

The Annual Survey of State Laws in India

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Justice City, Shamirpet,
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2022

Mode of Citation: ASSL (2020)

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Introduction

This survey will examine the legislations passed in Odisha in 2020. Its purpose is to identify legislative priorities of the government and the trends and practices that affected law-making in the state during that year. The article is divided into three parts: the first discusses the coronavirus pandemic and legislations made to tackle it. It also highlights some of the deficiencies in the legal response – which was primarily driven by subordinate legislation even though separate legislation addressing the issue of medical emergencies may have been more useful.

In the second part, legislations pertaining to labour and industries have been surveyed. It elucidates the shift in policy priorities and examines how the government's emphasis on ease of doing business and promoting medium and small-scale enterprises (MSMEs) has impacted its legislative agenda.

The third and final part briefly encapsulates other legislations, including social legislations, and legislations pertaining to the education sector.

Shadow of COVID-19 Pandemic

The year 2020 will be long remembered as the year of COVID-19—the year when a pandemic brought major changes to the world, affecting all levels of society. Tackling the pandemic required major changes in the operations of the government as well as the private sector entities. It also required amendments to legislations.

The pandemic first surfaced in India, in January 2020, and became widespread by March, necessitating a nationwide lockdown. From a legislative point of view, the Budget session (which is conducted from February to March), was conducted as usual. It focused on issues such as agriculture, education, nutrition, and infrastructure development. The health sector was allocated Rs. 7700 crores, which amounted to 4.6 percent of the budgeted expenditure of the state.² The impact of COVID-19 led to some changes in spending priorities, as exemplified by a 20 percent increase in the health budget of the state, bringing it to 5.3 percent of the total planned expenditure in 2021-2022.³ The pandemic also necessitated a supplementary budget to respond to impact on health, food, social security, livelihoods,

1. Assistant Professor (Law), NALSAR University of Law.

2. See the Odisha Appropriations Act, 2020 along with the Budget Speech 2020, *available at*: https://finance.odisha.gov.in/sites/default/files/2020-05/Budget_Highlights_English_2.pdf (last visited on Nov. 5, 2021).

3. See Odisha Appropriations Act, 2021 along with the Budget Speech 2021, *available at*: <https://finance.odisha.gov.in/sites/default/files/2021-02/Budget%20highlights%202021-22-Eng.pdf> (last visited on Nov. 5, 2021).

etc.⁴ An additional allocation of Rs. 1627 crores was made for public healthcare, and Rs. 1077 crores for COVID-19 assistance and food security during the pandemic.⁵

The pandemic-induced lockdowns had a major impact on finances of the states – there was a big fall in the indirect tax revenues.⁶ The states had to either adopt austerity measures or increase their borrowings. As per available data, Odisha had the highest percentage difference between estimated borrowings and actual borrowings for the fiscal year 2021-2022. This was enabled by the union increasing the borrowing limit from three percent to five percent of the gross state domestic product (GSDP) of the states.⁷ Odisha subsequently amended its Fiscal Responsibility and Budget Management (FRBM) legislation during the 2021 budget session to avail an additional two percent of the GSDP borrowing during the fiscal year 2020-2021.⁸

The pandemic's impact on the finances of the state also highlighted the importance of maintaining sufficient contingency funds.⁹ To deal with the pandemic, the state increased the limit of the its contingency fund from Rs. 400 crores to Rs. 2,000 crores by amending the Odisha Contingency Fund Act, 1967.¹⁰

The pandemic led the governments to introduce various emergency legislations.¹¹ Using the Disaster Management Act, 2005,¹² the union government notified the pandemic as a 'disaster' on March 24, 2020.¹³ Prior to this, on March 11, 2020, the government also advised the states to invoke section 2 of the Epidemic Diseases Act, 1897, to introduce enforceable regulations to prevent the spread of the virus.¹⁴ This section authorises state governments to take measures and prescribe 'temporary regulations' that may be necessary to prevent the outbreak or spread of the epidemic, if it thinks that ordinary provisions of law are insufficient for such purpose.¹⁵

4. Government of Odisha, "First Supplementary Statement of Expenditure, 2020-21", available at: https://finance.odisha.gov.in/sites/default/files/2020-11/First_Supplementary_Budget-2020-21_Eng_0.pdf (last visited on Nov. 10, 2021).

5. *Ibid.*

6. Pramit Bhattacharya and Tauseef Shahidi, "How the pandemic crunched state budgets in India", *Livemint*, April 4, 2021, available at: <https://www.livemint.com/economy/how-the-pandemic-crunched-state-budgets-in-india-11618378427620.html> (last visited on Oct. 31, 2021).

7. Asit R. Mishra, "Govt raises states' borrowing limits for FY21 to 5% of GSDP from 3% now", May 17, 2020, *Livemint*, available at: <https://www.livemint.com/news/india/govt-raises-states-borrowing-limits-for-fy21-to-5-of-gdp-from-3-5-now-11589701382466.html> (last visited on Oct. 31, 2021).

8. The Odisha Fiscal Responsibility and Budget Management (Amendment) Act, 2021 (Act 11 of 2021), s. 2.

9. A contingency fund is an extra-budgetary source of funds that is placed at the disposal of governors for meeting any unforeseen expenditure, pending appropriation made by the legislature.

