

THE OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS CODE, 2019

Relevant for: Indian Economy | Topic: Issues relating to Growth & Development - Industry & Services Sector incl. MSMEs and PSUs

Highlights of the Bill

- The Code seeks to regulate health and safety conditions of workers in establishments with 10 or more workers, and in all mines and docks.
- It subsumes and replaces 13 labour laws relating to safety, health and working conditions. These laws include: Factories Act, 1948; Mines Act, 1952; Dock Workers Act, 1986; Contract Labour Act, 1970; and Inter-State Migrant Workers Act, 1979.
- Establishments covered by the Code are required to register with registering officers, appointed by the central or state governments.
- Welfare facilities, working conditions and work hours for different types of establishments and workers will be prescribed by the central or state governments through rules.
- The Code sets up occupational safety boards at the national and state level to advise the central and state governments on the standards, rules, and regulations to be framed under the Code.
- The Code creates special provisions for certain classes of establishments such as factories, mines, dock workers, and constructions workers. These include separate provisions on licenses, safety regulations, and duties of employers.

Key Issues and Analysis

- The Second National Commission on Labour (2002) had recommended consolidation and simplification of existing health and safety laws. However, the Code continues to retain special provisions for various categories of workers such as working journalists and sales promotion employees. The rationale for retaining such provisions is unclear.
- The Code covers workers employed in establishments with at least 10 workers or more. It has been argued that size-based thresholds for applicability of labour laws helps in reducing compliance burden for small establishments. On the other hand, it has been argued that occupational health and safety laws should cover all workers, to protect their basic rights.
- The Code bars civil courts from hearing matters under the Code. Therefore, the only judicial recourse for a person aggrieved under the Code is to file a writ petition before the relevant High Court. It can be argued that a bar on civil courts from hearing any matters under the Code may result in the denial of an opportunity to challenge issues before a lower court.

PART A: HIGHLIGHTS OF THE BILL

Context

In India, labour falls under the Concurrent List of the Constitution. Therefore, both Parliament and state legislatures can make laws regulating labour. Currently, there are over 100 state and 40 central laws regulating various aspects of labour such as resolution of industrial disputes, working conditions, social security and wages.^[1] The Second National Commission on Labour (2002) found existing legislation to be complex, with archaic provisions and inconsistent definitions. To improve ease of compliance and ensure uniformity in labour laws, the National Commission recommended that existing labour laws should be consolidated into broader groups such as (i) industrial relations, (ii) wages, (iii) social security, (iv) safety, and (v) welfare and working conditions.^[2]

With regard to health, safety and working conditions, the Commission noted that there are several laws governing health and safety of workers. It recommended the consolidation of these laws into two codes; one universally applicable law to ensure safety at the workplace, and another law containing minimum standards of working conditions, work hours and leaves. It recommended that sector-specific requirements (e.g. for factories or mines) may be incorporated in regulations or manuals.²

In this context, the Occupational Safety, Health and Working Conditions Code, 2019 was introduced in Lok Sabha by the Minister of Labour and Employment, Mr. Santosh Kumar Gangwar, on July 23, 2019. Following this, it was referred to the Standing Committee on Labour and Employment, on October 9, 2019. The Code seeks to regulate health and safety conditions of workers in establishments with 10 or more workers, and in all mines and docks. It subsumes and replaces 13 existing labour laws relating to safety, health and working conditions.

Key Features

The Code consolidates 13 Acts regulating health safety and working conditions. These laws cover factories, mines, dock workers, building and construction workers, plantation labour, contract labour, inter-state migrant workers, working journalists, motor transport workers, sales promotion employees, and cine workers. The Annexure to this Brief compares the key provisions of the Code with the provisions of these Acts.

Coverage, license and registration

- **Coverage:** The Code applies to establishments employing at least 10 workers, and to all mines and docks. It does not apply to apprentices. Further, certain provisions of the Code such as health and working conditions, apply to all employees. Employees include workers and all other persons employed in a managerial, administrative, or supervisory role (with monthly wage of at least Rs 15,000).
- **License and registration:** Establishments covered by the Code are required to register within 60 days (of the commencement of the Code) with registering officers, appointed by the central or state government. Further, some establishments such as factories and mines, and those hiring workers such as beedi and cigar workers, may be required to obtain additional licenses to operate.

