

The Occupational Safety, Health and Working Conditions Code, 2019

Summary, Salient Features and Comparison with the existing labour legislations

I. Introduction

The Occupational Safety, Health and Working Conditions (OSHWC) Code, 2019 was introduced in the Lok Sabha on 23rd July, 2019 by the Ministry of Labour & Employment after inter-ministerial consultations and suggestions received from the public/stakeholders, incorporates the essential features of the **13 enactments** relating to Factories, Dock Workers, Building and other Construction Workers, Plantation Labour, Contract Labour, Inter-State Migrant Workers, Working Journalists and other Newspaper Employees, Motor Transport Workers, Sales Promotion Employees, Beedi and Cigar Workers, Cine Workers and Cinema Theatre Workers.¹

The effort of labour law rationalisation comes in the backdrop of the Second National Commission on Labour (2002) and Centre's intensive labour law reforms. The different kinds of employees and workers have been brought under a single Code which will govern safety standards, health, working conditions, and inspections. *The objectives of the Code can be seen as prescribing uniform standards, reducing paperwork, promoting ease of doing business, and reducing administrative bottlenecks such as multiple registrations.* It is essential to view this amalgamation through the lens of its perceived impact on the workers as well. Since the Code covers 12 different kinds of workers, including factories, contract labour, inter-state migrant workers, building and construction workers, and so forth, the rationalisation must be closely scrutinised.

There is a large number of workforce currently in the industries being covered by the Code which will consequently be governed by it. **In terms of growth in the industrial workforce, the number of people employed as workers in factories has also been going up.** According to the Annual Survey of Industries 2016- 2017, conducted by the Ministry of Statistic and Programme Implementation (MoSPI), Government of India, there were nearly **1,94,380 factories in the country registered under the Factories Act, employing a huge 1.2 crore workers as compared to 71 lakh in 2005-2006.**

Even though there is no consolidated data on the number of contract labour employed in different industries in India, the total number of contract labour engaged in different Public Sector establishments and offices of

¹ Parliamentary Standing Committee Report on the Occupational Safety, Health, and Working Conditions Bill 2019', http://164.100.47.193/lssccommittee/Labour/17_Labour_4.pdf, accessed as on 27th February 2020.

the Central Government in the Central Sphere, has been increasing constantly. It has increased from 8.39 lakh in 2015 to 13.6 lakhs in 2019.²

Many of the workers who are engaged contractually or who have migrated from different areas of the country are engaged in building and other construction work. As per estimates provided by National Sample Survey 2010-11, there are around 5 crore workers engaged in building and construction. As per the information from different states, the number of registered beneficiaries under various State Building and Other Construction Workers' Welfare Boards are 3.06 crores on 31.03.2018³.

The immensity of people engaged in different sectors and industries makes it essential to purvey the Acts that are meant for the welfare of the vulnerable working populations, such as contract labour and inter-state migrant workers. Considering the huge number of workers in these sectors, this brief analysis will cover the complete Code, while touching upon the changing contours of labour regulation relating to migrant workers and contract labour as an attempt to gauge the Code's possible impact on workers' rights.

II. OSHWC Code and Migrant Workers

As stated above, each of the different Acts being amalgamated had a very specific context and objective with which they had been enacted. Some of the Acts are quite old, such as the 70 year old Factories Act 1948, yet they are indispensable to the regulation and control of working conditions at particular worksites. Many of these Acts also address concerns of targeted working populations, among which are the inter-state migrant workers- one of the largest and most vulnerable groups in the country.