10. Odisha Contingency Fund (Amendment) Ordinance, 2020 (Ordinance 2 of 2020), s. 2. Later enacted into the Odisha Contingency Fund (Amendment) Act, 2020. A greater emphasis on contingency funds and increase in their limits was a trend seen in many other states such as Karnataka, Maharashtra, Uttar Pradesh: the Karnataka Contingency Fund (Amendment) Act, 2020; the Maharashtra Contingency Fund (Second Amendment) Ordinance, 2020; the Uttar Pradesh Contingency Fund (Amendment) Ordinance, 2020.

11. The Epidemic Diseases Act, 1897 (Act 3 of 1897).

12. The Disaster Management Act, 2005 (Act 53 of 2005).

13. Government of India, National Disaster Management Authority, Order no. 1-29/2020-PP (Pt. II), March 24, 2020.

14. Bindu Shajan Perappadan, "States to be asked to invoke Epidemic Disease Act: Centre", *The Hindu*, March 11, 2020, available at: <https://www.thehindu.com/news/national/coronavirus-states-to-be-asked-to-invoke-epidemic-disease-act-centre/article31043653.ece> (last visited on Nov. 12, 2021).

15. *Supra* note s. 2.

The government of Odisha notified the COVID-19 pandemic as a ‘disaster’ under section 2(d) of the Disaster Management Act, 2005 on March 13, 2020.¹⁶ To better deal with the pandemic, the state promulgated an ordinance on April 8, 2020, amending some of the provisions of the Epidemic Diseases Act.¹⁷ This amendment added an additional sub-clause to section 2(2) of the Act, giving the state additional rule-making powers related to procurement of goods, services and equipment necessary for control and prevention of the epidemic. In addition, it also introduced a penal provision for disobeying orders or regulations made under this legislation, punishable with imprisonment of up to two years or a fine of up to Rs. 10,000.¹⁸

The government also laid down several regulations and guidelines pertaining to the COVID-19 pandemic. From March 2020 to October 2021, within about 18 months of the pandemic hitting Odisha, the government passed more than 160 regulations and guidelines to deal with it.¹⁹ These regulations, among other things, authorised specific officials to define and enforce the rules related to containment zones; impose responsibilities on housing societies, hospitals, schools, universities;²⁰ impose rules about usage of masks and sanitisers; impose social distancing norms;²¹ decentralise and empower panchayats to carry out certain functions to handle the pandemic; and deal with issues arising out of the return of migrant workers to their homes and so on.²²

The state also passed several regulations pertaining to the media. For instance, one order dated March 21, 2020 provided for privacy of the pandemic-affected patients and their families, and prohibited the media from interviewing or publishing the name and address of the infected, their relatives or their doctors.²³ Subsequent media regulations were, however, much broader. The COVID-19 regulations dated April 3, 2020 provided that:

“No person/institution/organization will use any print/electronic/social media for information regarding COVID-19 without prior permission of the DMET (Director, Medical Education & Training), DPH (Director of Public Health), DHS (Director of Health Services) or Collector or Medical Superintendent as the case may be. This is to avoid spread of any unauthenticated information and/or rumours regarding COVID-19. If any person/institution/organization is

16. Government of Odisha, Revenue and Disaster Management (Disaster Management) Department Notification no. 1706/R&DM (DM), Mar. 13, 2020.

17. The Epidemic Diseases (Amendment) Ordinance, 2020 (Ordinance 1 of 2020), Odisha, No.3723-I-Legis-15/2020/L.

18. It is noteworthy that the union government also amended the Epidemic Diseases Act later in April 2020, through an ordinance (passed by the parliament later in September 2020). Epidemic Diseases (Amendment) Act, 2020 (Act 34 of 2020) w.e.f. April 22, 2020. This amendment specifically empowered the union government to prescribe regulations for inspection and detention of bus, train, vehicle, aircrafts leaving or arriving in the territory to which the law applies. It also introduced a provision to protect health care service personnel against violence during epidemics by making it a punishable offence. The amendment also deemed any violation of regulations or orders made under this legislation an offence punishable under section 188 of the Indian Penal Code, 1860. However, it is interesting to note that even prior to this amendment, prosecutions under section 188 of the IPC for violations of orders made under section 2 of the Epidemic Diseases Act have been successful (*See, J. Choudhury v. State of Odisha*, AIR 1963 Ori 216).

19. These notifications can be viewed at: <https://health.odisha.gov.in/health-guidelines.html> (last visited on Nov. 5, 2021).

20. *See for e.g.* the Odisha COVID-19 Regulations 2020, Apr. 3, 2020, No. HFW-SCH-I_EMER-001-2020 9570/H.

21. *See for e.g.* the Odisha COVID-19 (Amendment) Regulations 2020, Apr. 9, 2020, No. HFW-SCH-I_EMER-001-2020 9695/H.

22. Government of Odisha, Revenue and Disaster Management (Disaster Management) Department Notification no. 2232/R&DM (DM), April 19, 2020.