Rights and duties of employees and employers

- **Duties of employers:** Duties include: (i) providing a workplace that is free from hazards that may cause injury or diseases, (ii) providing free annual health examinations to employees in notified establishments, (iii) issuing appointment letters to employees, and (iv) informing relevant authorities in case an accident at the

workplace leads to death or serious bodily injury of an employee. Additional duties are prescribed for employers in factories, mines, docks, plantations, and building and construction work, including provision of a risk-free work environment, and instructing employees on safety protocols.

- **Duties of consultants:** Manufacturers, importers, designers and suppliers must ensure that any article created or provided by them for use in an establishment is safe, and provide information on its proper handling. Further, architects, engineers and designers must ensure any structure designed by them can be safely executed and maintained.
- **Rights and duties of employees:** Duties include taking care of their own health and safety, complying with safety and health standards, and reporting unsafe work incidents to the Inspector. Employees also have certain rights including the right to obtain information on safety and health standards from the employer.

Work hours and leave

- **Work hours:** Work hours for different classes of establishment and employees will be notified by the central or state government. For overtime work, the worker must be paid twice the rate of daily wages. Prior consent of workers is required for overtime work. Female workers may work past 7 pm and before 6 am with their consent, and if approved by the government. Journalists cannot work more than 144 hours in four weeks.
- **Leave:** Workers cannot be required to work for more than six days a week. Further, they must receive one day of leave for every 20 days of work per year.

Working conditions and welfare facilities

- **Working conditions:** Working conditions will be notified by the central government. Conditions may include hygienic work environment, clean drinking water, and toilets.
- **Welfare facilities:** Welfare facilities such as canteens, first aid boxes, and crèches, may be provided as per standards notified by the central government. Additional facilities may be specified for factories, mines, docks, and building and construction work such as welfare officers, and temporary housing.
- The Code includes three schedules containing lists of: (i) 29 diseases that the employer is required to notify the authorities of, in case a worker contracts them, (ii) 78 safety matters that the government may regulate, and (iii) 29 industries involving hazardous processes. The lists may be amended by the central government.

Relevant Authorities

- **Inspector-cum-facilitators:** The duties of Inspector-cum-Facilitators include inquiring into accidents, and conducting inspections. They have additional powers in the case of factories, mines, docks and building and construction workers which include; (i) reducing the number of employees working in sections of the establishment, and (ii) prohibiting work in dangerous situations.

- **Advisory Bodies:** The central and state governments will set up Occupational Safety and Health Advisory Boards at the national and state level, respectively. These Boards will advise the central and state governments on the standards, rules, and regulations to be framed under the Code.
- **Safety Committees:** The appropriate government may require constitution of safety committees in certain establishments, and for a certain class of workers. The committees will be composed of representatives of the employer and the workers. The number of employer representatives cannot exceed the employee representatives. These committees will function as a liaison between employers and employees.

Offences and Penalties

- The Code specifies various offences. An offence that leads to the death of an employee will be punishable with imprisonment of up to two years, or fine up to five lakh rupees, or both. Further, courts may direct that at least 50% of such fine be given as compensation to the heirs of the victim. For any other violation where the penalty is not specified, the employer will be punished with a fine between two and three lakh rupees. If an employee violates provisions of the Code, he will be subject to a fine of up to Rs 10,000. First-time offences which are not punishable with imprisonment, can be settled for up to 50% of the maximum fine.

PART B: KEY ISSUES AND ANALYSIS

Rationale for some special provisions unclear

The Code replaces 13 laws regulating health, safety and working conditions of workers. The National Commission on Labour, 2002 recommended consolidation and simplification of these laws.² Further, the Statement of Objects and Reasons of the Code states that it seeks to simplify and amalgamate the provisions of the 13 Acts.^[3] While the Code consolidates existing Acts, it falls short of simplifying their provisions. We illustrate this below.

The Code contains general provisions which apply to all establishments. These include provisions on registration, filing of returns, and duties of employers. However, it also includes additional provisions that apply to specific type of workers such as those in factories and mines, or as audio-visual workers, journalists, sales promotion employees, contract labour and construction workers.

It may be argued that special provisions on health and safety are required for certain categories of hazard-prone establishments such as factories and mines. It may be necessary to allow only licensed establishments to operate factories and mines. Similarly, special provisions may be required for specific categories of vulnerable workers such as contract labour and migrant workers. However, the rationale for mandating special provisions for other workers is not clear.

For example, the Code requires that any person suffering from deafness or giddiness may not be employed in construction activity which involve a risk of accident. The question is why such a general safety requirement is not provided for all workers. Similarly, the Code provides for registration of employment contracts for audio-visual workers, raising the question of why there is a special treatment for this category.