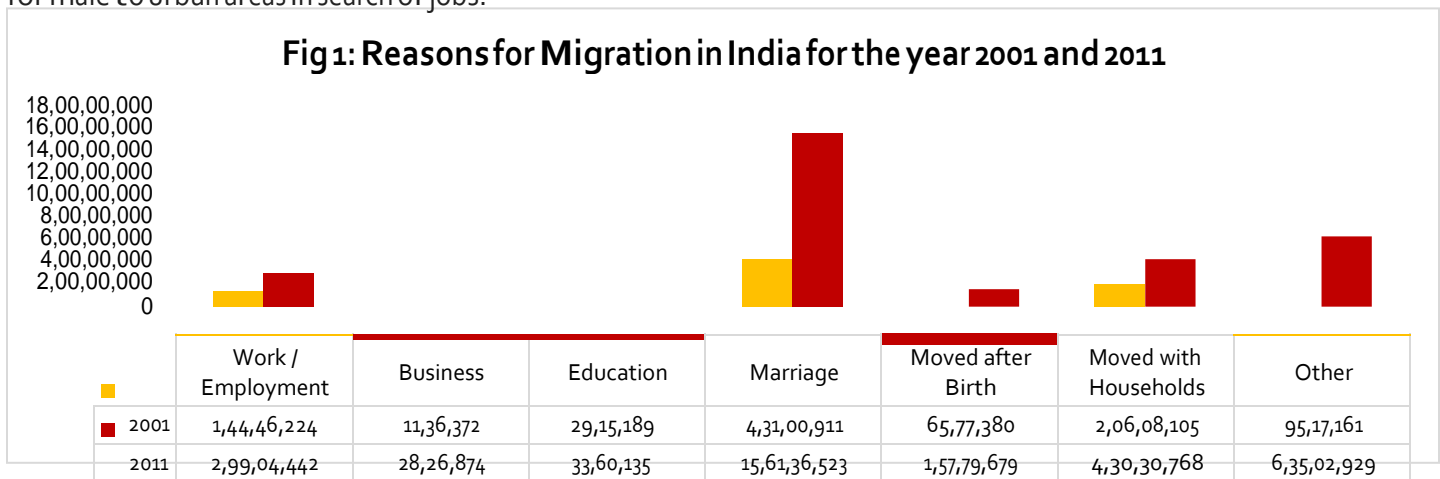
To understand the magnitude of labour migration in India, one can look at the Census 2011 which calculated the total number of internal migrants in India, both inter-state and intra-state to be at a massive 13.9 crore people. The major source states (prevalent out-migration) were Uttar Pradesh, Bihar, Punjab, Madhya Pradesh, and West Bengal. The biggest destination states (prevalent inward migration) were Maharashtra, Gujarat, Tamil Nadu, Kerala, Delhi, and Andhra Pradesh. In addition to this, the Economic Survey of India 2017 provided the estimate of inter-state migration to be around 90 lakh people annually from 2011 to 2016. There has been a substantial increase of migration due to reasons of livelihood and employment in the past two decades as well.

The Census 2011 and various other government reports related to migration across the country have shown strong proof showcasing movement of migrants across states, due to search of employment and livelihood.

² Rajya Sabha Unstarred Question No. 2674, dated on 11.12.2019

³ Rajya Sabha Unstarred Question No. 919, dated on 25.07.2018

Labour migration has been rapidly growing, because of which it is essential to study the amalgamation of the Inter-State Migrant Workers Act into the OSH Code, because it is the sole legislation related to inter-state migrant workers. Fig. 1, highlights the key reasons behind migration for the year 2001 and 2011 in India. It is interesting to note the increase in number of migration due to marriage which is not limited to migration for female but equally for male to urban areas in search of jobs.



Source: Census 2001 and 2011.

III. Consolidation of 13 Labour Laws

The proposed Code seeks to consolidate 13 existing labour laws⁴, which are:

13 Existing Laws	
	Factories Act, 1948 (Factories Act);
	Contract Labour (Regulation and Abolition) Act, 1970 (CLRA);
	Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979
	Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996
	Plantations Labour Act, 1951 (Plantations Labour Act); Mines
	Act, 1952 (Mines Act);
	Dock Workers (Safety, Health and Welfare) Act, 1986;
	Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (Working Journalists Act);
	Working Journalists (Fixation of Rates of Wages) Act, 1958;
	Motor Transport Workers Act, 1961 (Motor Workers Act);
	Sales Promotion Employees (Condition of Service) Act, 1976 (Sales Employees Act); Beedi and
	Cigar Workers (Conditions of Employment) Act, 1966 (Beedi Workers Act); and Cine Workers and
	Cinema Theatre Workers Act, 1981 (Cine Workers Act).