23. Government of Odisha, Health and Family Welfare Department, Order no. 8005/HA-Misc-01/2020, March 21, 2020.

found indulging in such activity, it will be treated as a punishable offence under these Regulations and other provisions of Law.”²⁴

It also gagged anyone other than the medical superintendent or persons authorised by them from speaking to the media. Such regulations were a setback to the civil society and NGOs, which attempted to independently verify the government’s COVID-19 numbers and audit the efficacy of governmental actions.

In addition to the amendments to the Epidemic Diseases Act and the regulations made thereunder, the state introduced several other enactments to streamline the economic transactions impacted by COVID-19 and enable digital transactions. For instance, it amended the Court Fees Act, which now allowed for online payment of court fees instead of physical purchase of stamps.²⁵ This was in furtherance of the Odisha high court’s decision to operate through video conferencing, conduct livestreaming of court room proceedings and allow e-filing.²⁶

The loss of livelihoods caused by the lockdowns required the state to provide support to various professions, industries and workers. For instance, the Odisha Advocates’ Welfare Fund was amended to enable the Bar Council to provide monetary assistance to lawyers during natural calamities, in addition to the previous grounds of death and superannuation.²⁷

To deal with the logistical difficulty of serving physical notices on delinquent officials, the government also enacted the Odisha Local Fund Audit (Amendment) Act, 2020. It introduced a provision to serve any decision, order, summons, notice or other communication through a newspaper announcement or affixing it in a conspicuous place, in addition to online communication through the human resources management system (HRMS) portal of the state.²⁸

Among the other logistical relaxations effected by the state, the government also extended the due dates for filing various indirect tax returns and compliances. This necessitated an amendment in the Odisha Goods and Services Act, 2017, which now conferred power on the government to extend deadlines for compliances in cases of *force majeure*, including epidemics.²⁹ The state also executed time-limit extensions, waiver of late fees, allowing of e-invoicing and so on through delegated legislations.³⁰

Omission and Missed Opportunities in the Legislative Agenda on the Pandemic

Odisha’s legislative response to the COVID-19 pandemic, particularly its amendments to the Epidemic Diseases Act, 1897, was very limited, and mostly enabled through subordinate legislations.

24. The Odisha COVID-19 Regulations, 2020, April 03, 2020, No. HFW-SCH-I_EMER-001-2020 9570/H.

25. Court Fees (Odisha Amendment) Act, 2020.

26. PTI, “Odisha Assembly passes bill to allow e-payment of court fee”, *New Indian Express*, Oct. 10, 2020, available at: <https://www.newindianexpress.com/states/odisha/2020/oct/01/odisha-assembly-passes-bill-to-allow-e-payment-of-court-fee-2204502.html> (last visited on Nov. 13, 2021).

27. The Odisha Advocates’ Welfare Fund (Amendment) Act, 2020.

28. The Odisha Local Fund Audit (Amendment) Act, 2020, s. 2.

29. The Odisha Goods and Services Tax (Amendment) Ordinance, 2020 (Ordinance 5 of 2020), later enacted into the Odisha Goods and Services Tax (Amendment) Act, 2020, s. 3.

30. See the Odisha Ministry of Finance notifications pertaining to GST, available at: <https://finance.odisha.gov.in/notification/gst?page=1> (last visited on Nov. 5, 2021).

The lack of an existing epidemic management system caused the government to respond in an ad hoc manner to the various crises as they developed. This is illustrated in the difficulties that arose due to the return of migrant workers to Odisha. First, there was confusion as to whether they should be allowed to return to the state. The Odisha high court ordered that they must test negative before they were allowed to return. It directed “the state government to ensure that all migrants who are in queue to come to Orissa should have tested COVID-19 negative before boarding the conveyance.”³¹ This order was subsequently stayed by the supreme court.³²

To its credit, the government of Odisha did recognise that the returning migrant workers needed assistance and attempted to respond to it. It created a single portal for the registration of travellers coming into Odisha (including migrant workers).³³ Within 48 hours of the launch of this portal, 4.82 lakh people had reportedly registered to return.³⁴ It set up help desks and facilitated trains for the migrant workers who wished to return, and provided them online e-passes and medical camps at major locations with provision of food and accommodation.³⁵ To ensure containment of the virus, contact tracing and quarantine norms were adopted. The village panchayats were directed under the Disaster Management Act to set up a registration facility and to make the necessary arrangements for temporary accommodation, food, water and sanitation of the quarantined migrant workers.³⁶ They were authorised to administer any gratuitous relief under the supervision of the District Disaster Management Authority and provide Rs. 2000 as an incentive to the quarantined persons. The government also provided some additional wages to workers under the Mukhyamantri Karma Tatpara Abhiyan or Mukta Yojana (MUKTA) and special monetary assistance to landless farmers registered under the Krushak Assistance for Livelihood and Income Augmentation (KALIA) Scheme.

The relative success in pre-registration, quick setting up of infrastructure and a decentralised assistance system helped contain the infection and led many to showcase Odisha’s success in handling the pandemic, especially the migration crisis.³⁷

However, the government’s ad hoc steps left many of the problems created by the pandemic unaddressed. For instance, other than the unemployment crisis, food security was imperilled and had created a

31. *Narayan Chandra Jena v. State of Odisha*, WP (c) No. 11573 of 2020, Odisha High Court Order dated May 7, 2020.