Further, the Code specifies additional leave for sales promotion employees. It also specifies that working journalists cannot be made to work more than 144 hours in four weeks (i.e. an average of 36 hours per week). For all other workers covered under the Code, the minimum leave and maximum work hours is prescribed through rules. The rationale for differential treatment with regard to working conditions between working journalists and sales promotion employees on the one hand, and all other workers on the other hand, is unclear.

Note that, if any sector-specific provisions are needed, the Code empowers the government to notify them.

Table 1 below sets out the general provisions in the Code applicable to all workers and the additional special provisions applicable to specific categories of workers and establishments under the Code.

Table 1: Comparison of the general provisions and special provisions in the Code

Feature	General Provisions	Specific provisions
Duties of Employers	<ul style="list-style-type: none"> Duties include providing a safe workplace, issuing appointment letters, and complying with the provisions of the Code. 	<ul style="list-style-type: none"> Factories, mines, docks, plantation and construction: Employer must provide a risk-free workplace and instruct employees on safety protocol. Inter-state migrant workers: Employer must notify special authority of both states in the case of fatal accidents and serious bodily harm. Mines: The owner and agent of the mine will be jointly responsible for providing a safe work environment. Factories, mines, plantation, construction, and motor transport undertakings: Appropriate government may require provision of added facilities like ambulance rooms, well-officers, and temporary housing.
Working conditions and welfare facilities	<ul style="list-style-type: none"> To be notified by the appropriate government. These may include bathing spaces, canteens, and first aid boxes. 	<ul style="list-style-type: none"> Factories, mines, plantation, and motor transport undertakings: Appropriate government may appoint medical officers to examine, certify, and supervise the health of workers. Factories involved in hazardous processes: Maximum permissible limits of exposure to chemical and toxic substances in manufacturing processes will be prescribed by state government. Further, it may specify medical examinations for workers, among other facilities. Interstate migrant workers: Employers must provide suitable conditions of work, medical facilities, housing, displacement and journey allowance.
Dangerous operations	<ul style="list-style-type: none"> No general provision for hazardous and dangerous operations. Inspector-cum-Facilitators may inquire into accidents and conduct inspections, among 	<ul style="list-style-type: none"> Factories involved in hazardous processes: Emergency standards may be set. The National Advisory Board may make recommendations in cases of extraordinary occurrence.
Inspector	<ul style="list-style-type: none"> Inspector-cum-Facilitators may limit number of employees working in an establishment, if it appears that workers are in danger. 	<ul style="list-style-type: none"> Factories, mines, docks, and construction work: Inspector-cum-Facilitators may limit number of employees working in an establishment, if it appears that workers are in danger.

	others.	
License and Registration	<ul style="list-style-type: none"> All establishments with ten or more workers must register with the appropriate government. 	<ul style="list-style-type: none"> Factories: Additional licenses and registration may be required. Beedi workers and contract labour: License required for beedi and cigar establishments (except for family establishments). Contractors must either obtain a five-license or obtain work-specific licenses. Audio-visual workers: A signed agreement between the employer and worker must be registered with the government. Working Journalists: Work hours cannot exceed 144 hours in 4 weeks. Sales promotion employees are entitled to leave for 1/11th time on duty, and medical leave for 1/18th of time on duty. Motor transport workers are entitled to one day off in every 20 days, in certain cases. Construction work: No employer can hire workers with defective vision, deafness, or a tendency for giddiness, there is a risk of accident. Mines: No worker below the age of 18 or apprentice/trainee below the age of 16, may work in a mine.
Work hours	<ul style="list-style-type: none"> To be notified by the government. Workers are entitled to one day off for every 20 days of work and one day off every week. 	
Leave		
Disability	<ul style="list-style-type: none"> No general provision in the Code. 	
Age	<ul style="list-style-type: none"> No person below the age of 14 may be allowed to work. 	

Sources: Occupational Safety, Health and Working Conditions Code, 2019; PRS.

Certain workers not covered under the Code

The Code covers establishments with 10 or more workers. It excludes establishments with less than 10 workers. This raises the question of whether workers in smaller establishments should be covered by health and safety laws.

It has been argued that application of labour laws based on the number of employees is desirable to reduce the compliance burden on infant industries and to promote their economic growth.^{[4].^[5]} To promote the growth of smaller establishments, some states have amended their labour laws to increase the threshold of their application. For instance, Rajasthan has increased the threshold of applicability of the Factories Act, 1948, from 10 workers to 20 workers (if power is used), and from 20 workers to 40 workers (if power is not used). Note that a similar amendment was proposed in the Factories (Amendment) Bill, 2014, which lapsed with the dissolution of the 16th Lok Sabha.