⁴ Parliamentary Standing Committee Report on Occupational Safety, Health, and Working Conditions Bill 2019'

IV. Salient Features of OSHWC Code

With the objective of regulating the occupational safety, health and working conditions of all persons employed in an establishment, the Code provides for the following -

1. **Consolidation of the existing Labour Acts:** Widespread changes to registration by reducing the different kinds of registration processes from 6 different Acts to one registration under the Code. Different licenses for factory, contract labour, beedi and cigar workers, etc. have been reduced to one license. A single All India License has been proposed for contractors which is not linked to the work order.
2. **Decrease in number of Registers:** Reduced the number of registers to be maintained and number of returns to be filed by the employer under the various Acts.
3. **Inclusion in definition:** Definition of Inter-state Migrant Worker has been changed to include the workers employed directly by the principal employer. Further, definition of family now includes grandparents as well who can take benefit of the welfare provisions extended to families of workers.
4. **National Occupational Safety and Health Advisory Board:** Multiple committees under the earlier legislations have been substituted by one National Occupational Safety and Health Advisory Board, with tripartite representation from employees, employers and State Governments in its functioning and decision-making.
5. **Uniform Thresholds:** Uniform thresholds for welfare facilities, health, and working conditions for all establishments covered by the OSH Code, with delegation of rule-making in this regard to the government.
6. **Increase in working hours for Female workers:** Provision for allowing women to work from 7 pm to 6 am in establishments subject to their written consent and conditions imposed by state government regarding their safety and working conditions. Women were previously barred from working at night by Factories Act 1948.
7. **Special Provisions:** Combined and amalgamated special provisions relating to Inter-State Migrant Workers and Contract Labour.

V. Coverage of OSHWC Code

With the given salient features, the OSHWC Code will apply to all establishments, meaning (a) *a place where any industry, trade, business, manufacture or occupation is carried on and employing 10 or more workers*, (b) *a factory, motor transport undertaking, newspaper establishment, audio-video production, building and other construction work or plantation employing 10 or more workers*, and (c) *a mine or a dock. It may be noted that*

presently, the threshold for the applicability of the relevant laws varies from one or more employees to 20 or more employees.

Since the Code includes inter-state migrant workers under the term '**contract labour**', it can be understood that the Code applies to all establishments employing 20 or more inter-state migrant workers as well. This is a major change from the ISMW Act, which was applicable to all establishments employing 5 or more inter-state migrant workers.

There is ambiguity in the understanding of the applicability of the Code to offices of Central Government because an '**employer**', which includes a person who may be specified by the authority in the instance of an establishment carried on by the State or Central Government, is bound by the duties under this Code, whereas Clause 1(4) excludes all offices of the Central government and State Government.

VI. Major Changes in Definitions

It is essential to analyse and understand the major changes undertaken in the Code with respect to the definition. Mentioned below are some of the major changes in definitions of the Code:

- i. **Employee** means a person employed on wages by an establishment to do any skilled, semi-skilled, unskilled, manual, operational, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied. The definition of "employee" varied under the various legislations, which has now been harmonised under the OSHWCC Code.
- ii. **Worker** means any person employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and includes working journalists and sales promotion employees. The definition of "worker" varied under the various legislations, which has now been harmonised under the OSHWC Code.
- iii. **Contract labour** now includes inter-state migrant workers as well and has been modified to exclude workers who are regularly employed by the contractor for any activity of his establishment and the employment is governed by mutually accepted standards of conditions of employment.
- iv. **Inter-state Migrant Worker** now includes inter-state migrant workers who are directly employed by the principal employer.

- v. **Inspectors** are now named as Inspector-cum-facilitator under the Code, which is a departure from the earlier legislations as it expands their scope of functions.
- vi. The term '**audio-visual worker**' expands on the previous term used in the Cine Workers Act, i.e., 'cine worker'. This expansion of the definition of cine worker now extends the protection and standards for working conditions by workers engaged in production of cinema and theatre to audio-visual workers employed in different forms of digital media. Individuals engaged for animation, VFX, design, etc. will also be covered by the OSH Code.
- vii. OSHWC Code widens its ambit to extend its coverage to all establishments which employ persons who are engaged in undertaking sales or business promotion. Previously, the Sales Employees Act only covered pharmaceutical establishments and other notified establishments.

