*, March 5, 2020, available at: https://www.business-standard.com/article/pti-stories/houses-pass-bill-to-help-bihar-govt-borrow-rs-5-688-cr-from-120030501688_1.html (last visited on April 18, 2022).

26. These reforms include recommendations by the 15th Finance Commission such as ensuring sustainability of additional debt through higher future GSDP growth and lower deficits, promoting welfare of migrants and reducing leakage in food distribution, increasing job creation through investment, safeguarding interests of farmers while making the power sector sustainable and promoting urban development, health and sanitation.

27. BQ Desk, "Covid-19 Economic Package: Government Allows Increased State Borrowings With Conditions Attached", *The Bloomberg Quint*, May 17, 2020, available at: <https://www.bloombergquint.com/economy-finance/covid-19-economic-package-government-allows-increased-state-borrowings-with-conditions-attached> (last visited on April 18, 2022).

only and not for paying salaries and pensions. The approval for the remaining one percentage point depended upon the states' carrying out reforms in four areas — one nation one ration card; ease of doing business; urban local body/ utility, and power distribution.²⁸ This amendment was carried out on the demand of Bihar to uplift the economy from the impact of COVID-19.

The Bihar Taxation Laws (Relaxation of period of limitations Provisions) Act, 2020 was enacted to extend the limitation period under the specified acts from March 20 to June 29. The limitation period was then extended to December 31, 2020 or a chosen date after December 31, 2020, not later than December 31, 2021. This Act was passed in view of the challenges faced by taxpayers in meeting the statutory and regulatory compliances due to the outbreak of COVID-19.²⁹ The Act provides more time to taxpayers for furnishing of income tax returns and other tax related procedures such as registration and payment of penalties. The central government has emphasised online filing of taxes through the newly launched tax filing portal.³⁰ This was also in line with the supreme court's direction to extend the period of limitation in all proceedings before the courts and tribunals with effect from March 15, 2020 until further orders.

The Bihar Goods and Service Tax (Amendment) Act, 2020 adds section 168 A to the Bihar Goods and Services Tax Act, 2017. The provision provides that time limit can be extended for certain actions under the Act in special circumstances arising due to *force majeure*. The government has simultaneously issued the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 on March 31, 2020, to give itself power to extend timelines for undertaking any actions required under the GST legislations on account of force majeure situations, including epidemics. However, declaration of COVID-19 as *force majeure* or act of god has led to a tussle between the states and the centre, with the centre refusing to make good the shortfall in compensation cess for the year which resulted in a huge reduction in revenues for the states. As a way out, the centre offered two options to the states but both options involved borrowing from the reserve bank of India (RBI).³¹ The amendment will also have an impact on daily lives of people who will have to bear the cost of reduced developmental funding. State revenue is bound to take a hit during a time when it urgently needs more funds. In order to address the paucity of resources the centre made some fund-raising proposals to the states. However, all the proposals required states to borrow in order to raise resources.³²

The Bihar Taxation Law (Amendment) Act, 2020, amends section 14 of the Bihar Value Added Tax Act, 2005. Under the amendment, the tax shall be calculated on the sale price of the goods at such rate

28. Special Correspondent, "States' borrowings shot up by over 80% due to pandemic", *The Hindu*, Jan. 22, 2021, available at: <https://www.thehindu.com/news/national/states-borrowings-shot-up-by-over-80-due-to-pandemic/article33630633.ece> (last visited on Jan. 28, 2022).

29. Vikas Vasal, "Relaxation in Income Tax Compliances Amid COVID-19 Outbreak", *The Mint*, April 9, 2020, available at: <https://www.livemint.com/money/personal-finance/relaxation-in-income-tax-compliances-amid-covid-19-outbreak-11586433656568.html> (last visited on April 18, 2022).

30. Preeti Motiani, "Income tax return filing deadline for FY 2020-21 extended to December 31, 2021", *The Economic Times*, Dec. 27, 2021, available at: <https://economictimes.indiatimes.com/wealth/tax/income-tax-return-filing-deadline-for-fy-2020-21-extended-to-december-31-2021/articleshow/85616228.cms> (last visited on Jan. 28, 2022).