32. Live Law News Network, “SC stays Orissa HC Order on mandatory COVID-19 testing for migrants to enter Odisha”, *Live Law*, May 8, 2020, available at: <https://www.livelaw.in/top-stories/sc-stays-orissa-hc-order-on-mandatory-covid-19-testing-for-migrants-to-enter-odisha-156440> (last visited on Nov. 12, 2021).

33. See, COVID-19 Odisha State Portal, Online Registration of Persons Travelling to Odisha at: <https://covid19regd.odisha.gov.in/migrant-registration.aspx> (last visited on Nov. 6, 2021).

34. Ashutosh Mishra, “Odisha Govt Ill-Prepared to Handle the Lakhs of Migrant Workers Coming Home”, *The Wire*, May 4, 2020, available at: <https://thewire.in/government/odisha-migrant-workers-quarantine-jobs> (last visited on Nov. 13, 2021).

35. S. Meher and J. Nanda, Nabakrushna Choudhury Centre for Development Studies, Bhubaneswar, “COVID-19 and Migrant Workers- Challenges and Opportunities for Odisha”, working paper no. 79, (2020) p.17, available at: <https://ncds.nic.in/sites/default/files/WorkingandOccasionalPapers/WP79NCDS.pdf> (last visited on Nov. 13, 2021).

36. Government of Odisha, Revenue and Disaster Management (Disaster Management) Department Notification no. 2232/R&DM (DM), April 19, 2020.

37. Coalition for Disaster Resilient Infrastructure, NDMA, “Response to Covid-19 – Odisha”, (2021) available at: <https://ndma.gov.in/sites/default/files/PDF/covid/response-to-covid19-by-odisha.pdf> (last visited on Dec. 2, 2021).

hunger crisis.³⁸ The first phase of the National Family Health Survey (2019-2020) showed an increase in the number of underweight and severely wasted children under the age of five in as many as 16 states!³⁹

It is also pertinent to mention Odisha's disaster management system, which has been lauded as an effective and well-oiled machinery that quickly responds to any natural disaster. One of the reasons for such efficiency is because it is supported by the Odisha State Disaster Management Authority, which was established after the 1999 super cyclone (and accorded statutory backing in 2005).⁴⁰ Subsequently, the disaster management policy devised departmental plans, a relief code and detailed operational manuals for the state, district and village levels, which helped conduct routine activities. It is hoped that the state can similarly build upon its experiences during the pandemic to create a public health response system to efficiently deal with any such crises in the future.

Legislative Agenda on Industry and Labour

The long lockdowns implemented in 2020 resulted in many workers losing their jobs. Industrial losses caused a sharp drop in income, a rise in unemployment, casualisation and impoverishment.⁴¹ The lockdowns during April-May 2020 caused as many as 100 million job losses, some of which, subsequently, became permanent job losses.⁴² In Odisha, the growth rate during 2020-2021 fell to -4.91 percent⁴³—particularly labour-intensive sectors like industry (-8.83 percent), construction (-10.79 percent), manufacturing (-9.90 percent). In the service sector, hospitality and tourism saw sharp reductions.⁴⁴ The pandemic, along with the cyclone Amphan, also led to a 8.83 percent contraction in the agriculture sector and caused major job losses.⁴⁵

These circumstances led the government to take measures to ease the burden on industries, and kickstart the economy, which, in turn, it was hoped would improve employment. Legislative initiatives in this sector were primarily motivated by the government's desire to ease the burden of doing business and to improve competition. The government has carved out many exemptions specifically for the MSMEs, which are generally more labour-intensive compared to larger enterprises.

38. Ruma Bhargava and Megha Bhargava, "COVID-19 is creating a hunger catastrophe in India – here's an opportunity to break the cycle", June 15, 2021, *available at*: <https://www.weforum.org/agenda/2021/06/covid-19-pandemic-hunger-catastrophe-india-poverty-food-insecurity-relief/> (last visited on Dec. 2, 2021); Kavitha Iyer, "Hunger sweeps India in Covid's shadow as millions miss out on rations", *The Guardian*, July 14, 2021, *available at*: <https://www.theguardian.com/global-development/2021/jul/14/hunger-sweeps-india-in-covids-shadow-as-millions-miss-out-on-rations> (last visited on Dec. 2, 2021).

39. National Family Health Survey-5 (2019-2020), Key indicators from 22 states/UTs from phase-I, *available at*: http://rchiips.org/NFHS/NFHS-5_FCTS/NFHS-5%20State%20Factsheet%20Compendium_Phase-I.pdf (last visited on Dec. 3, 2021). It is also noteworthy that India's ranking in the Global Hunger Index has changed from 94 in 2020 to 101 in 2021, much below its neighbours, and ahead of only 15 countries. *See*, Global Hunger Index Scores By 2021 GHI Rank, *available at*: <https://www.globalhungerindex.org/ranking.html> (last visited on Dec. 20, 2021).

40. See Odisha Finance Department Resolution No. IFC- 74/99-51779/E, Dec. 28, 1999.

41. Rosa Abraham, Amit Basole *et al.*, *State of Working India 2021– One year of Covid-19*, (Centre for Sustainable Employment, Azim Premji University, 2021), *available at*: <https://cse.azimpremjiuniversity.edu.in/state-of-working-india/swi-2021> (last visited on Nov. 18, 2021).