VII. Authorities under the Code

A. Main Authorities under the Code

a. Occupational Health and Safety Advisory Board

The OSHWC Code provides for a single National Occupational Safety and Health Advisory Board to be constituted by the Central Government, alongside a board of the same nature to be constituted by the state governments. The boards will provide insights to the Central and State Governments with respect to rules, regulations, and facilitate optimal functioning, and execution of the OSH Code.

The National OSHWC Advisory and State Boards will thus replace existing the advisory boards under different legislations such as Contract Labour Act and BOCW Act where such boards are constituted with representation from the respective stakeholders. For instance, the BOCW Act provides for the formation and functions of the Central and State BOCW advisory committees. These committees have diverse and focused representation from essential stakeholders such as building workers, engineers, architects and insurance providers.

b. Safety committee and safety officers

The Central or State Government may require particular establishments to constitute a Safety Committee consisting of equal representatives of employers and workers working in that establishment. This is an important power vested with the government to directly intervene in the issues surrounding safety and working conditions of establishments by requiring them to constitute safety committees.

In addition to the safety committee, the Code requires employers to appoint safety officers for maintaining the safety standards of the establishment, in every factory, building or other construction work which employ more than 500 workers, or mine employing 100 or more workers.

c. Inspector-cum-facilitator

The Inspector-cum-Facilitator is required to conduct regular inspections as well as inquiries into accidents. In the case of mines, factories, docks, and building and construction workers, the Inspector-cum-Facilitator can also make decisions so as to reduce the number of employees working in certain sections of the premises, as well as prohibit work in dangerous situations.

The change in nomenclature can be seen as expanding the functions of the Inspector to inspect and ensure standards are being followed as well as to facilitate a better working environment for workers.

In addition, the Code provides for web-based random inspections by Inspector-cum-Facilitators of establishments outside of their jurisdiction, including reviewing and verifying of documents through online systems without a physical inspection.

B. **Authorities removed in the Code**

While amalgamating authorities, the Code has omitted some important authorities provided under the different Acts.

- a. Under the BOCWA, a Welfare Board was to be formed in each state, for carrying out a variety of functions centered on providing financial assistance and welfare benefits to the workers.
- b. The Factories Act makes a provision for the Government to form a Site Appraisal Committee to grant permission for the location of a factory involving a hazardous process.
- c. The State Advisory Board and Central Advisory Board under the Contract Labour Act have also been omitted in the Code

VIII. **Duties of Employer: Comparative Analysis**

There are several duties laid down for the employer⁵ to perform regardless of the nature of the establishment. The employer must issue a letter of appointment to every employee with all information as is laid down by the appropriate government.

⁵ Section 2(s), Occupation Safety, Health and Working Conditions Code, 2019

The primary duty of the employer is to ensure that the workplace is free from hazards or conditions which may cause injury to workers or employees. In addition, he must provide health check-ups for the employees, and comply with the standards as prescribed under the Code, regulations, rules, etc.

A. Health and working conditions

The OSHWC Code provides for the Central government to prescribe the health and working conditions, and welfare facilities, which must be adhered to by employers. In comparison, the different subsumed Acts expressly specified the conditions to be maintained in establishments.

The **Factories Act** lays down extensive measures to be undertaken by employers to ensure **safety of workers** when handling machines, such as - fencing of machines, safeguards while examining machinery and in case of self-acting and revolving machinery, maintenance of hoists and lifts; as well as precautions to be undertaken against dangerous fumes, explosive dust, fires

In contrast, the OSHWC Code lays down no specifications for maintenance of safety in factories. This has been left to the appropriate government to prescribe through rule-making.