31. Prabhaskar K Dutta, "GST compensation row: How Act of God may help Centre", *India Today*, Aug. 28, 2020, available at: <https://www.indiatoday.in/news-analysis/story/gst-compensation-row-act-of-god-nirmala-sitharaman-1716047-2020-08-28> (last visited on Jan. 28, 2022).

32. Rahul Menon, "Acts of God and the All-Important GST Pact Between the State and Centre", *The Wire*, Aug. 30, 2020, available at: <https://thewire.in/economy/acts-of-god-and-the-all-important-gst-pact-between-the-state-and-centre> (last visited on Jan. 28, 2022).

as not exceeding 50% or the weight or volume of the goods at such rate as not exceeding 50 rupees per litre or any combination of both. The amendment was made in view of the rapidly fluctuating prices of petroleum crude oil in the international market in view of the spread of the pandemic COVID-19 across many countries in the world including India incurring loss of value added tax revenue from petrol and diesel. The amendment does away with the classifications in terms of the schedule.

The Bihar Goods and Services Tax (Second Amendment) Act, 2020, amends several provisions of the Bihar Goods and Services Tax Act, 2017. Firstly, under section 29(1)(c), for cancellation of registration, the taxable person can intend to opt out of the registration voluntarily made under sub-section (3) of section 25 (procedure for registration) which was previously excluded and included no liability for taxable persons to be registered under section 22 or section 24. Secondly, under section 30(1), the revocation of cancellation of registration can be extended if sufficient cause can be shown and for reasons to be recorded in writing by the additional commissioner or the joint-commissioner, as the case may be, for a period not exceeding thirty days or by the commissioner for a further period not exceeding thirty days, beyond the period specified in clause (a). Before the amendment, any registered person, whose registration is cancelled by the proper officer on his own motion, could apply to such officer for revocation of cancellation of the registration in the prescribed manner within thirty days from the date of service of the cancellation order. Thirdly, under section 31(2), the state government may notify on the recommendations of the council the categories of services or supplies in respect of which a tax invoice shall be issued, within such time and in such manner as may be prescribed subject to the condition mentioned therein, specify the categories of services in respect of which any other document issued in relation to the supply shall be deemed to be a tax invoice or tax invoice may not be issued. Lastly, it inserts Sec. 122(1) and imposes penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed on for any person who retains the benefit of a transaction covered under clauses (i), (ii), (vii) or clause (ix) of sub-section (1). It also adds retrospective exemption from, or levy or collection of, state tax in certain cases excluding anything contained in the notification of the commercial taxes department notification number S.O. 65, dated June 29, 2017, issued by the state government under section 9(1) of the Bihar Goods and Services Tax Act, 2017 wherein no state tax shall be levied or collected in respect of supply of fishmeal (falling under heading 2301), during the period commencing from the July 1, 2017 and ending with the September 30, 2019 (both days inclusive) and, state tax at the rate of six percent shall be levied or collected in respect of supply of pulley, wheels and other parts (falling under heading 8483) and used as parts of agricultural machinery (falling under headings 8432, 8433 and 8436), during the period commencing from the July 01, 2017 and ending with the December 31, 2018 (both days inclusive). Also, the amendment removes refund for all tax which has been collected, but which would not have been so collected, had sub-section (1) been in force at all material times.

The Bihar Prohibition and Excise (Amendment and Validation) Act, 2020 amends section four of the Bihar Prohibition and Excise Act, 2016. Firstly, the amendment declares the overriding effects of the Bihar Prohibition and Excise Act, 2016 on all Acts, ordinances, rules or decision or judgment, decree or order of any court of law which previously excluded (a) the Customs Act, 1962 (Act 52 of 1962) or (b) the Cantonments Act, 2006, (41 of 2006). Secondly, all acts done in accordance with the provisions of Bihar Prohibition and Excise Act, 2016 by assistant sub- inspectors of police shall be deemed to be valid.