On the other hand, it has also been argued that such low numeric thresholds may create adverse incentives for establishments sizes to remain small, in order to avoid complying with labour regulation.^{4,5} Also, some have argued that a law on health and safety should cover workers in all establishments, to protect their basic rights against unsafe work practices.^{2,4} In this regard, the NCL had recommended three laws - one which contained broad health and safety regulations applicable to all establishments, and two other laws on working conditions and welfare facilities: one for larger establishments (hiring 20 or more workers) and the other for smaller establishments (hiring less than 20 workers). In the third law, it prescribed less stringent provisions for conditions such as welfare facilities in order to reduce the compliance burden on smaller establishments.

Note that most countries do not exempt smaller enterprises from labour regulation entirely. The International Labour Organisation (2005) notes that only 10% of its member states had exempted micro and small enterprises from labour regulation altogether.^[6] Most countries adopt a mixed approach to labour regulation. For instance, health and safety laws in the United States, United Kingdom, South Africa and Philippines provide universal coverage to all workers (except for domestic help in the US and UK).⁷ However, certain obligations under these laws are only applicable to enterprises with employees over a certain threshold. For example, record-keeping obligations for work-related accidents in the US only apply to establishments with at least 10 employees. In South Africa, only enterprises with 20 or more workers are required to designate a health and safety representative.^[7]

Civil Court barred from hearing matters under the Code

The Code bars civil courts from hearing any matters under the Code. In some matters where persons are aggrieved by the orders of authorities such as, by the order of the Inspector-cum-facilitator in the case of factories, or by the revocation of a license for contractors, the Code provides for an administrative appellate authority to be notified. However, it does not provide a judicial mechanism for hearing disputes under the Code.

Under the existing 13 health and safety laws, claims which affect the rights of workers such as wages, work hours, and leave, are heard by labour courts and industrial tribunals. However, the Code bars the jurisdiction of civil courts, and does not specify that such disputes arising under it may be heard by these labour courts and tribunals.

Further, there may be other health and safety-related disputes. For example, an employer may wish to challenge an order passed by an Inspector which identified certain safety violations at the workplace. In such a case, the employer may file a case in the civil court for seeking remedy against the orders passed by the Inspector. Appeal may be filed before the High Court and ultimately before the Supreme Court. However, the Code bars civil courts from hearing any dispute under the Code. As a result, employers who are aggrieved by the orders of the Inspector and by the notified administrative appellate authority will not be able to challenge it in a civil court. The only recourse available to them would be to directly file a writ petition before the relevant High Court. It can be argued that the bar on civil courts from hearing matters under the Code may deny aggrieved persons an opportunity to challenge certain issues before a lower court.

Wages not defined in the Code

The Code refers to “wages” in provisions relating to overtime work and calculation of leave. However, it does not define the term. Different laws contain varying definitions of the term ‘wages’. For instance, the Code on Wages, 2019 defines ‘wages’ to include basic pay, dearness allowance and retaining allowance, whereas the definition of wages in the Payment of Gratuity Act, 1972 does not include retaining allowance. It is unclear as to which definition of ‘wages’ will apply to the Code. This may lead to uncertainty in the interpretation of the term for the purpose of calculating overtime wages and earned leave.

Several matters left for notification by the government

The Code makes provisions for various welfare facilities, health and safety standards, and work hours for workers. However, it does not specify the standards but empowers the appropriate government to notify them. The Acts which are being subsumed by the Code specify these standards. For example, the Acts governing factories, mines, and beedi workers, specify maximum work hours of 9 hours per day and 48 hours per week. Similarly, some of these laws

make provisions for drinking water, washrooms, and first aid facilities. The question is whether minimum requirements should be specified in the Code itself on matters such as work hours, safety standards, and working conditions (e.g. washrooms and drinking water).

Note that one of the provisions of the Code overlaps with the Maternity Benefit Act, 1961 (which is not being subsumed by the Code). The Code states that the central government *may* make rules to provide for crèches in establishments with more than 50 workers, i.e. it is not mandatory. The Maternity Benefit Act, 1961 makes the provision of crèches mandatory in such establishments.