42. *Ibid.*

43. Planning and Convergence Department, Directorate of Economics and Statistics, "Economic Survey of Odisha, 2021-22" (Government of Odisha, Feb. 2021) *available at*: <https://pc.odisha.gov.in/sites/default/files/2021-02/Odisha%20Economic%20Survey%202020-21.pdf> (last visited on Nov. 18, 2021).

44. *Ibid.*

45. *Ibid.*

This trend can be observed in the amendments carried out by Odisha, through an ordinance in July 2020, in the Industrial Disputes Act, 1947. The amendment increased the threshold of applicability of the Act from 100 to 300 workers.⁴⁶ It permitted industrial establishments employing less than 300 workers to lay-off, retrench and close their establishments without seeking prior government approval.⁴⁷ Practically all establishments, except for a few large factories and manual labour-intensive large establishments, could act at whim, risking the livelihoods of many.

In October 2020, the state also brought simultaneous amendments to the Factories Act, 1948 and the Contract Labour (Regulation and Abolition) Act, 1970 through ordinances,⁴⁸ to increase the threshold of their application as well. The latter Act was earlier applicable to any 'establishment' having 20 or more workers. The 20 threshold was present to exempt small and micro enterprises, typically run by families and individuals. The amendment increased the threshold applicability to establishments having 50 workers.⁴⁹ As a result, more establishments and their 'principal employers' or contractors did not have to register with the labour department and were not subject to any regulation or compliances under the Act. It is interesting to note that, as per the Economic Census of Odisha in 2013, about 82 percent of all 'establishments' were non-agricultural, accounting for about 83 percent of the total workers employed in the state, and the average employment per establishment was two to three persons.⁵⁰ The Odisha Economic Survey 2021, under the Contract Labour (Regulation and Abolition) Act, revealed that only 131 principal employers and 2006 contractors registered in the state during 2019-2020. The new amendment would further reduce this already small number.⁵¹

Similarly, the Factories Act amended the definition of factory to increase the employee threshold from ten to twenty (for factories using power in the manufacturing process) and 20 to 40 (for factories not using power in the manufacturing process).⁵² It also provided an enabling power to the government to exempt any new factory or class or description of new factories from all or any of the provisions of the legislation for a period of 1000 days from the date on which their commercial production starts.⁵³ The maximum allowed overtime was also increased from 75 to 115 hours. It is noteworthy that, prior to these amendments, the government, had amended the Factories Rules to allow shifts of 12 hours, instead of eight hours, in factories in May 2020.⁵⁴

These two ordinances were passed by the legislative assembly and enacted in the subsequent winter session. It is noteworthy that the amendments were adopted by the Assembly on the same day that they were tabled, with very little discussion and very little opposition.⁵⁵ Similar ordinances increasing the

46. Industrial Disputes (Odisha Amendment) Ordinance, 2020 (Ordinance 8 of 2020).

47. Subsequently this position has been adopted by the union government, which has repealed and subsumed the Industrial Disputes Act, 1947 into the Industrial Relations Code, 2020. Industrial Relations Code, 2020 (Act 35 of 2020), s. 77.

48. The Contract Labour (Regulation and Abolition) (Odisha Amendment) Ordinance, 2020 (Ordinance 13 of 2020) and the Factories (Odisha Amendment) Ordinance, 2020 (Ordinance 14 of 2020).

49. The Contract Labour (Regulation and Abolition) (Odisha Amendment) Ordinance, 2020 (Ordinance 13 of 2020), s. 2.

50. Directorate of Economics and Statistics, "State Report on Sixth Economic Census of Odisha" (2013), available at: <http://www.desorissa.nic.in/pdf/sixth-eco-census-report.pdf> (last visited on Dec. 18, 2021).

51. *Supra* note 43 at 38.

52. The Factories (Odisha Amendment) Ordinance, 2020 (Ordinance 14 of 2020) s. 2.

53. *Id.* s. 3.

54. Labour and ESI department, Government of Odisha, Notification no. LL2-FE-0003-2020-2716/LESI, May 8, 2020.

55. See the Daily Brief Record of Proceedings, Nov. 24, 2020, Odisha Legislative Assembly, 16th Assembly, 5th Session, Bulletin no. 5.

threshold applicability or even outright suspending the application of labour welfare legislations,⁵⁶ were also been passed in other states like Uttar Pradesh, Bihar, Assam, Madhya Pradesh, Goa and Gujarat.⁵⁷

The government justified these changes by claiming that they were intended to “facilitate investment, generation of employment and counter the hardships caused to MSMEs due to (the) COVID-19 pandemic.”⁵⁸ These changes allowed a greater number of factories and establishments to hire and fire employees at will. There was little or no oversight regarding provision of facilities to the workers. In a state where labour welfare legislations were already being honoured more in the breach than in observance, it is worth pondering whether the new ordinances would indeed generate employment or would only displace the burden of the pandemic from the employers onto the workers. The fear that these changes would adversely affect marginal workers, especially women, youth and contract workers, who were already struggling due to the pandemic, were legitimate. Constitutionality of these enactments aside, it is worth asking if the ease of doing business should be accorded greater priority than the constitutional values of promoting, protecting and respecting people’s livelihoods.⁵⁹

The Essential Services (Maintenance) Act was also modified, to expand the definition and scope of ‘essential services’ and to allow the state government to declare strikes illegal if it thought that the strike would affect the continuance of a public utility service.⁶⁰ The amendment also imposed disciplinary action on state government employees for participating in ‘illegal strikes’. Further, it made funding ‘illegal strikes’ an offence punishable with a fine of Rs. 5000 or imprisonment up to one year or both.⁶¹ These amendments, which were justified in the name of improving the delivery of public services, in practice restricted employees’ rights of association, assembly and strikes.