The Factories Act further went on to lay down provisions with respect to **working conditions** -

- a. Cleanliness of the factory, including daily removal of dirt, disinfectant cleaning, drainage and painting
- b. Disposal of waste from the manufacturing process after being rendered innocuous
- c. Ventilation and temperature control to the comfort of the workers
- d. Space specifications per worker to avoid overcrowding

Along with mandating specific health and safety measures, the Act also made the **employers' license liable for cancellation, upon non-compliance with these standards.**

Akin to the above, the **Mines Act** prescribes extensive measures to be taken by the employer for the medical safety of workers including;

- a. **Medical appliances** during all work hours in the charge of trained persons,
- b. **Conveyance to hospitals or dispensaries.**
- c. First-aid room in every mine employing more than one hundred and fifty persons

The **BOCW Act** provided for the following standards –

- **Accommodation:** Employers must provide all workers with free, temporary accommodation near the work site for the period of construction, with separate cooking place, bathing, washing and lavatory facilities.

- **Creche:** The Act mandated the provision of a creche where more than 50 female workers are employed.

All three legislations require the provision of effective arrangements for drinking water at suitable points as specified as well as sufficient number of latrines and urinals which must have adequate lighting and ventilation whilst maintaining clean and sanitary conditions.

The OSHWC Code however, provides for no such specific measures and leaves it to the appropriate government body to prescribe the same through rule-making.

B. Hours of Work, Annual Leave, Weekly Work-days, etc.

All establishments will only be allowed to make the **workers work for 6 days in a week**, with the hours of work being left to the discretion of the appropriate government as the case may be. But the hours of work for working journalists has been prescribed to a maximum of 144 hours of work during a period of four consecutive weeks.

Taking into account the demanding nature of work, the Mines Act laid restrictions on the hours of work in any day. Barring exemptions, the Act does not allow any worker to work in the mine for more than ten hours in any day inclusive of overtime. The Act allows every woman employed in a mine above ground an interval of at least eleven hours between the termination of employment and the commencement of the next period of employment. The OSHWC Code however, does not make any such specifications and leaves it to the discretion of the appropriate government body.

Under the present labour law regime, many statutes provide a particular number of days that a worker should work with their employer to avail annual leave. In place of the different number of days under old acts such as Factories Act and the Mines Act, the OSHWC Code **provides that every worker shall be entitled to one day of leave for every 20 days of work with the condition that he has worked for 180 days or more in the previous year.**

The Mines Act also lays down a system for calculating wages to be paid to workers during leave periods, including in cases of termination or quitting of employment. The OSHWC Code does not specify any such process, thereby reducing - *i) the clarity that workers may have with respect to the wages paid during leave period; ii) the accountability of employers in instances of termination or quitting of employment.*

C. Employment of Women at Night

The Factories Act had laid down that no woman shall be required or allowed to work in any factory except between the hours of 6 am and 7 pm. A similar restriction is provided in the Plantations Labour Act, which may be waived with the state government's permission, as well as in the Mines Act, which goes further to restrict employment of women altogether in any part of a mine which is below the ground.

The OSHWC Code omits these provisions, providing that women workers can be allowed to work between 7 pm and 6 am, upon their written consent, and the State Government, considering the safety and working conditions, will notify such establishments.

D. Welfare Facilities

The provisions in relation to the welfare of the workers have been revised in the OSHWC Code. Previously, these provisions in the respective laws has differing thresholds of applicability, the Code lays down uniform thresholds for the provision of:-

1. Canteen- 100 or more workers including contract labour.
2. Separate Living Spaces, Lunch-room and Restrooms for male, female, and transgender - 50 or more workers.
3. Appointment of Welfare Officers - 250 or more workers.
4. Creche - 50 or more workers
5. Ambulance room - 500 or more workers at factory, mine, building and other construction work

An important omission in the Code is that of registration of workers as beneficiaries. The BOCW Act provided for compulsory registration of workers as beneficiaries, and for issuance for identity cards to each and every worker. In addition, it required setting up of a **"welfare fund"** to pay for these welfare benefits, which were to be paid by the Board to the beneficiaries registered under the Act.

The OSHWCC Code however, has no mention of such a registration or welfare fund for payment of benefits.