The Bihar Settlement of Taxation Disputes Ordinance, 2020 lays down the manner for settlement of disputes and settlement amounts. The law is similar to a central government scheme 'Vivad se Vishwas' (now a legislation) which was launched to bring down pending IT litigation, generate timely revenue for the government, and benefit the taxpayers. The law provides relief to taxpayers to settle pending

tax disputes easily and conveniently by paying a certain settlement amount. This scheme aims to end all direct tax disputes.³³

Conclusion

It may be observed that the pandemic contributed to considerable changes in the functioning of the state legislature of Bihar. This is not merely evident from the low number of sitting days held but also from the sheer number of ordinances promulgated as compared to the previous years. Most of these ordinances pertained to the tax sector, followed by labour and then dispute resolution. The least number of the ordinances were in the sectors of land and education. The most important reason behind this selective approach towards sectors was the urgency to shake off the adverse effects of the pandemic and the lockdown from the economy.

If the ordinances promulgated in various sectors are carefully analysed, a common observation is gathered. Most of these ordinances show an overt structural interference of the central government in the matters of the Bihar government. For instance, in the education sector, the BSHEC was set up in such a manner that it could not function independently of the central government. The NEP 2020 and the RUSA scheme allow the centre to indirectly control the functioning, decision making, and funding of state higher education institutions. In the dispute resolution sector, the inclusion of ration card related disputes under the BRPGRA is a step in the right direction to solve issues at the ground level. However, the insistence of the centre on the mandatory linking of the ration cards with the *Aadhar* card leaves less room for state government's autonomy. Whether the scheme has been offered by the state government or the central government, if it requires the beneficiary to possess a ration card, it will also inevitably and automatically requires the ration card to be linked to the *Aadhar* card. The indirect collection of information through schemes and redressal forums was not the ostensible objective of the legislators when they enacted the BRPGRA; but the legislation becomes colourable as it allows for the state to breach the privacy of an individual at the behest of the centre.

The slew of ordinances passed in the field of labour are indicative of the continuance of ordinance raj in Bihar and a violation of *DC Wadhwa* judgment.³⁴ These ordinances have led to the dilution of labour regulations and the rights of workers. The judgment states that the shift of the law-making power to the executive in emergency situations is contrary to the norms of a democratic nation holding that “*the power to promulgate an Ordinance is essentially a power to be used to meet an extraordinary situation and it cannot be allowed to be perverted to serve political ends*”. Similarly, the supreme court in *Krishna Kumar Singh v. the State of Bihar* held that the authority to issue ordinances is not an absolute entrustment, but is “*conditional upon satisfaction that circumstances exist rendering it necessary to take immediate action*”.³⁵ The centre has facilitated the carrying out of similar ordinances in various states around the same period of time to boost the economy affected by the lockdown imposed due to COVID-19 which was protested by a number of state governments, thereby questioning its necessity and the need for the centre to take such measures without consulting the state governments. Labour laws fall in the concurrent list of the

33. India Today Web Desk, “Vivad se Vishwas: CBDT extends payment deadline under tax dispute scheme till September 30”, *India Today*, Aug. 31, 2021, available at: <https://www.indiatoday.in/information/story/vivad-se-vishwas-scheme-cbdt-extends-payment-deadline-under-tax-dispute-scheme-till-september-30-1847558-2021-08-31> (last visited on Jan. 28, 2022).

34. *Supra* note 4.

35. *Supra* note 6.

Constitution of India. However, these labour ordinances indicate the indirect influence of the centre in imposing complete control to dilute labour laws through regional reforms.

In the tax sector, the use of the force majeure or act of god has led to a tussle between the states and the centre, where centre has refused to make good the shortfall in compensation cess for this year which in turn results in a huge reduction in revenues for the states. The centre, on advice of the attorney general claimed that it is not responsible to pay GST compensation due to extenuating circumstances. This was made possible by the presumption that the state is a private player in a contractual relationship whose responsibilities are waived due to act of god, when clearly the nature of relationship between the centre and states is much more than what exists between parties in a private contract.