To further the government’s agenda to promote infrastructure development and generate employment, the Assembly passed the Odisha Industrial Development Corporation (Amendment) Bill, 2020. The Odisha Industrial Development Corporation (IDCO) was set up under the Odisha Industrial Development Corporation Act, 1980 to act as the nodal agency of the state government to secure, assist and develop industrial regions, developmental projects, and special economic zones (SEZs). This amendment empowered IDCO to take up ‘social infrastructure projects’, which included everything from power supply, sewerage and effluent treatment plants to educational institutions, universities, hotels, multiplexes, resorts, sports complexes, commercial complexes, healthcare facilities and tourism projects.⁶²

56. See, for e.g., Uttar Pradesh Temporary Exemption from Certain Labour Laws Ordinance, 2020.

57. Aanchal Magazine, “States compete to bring in sweeping changes to labour laws, ‘competition to attract capital’, say analysts”, *The Indian Express*, May 24, 2020, available at: <https://indianexpress.com/article/business/economy/states-changing-labour-laws-competition-attract-capital-analysts-6424424/> (last visited on Nov. 20, 2021).

58. Debabrata Mohanty, “Odisha govt moves amendments to University and Factories Act as assembly session starts”, *Hindustan Times*, Sep. 30, 2020, available at: <https://www.hindustantimes.com/india-news/odisha-govt-moves-amendments-to-university-and-factories-act-as-assembly-session-starts/story-r5ni9SsyMPd0xUF59qdfCL.html> (last visited on Nov. 20, 2021).

59. Although ensuring the right to adequate means of livelihood is a directive principle of state policy (article 39), states have the obligation to respect and not interfere with people’s livelihoods without following due process, under article 21 of the Constitution (see, for e.g., *Olga Tellis v. Bombay Municipal Corporation*, AIR 1986 SC 180).

60. Odisha Essential Services (Maintenance) Amendment Act, 2020.

61. *Ibid.*

62. Odisha Industrial Development Corporation (Amendment) Act, 2020.

Other Legislations

In 2020, the Odisha government introduced a bill to amend the Odisha Universities Act, 1989. The Odisha Universities (Amendment) Act, 2020 centralises several functions of most state universities in Odisha.⁶³ The amendment brings all appointments, including administrative and teaching positions into the ambit of the Odisha Public Service Commission.⁶⁴ Similarly, the appointment of non-teaching staff would now be done by the Staff Selection Board.⁶⁵ It has changed the appointment procedure of important officials of universities, including the vice-chancellor, registrar and comptroller of finance by changing the composition of selection committees involved in their appointment.⁶⁶ The amendment has also changed the composition of governing bodies of the universities (called the ‘Syndicate’).⁶⁷

This amendment was sought to be justified on grounds of filling massive vacancies in universities and improving their functioning. It has been criticised for impinging on the autonomy of the universities and its validity has been challenged before the Odisha high court.⁶⁸ The University Grants Commission (UGC), in its affidavit before the court, has also found some of the provisions, such as the one on the appointment of vice-chancellors, as not being in conformity with UGC guidelines.⁶⁹

These amendments could have a far-reaching impact on the autonomy of universities. They will lose the freedom to set their own standards and requirements for hiring their teaching staff, with the public service commission using a one-size-fits-all approach to hiring in all universities. The universities will also lose the flexibility of hiring people in departments and for courses depending on where they are needed. Instead, university hiring would need to go through the additional bureaucratic rigmarole of the public service commission. The state’s control over the process of appointing key administrative personnel such as the vice-chancellor and registrar may also advantage persons who are personally or ideologically aligned with the government. Thus, universities will find their authority compromised, with the government taking key decisions on hiring, resource allocation and curriculum development. How can liberal and free knowledge be advanced if universities are required to function under the shadow of such bureaucratic oversight?

During this year, the state also introduced the Odisha Municipal Laws (Amendment) Bill, 2020 to amend the Odisha Municipal Act, 1950, and the Odisha Municipal Corporation Act, 2003 to cap the reservation in urban local bodies at 50 percent.⁷⁰ This was in line with a prior decision of the Odisha high court, which was upheld by the supreme court. However, this bill was subsequently modified to include provisions on horizontal reservations for women, and was finally passed in September 2021.⁷¹

63. Odisha Universities (Amendment) Act, 2020.

64. *Id.*, s. 14.

65. *Id.*, s. 15.

66. *Id.*, s. 6-8.

67. *Id.*, s. 10.