IX. Provisions Relating to ISMW Act: Focus on Migrant Workers

There are certain provisions which have been completely removed in the transition from the ISMW Act to the OSH Code changing the nature of duties and responsibilities of the contractor. For getting a clearer picture on how this has been done, the parts of the sections which have become missing which were beneficial for the ISMW under the old Act are as follows:

- a. **The Contractor was duty-bound to furnish particulars of the ISMW recruited in the Home state, and also in the Destination State within 15 days of the date of recruitment.** This provision is not in the Code.
- b. **The contractor was supposed to provide the worker with a passbook in Hindi or English or Regional Language.** This contained many important details such as name and place of establishment of employment, period of employment, rates of wages, etc. Code does not require any such passbook to be issued.
- c. **If any ISMW Act is ceased to be an employee of an establishment, under Section 12(1)(c) the contractor had to furnish a return to both Home & Destination State,** but the Code does not mandate such furnishing.

X. Special Provisions

In addition to the provisions mentioned above, the legislations provided for some special provisions, keeping in mind the unique nature of work performed by each category of workers in different establishments.

A. Factories Act 1948

- a. The restriction on employment of young persons in certain hazardous functions within the factory is no longer maintained.
- b. Several qualifications involved in the case of child workers, to safeguard their interests.
- c. The Act restricted engagement of women in certain parts of factories and for certain kinds of work, which has now been done away with in the OSH Code.

B. Contract Labour Act 1970

- a. The Code states that no fees or commission will be charged from the contract labour including inter-state migrant workers.

- b. In an important step, the Code now makes the principal employer liable to perform all the duties of a contractor if he/she employs contract labour from an unlicensed contractor. This shift of liability is essential to protect the employed contract labour and inter-state migrant workers who are recruited through unlicensed contractors.
- c. An experience certificate shall be provided on an annual basis to the workers or as and when demanded by the contract labour giving details of the work performed by such workers
- d. The mechanism of payment of wages has been transformed to bank transfer or electronic mode, and employer also be informed electronically about the same

C. Audio-Visual Workers

- a. Any worker is prohibited to be employed as an audio-visual worker unless they have an agreement in writing which is registered with the competent authority by the producer of the audio-visual programme.

D. Mines Act 1952

- a. Key provisions in the Act regarding advance payment of wages and mode of recovery of unpaid wages have been done away with in the OSH Code.
- b. Although the OSH Code retains provisions for conducting Safety and Occupational Health Surveys of the mines, akin to the Mines Act, it does not provide the additional protective measures for persons found to be medically unfit to discharge their duties, as were provided in the legislation.

XI. **Conclusion**

In its attempt to consolidate multiple labour laws, the OSHWC Code has simplified multiple procedural aspects, making compliance of laws easier. However, the flip side of these unique aspects of the Code, is that they significantly impact the working conditions, leaving workers more vulnerable.

a. **Unification of Registration and Licensing:**

The attempt to consolidate registration processes by providing for a single license is a positive step towards reducing the paperwork, doing away with unnecessary red tape, and easing the official bottlenecks faced by various enterprises which wish to undertake business and other activities. However, in the process, several worker safety measures have been compromised, whereas this reduction in the costs of compliance could be used for purposes such as better working conditions for employees and workers.

b. Excessive Delegation of Rule-Making for Mandatory Standards:

Previously, under laws like Factories Act or Plantation Labour Act, the weekly hours, hours of work, rest intervals, overtime, etc. had been provided for by them. The OSHWC Code changes that by making it as per the discretion of the appropriate government to lay down the particular regulations in that regard.

Mandatory standards pertaining to workers' health and welfare have been done away with, to be replaced with government discretion in the form of rule-making. Some provisions, such as the registration of workers and issuance of beneficiary identity cards, were in place to recognise their vulnerability and to facilitate their entitlement for welfare schemes, which have now been done away with.

The working conditions and welfare facilities were undoubtedly largely varying across different kinds of establishments in accordance with the various legislations. In an attempt to harmonise, these welfare provisions, the Code does away with mandatory standards altogether, which could have been remedied by providing for minimum standards, leaving more specific rule making for particular establishments to the government.

c. Possible Separation of Contract Labour and Inter-State Migrant Workers

In the Code, the aspects of inter-state migrant workers are included in contract labour. Considering the peculiar conditions inter-state migrant workers live and work in when they work outside their home-state, it may be considered necessary to provide for a section of provisions especially for inter-state migrant workers. Since the concerns of contract labour and inter-state migrant workers are unique and distinct, it will be more effective to address them in separate parts in the Code as well.

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