68. Lal Mohan Patnaik, “Odisha on validity of university amendment act: HC notice to Centre”, *The Times of India*, Dec.17, 2020, available at: <https://timesofindia.indiatimes.com/city/cuttack/odisha-on-validity-of-university-amendment-act-hc-notice-to-centre/articleshow/79774484.cms> (last visited on Nov. 22, 2021).

69. Express News Service, “UGC takes stand against Odisha Universities Act”, *The New Indian Express* June 22, 2021, available at: <https://www.newindianexpress.com/states/odisha/2021/jun/22/ugc-takes-stand-against-odisha-universities-act-2319780.html> (last visited on Nov. 22, 2021).

70. Odisha Municipal Laws (Amendment) Bill, 2020.

71. Odisha Municipal Laws (Amendment) Act, 2021.

Odisha also introduced the Odisha State Commission for Backward Classes (Amendment) Bill, 2020 which empowered the State Commission to undertake surveys of the social and educational conditions of the people belonging to the backward classes “*as may be decided by the State Government, from time to time*”.⁷² The bill was subsequently passed in January 2021. It is noteworthy that the Odisha State Commission for Backward Classes (OSCBC) Act was enacted in 1993. The first Commission was also set up in 1993, but it did not have any power to conduct these surveys. Further, after its tenure expired, it was never reconstituted. Neither were there reservations for OBCs in educational institutions and jobs, for which the state was criticised by the chairperson of the National Commission for Backward Classes in February 2020.⁷³ Subsequently, Odisha set up a new State Commission on Backward Classes. Odisha had demanded for a simultaneous socio-economic caste census along with the 2021 population census, which was turned down by the union government.⁷⁴ In this context, the state decided to empower the OSCBC to conduct its own social and educational surveys.

Trend of Legislating through Ordinances

Odisha passed a large number of ordinances in 2020. The pandemic and delay in the sessions seem to have provided the government an excuse to pass almost every law first as an ordinance and then table it as a bill in the state legislative assembly. This is reflected in the fact that most of the bills introduced in the assembly in 2020 had already been promulgated as ordinances.⁷⁵ Except for a few bills such as the Odisha Essential Services (Maintenance) Amendment Bill, the Odisha State Commission for Backward Classes (Amendment) Bill, and the Odisha Industrial Infrastructure Development Corporation Bill, the other bills had already been made into law through the ordinance route.

72. Odisha State Commission for Backward Classes (Amendment) Act, 2020, s. 2.

73. Meera Mohanty, “Odisha finally gets a Commission for Backward Classes”, *The Economic Times*, Feb. 12, 2020, available at: <https://economictimes.indiatimes.com/news/politics-and-nation/odisha-finally-gets-a-commission-for-backward-classes/articleshow/74107136.cms?from=mdr> (last visited on Nov. 22, 2021).

74. *Ibid.*

75. The following ordinances were promulgated by Odisha in 2020:

1. Epidemic Diseases (Amendment) Ordinance, 2020 (Ordinance 1 of 2020).
2. Odisha Contingency Fund (Amendment) Ordinance, 2020 (Ordinance 2 of 2020).
3. Odisha Agricultural Produce and Livestock Contract Farming and Services (Promotion and Facilitation) Ordinance, 2020 (Ordinance 3 of 2020).
4. Odisha Agricultural Produce and Livestock Marketing (Promotion and Facilitation) Ordinance, 2020 (Ordinance 4 of 2020).
5. Odisha Goods and Services Tax (Amendment) Ordinance, 2020 (Ordinance 5 of 2020).
6. Odisha Goods and Services Tax (Second Amendment) Ordinance, 2020 (Ordinance 6 of 2020).
7. Court-Fees (Odisha Amendment) Ordinance, 2020 (Ordinance 7 of 2020).
8. Industrial Disputes (Odisha Amendment) Ordinance, 2020 (Ordinance 8 of 2020).
9. Odisha Municipal Laws (Amendment) Ordinance, 2020 (Ordinance 9 of 2020).
10. Epidemic Diseases (Odisha Second Amendment) Ordinance, 2020 (Ordinance 10 of 2020).
11. Odisha Advocates’ Welfare Fund (Amendment) Ordinance, 2020 (Ordinance 11 of 2020).
12. Odisha Universities (Amendment) Ordinance, 2020 (Ordinance 12 of 2020).
13. Contract Labour (Regulation and Abolition) (Odisha Amendment) Ordinance, 2020 (Ordinance 13 of 2020).
14. Factories (Odisha Amendment) Ordinance, 2020 (Ordinance 14 of 2020).
15. Odisha Agricultural Produce and Livestock Marketing (Promotion and Facilitation) Second Ordinance, 2020 (Ordinance 15 of 2020).

The Constitution provides that the governor can promulgate an ordinance during recess of the state legislature only if he “*is satisfied that circumstances exist which render it necessary for him to take immediate action.*”⁷⁶ The supreme court of India has made it inescapably clear that the power to promulgate ordinances is an extraordinary power, which has to be used only to meet extraordinary situations and not to serve political ends.⁷⁷ The ‘satisfaction’ of the government regarding existence of circumstances requiring promulgation of the ordinance in question is also not immune from judicial review.⁷⁸ The court in the *Krishna Kumar & Anr v. State of Bihar* case noted:

“The Governor is required to form a satisfaction of the existence of circumstances which makes it necessary to take immediate action. Necessity is distinguished from a mere desirability. The expression “necessity” coupled with “immediate action” conveys the sense that it is imperative due to an emergent situation to promulgate an Ordinance during the period when the legislature is not in session.”⁷⁹

It accordingly held that courts could interfere if the ordinance had been promulgated to secure an oblique purpose, or on extraneous grounds.

Keeping the above principles in mind, one may question whether most of the ordinances issued in 2020 were required. Those amending the labour legislations and the Universities Act were introduced only a few weeks before the start of the session and, definitely, there was no urgency justifying their promulgation by the government. The intent seems to be to present the legislature with a *fait accompli*. However, considering that the ruling party Biju Janata Dal (BJD) enjoyed a large majority in the state legislature, the apprehension is inexplicable. Regular resort to ordinance-making seems to indicate that the government is using it as a routine procedure of law-making to enable it to gauge public opinion on the subject before it is enacted by the legislature.

This can be exemplified by the recent controversial farm laws, which were promulgated as ordinances in Odisha and sparked nationwide protests. Odisha passed the Odisha Agricultural Produce and Livestock Contract Farming and Services (Promotion and Facilitation) Ordinance, and the Odisha Agricultural Produce and Livestock Marketing (Promotion and Facilitation) Ordinance, in May 2020, a few weeks before they were passed by Parliament. The government claimed that these ordinances would help remove fragmentation of agricultural markets, enable farmers to sell their produce anywhere and help set up private market yards, farmer-consumer market yards, etc.⁸⁰ These ordinances were not introduced in the Assembly as bills during the monsoon session, presumably due to the protests against very similar farm laws passed by the centre, and were re-promulgated later. During the winter session, the government introduced the Odisha Agricultural Produce and Livestock Marketing (Promotion and Facilitation) Bill, 2020. However, the intense protests and the BJD’s own position

76. The Constitution of India, art. 213.

77. See, e.g., *DC Wadhwa v. State of Bihar* (1987) SCR (1) 798; *Krishna Kumar Singh & Anr v. State of Bihar* (2017) 3 SCC 1 and *RC Cooper v. Union of India*, (1970) SCR (3) 530.

78. *Krishna Kumar Singh & Anr v. State of Bihar* (2017) 3 SCC 1.

79. *Ibid.*

80. Debabrata Mohanty, “Odisha dithers over its farming ordinances as monsoon session ends”, *Hindustan Times*, Oct. 6, 2020, available at: <https://www.hindustantimes.com/india-news/odisha-dithers-over-its-farming-ordinances-as-monsoon-session-ends/story-KHbqhVJI3xKgthCzAib1HL.html> (last visited on Nov. 14, 2021); Satyasundar Barik, Odisha re-promulgates ordinance on APMCs, Available at: <https://www.thehindu.com/news/national/other-states/odisha-repromulgates-ordinance-on-apmcs/article33796206.ece> (last visited on Nov. 14, 2021).

against the central farm laws resulted in a quiet burial of this bill and lapse of these ordinances. The point to be noted is that there was no reason to pass such important and controversial laws through ordinance. The purported justification of ‘providing immediate relief to farmers during the pandemic’⁸¹ seems questionable. However, it is heartening that the government was willing to wait before enacting it through the legislature, which given its absolute majority, would have been easy to do.

While the move of allowing the lapse of the ordinances, which demonstrates the willingness of the government to engage with the stakeholders and be open to their feedback, is commendable, this objective could have been better achieved through a pre-legislation consultative process. Promulgating an ordinance, to gauge public opinion, seems to be putting the cart before the horse. The COVID-19 pandemic seems to have contributed to normalising ordinances as a mode of law-making. This is an unfortunate development and does not augur well for the constitutional practices of the state. It is better to develop a practice of consultation and deliberation, rather than assessing public opinion by making ordinances. These executive laws should only be reserved for true emergencies.

Conclusion

In terms of legislative business, in 2020, Odisha appears to have been dominated by pandemic-influenced legislations. Overall, the legislative response to the pandemic was well timed and effective, and enabled the government to prevent it from worsening.

The developments in the industry and labour sectors signal a regulatory withdrawal, signalling the government’s belief that improving the ease of doing business will boost the economy and will take care of issues of unemployment. Sadly, this might have had the effect of shifting the burden of the pandemic from industries to the workers. As for other sectors, a trend of centralisation has been observed, for instance, in the amendments made in the Odisha Universities Act.

Further, there are some concerning developments and trends which seem contrary to best legislative practices, such as conducting ordinary legislative business through ordinance making. Normalising ordinance as a pre-enactment step seems unnecessary and contrary to the intention behind the inclusion of this power in the Constitution.

81. Express News Service, “Odisha to bring agriculture ordinance for farmers”, *The New Indian Express*, Nov. 13, 2020, available at: <https://www.newindianexpress.com/states/odisha/2020/nov/13/odisha-to-bring-agriculture-ordinance-for-farmers-2223068.html> (last visited on Nov. 14, 2021).