Annexure: Comparison of the Code with the laws being subsumed

Table 2 below compares the key provisions of the Code with the provisions of the 13 Acts it proposes to subsume. The 13 Acts are: Factories Act, 1948; Mines Act, 1952; Dock Workers (Safety, Health and Welfare) Act, 1986; Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996; Plantations Labour Act, 1951; Contract Labour (Regulation and Abolition) Act, 1970; Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979; Working Journalist and other Newspaper Employees (Conditions of Service and Miscellaneous Provision) Act, 1955; Working Journalist (Fixation of Rates of Wages) Act, 1958; Motor Transport Workers Act, 1961; Sales Promotion Employees (Condition of Service) Act, 1976; Beedi and Cigar Workers (Conditions of Employment) Act, 1966; and Cine Workers and Cinema Theatre Workers Act, 1981.

Table 2: Comparison of existing laws with the Code

Features	Existing Laws	2019 Code
Coverage and registration	<ul style="list-style-type: none"> Different Acts cover establishments based on various thresholds of workers. Further, some Acts require establishments to obtain registrations or licenses. These include Acts covering factories (threshold: 10 workers with power and 20 without power), motor transport workers (threshold: 5 or more workers), contract labour (threshold: 20 or more contract labour). 	<ul style="list-style-type: none"> The Code applies to establishments employing 10 workers or more, and all mines and docks. Establishments covered by the Code are required to register. Factories will need an additional license. Contractors hiring 20 or more workers may obtain a license of 5 years. For beedi workers, license validity is extended from 1 year to 3 years.
Authorities	<ul style="list-style-type: none"> Inspectors can carry out surprise checks, and inquire into accidents, among other powers. Mines, building and construction workers, dock workers, contract labour: Advisory committees/boards may be constituted to advise government on matters under the Act. Factories Act: Employers must ensure safety in handling, storage and transport of hazardous articles, and provide instruction and training to ensure the health and safety of all 	<ul style="list-style-type: none"> Inspectors-cum-facilitators can carry out inspections, and inquire into accidents. Occupational Safety and Health Advisory Boards will be set up at the national and state level to advise central and state governments on framing of rules and regulations. The duties of employers include: (i) providing a workplace that is free from hazards that may cause injury or diseases, and (ii) issuing appointment letters to employees.
Duties		

workers.

- **Inter-state migrant workmen:** Contractor is required to furnish details of migrant workmen to authorities, issue them a pass-book, and report to the authorities in case of accidents.
- **Contract Labour:** Contractor to provide welfare facilities.
- **Factories, mines, and beedi and cigar workers:** No worker can work for more than 6 days a week. Maximum work hours are 48 hours/week, or 9 hours/day (8 hours for underground mines). Further, workers are entitled to receive paid annual leave for at least one in 20 days spent on duty.
- Overtime work will be eligible for twice the wage.
- **Working journalists cannot work for more than 144 hours in four weeks. Sales promotion employees are entitled to earned leave for 1/11th of time on duty, and medical leave (of 50% wages) for 1/18th of time on duty.**
- Different Acts make provisions for different welfare facilities. Illustrative list provided below.
- **Mines, plantations, and building workers: Provisions for drinking water, toilets, and first aid.**
- **Beedi and cigar workers: Provisions for ventilation, overcrowding, canteens and creches.**
- **Plantation and building workers: Provisions for canteens, creches, and housing facilities.**
- **Factories: Women may work between 6am and 7pm only in plantations, beedi and cigar establishments, factories, and mines (women may not work underground in mines).**
- **Factories, motor transport undertakings, beedi and cigar factories, contract labour, and inter-state migrant workers: Offences include: (i) obstructing an inspector in discharge of his duty; and (ii) violating conditions of employment. Penalties**

- Additional duties of employers in **factories, mines, docks, plantations, and building and construction work**, include: (i) providing a risk-free workplace, and (ii) training of employees.
- **Contract Labour: Employer to provide welfare facilities.**
- No worker may work for more than 6 days a week. Exceptions may be provided for **motor transport workers**. Government will notify maximum hours of work for establishments. Further, workers are entitled to receive paid annual leave for at least one in 20 days of the period spent on duty.
- Overtime work will be eligible for twice the wage.
- **Working journalists cannot work for more than 144 hours in four weeks. Sales promotion employees are entitled to earned leave for 1/11th of time spent on duty, and medical leave (of 50% wages) for 1/18th of time on duty.**
- Working conditions will be notified by the central government. These may include; a hygienic work environment, clean drinking water, and toilets.
- Other welfare facilities may be prescribed by the central government. These may include; canteens, first aid boxes, and creches.
- Female workers, with their consent, may work past 7pm and before 6am.
- Children below 14 years of age are prohibited from working.
- Offences: (i) obstructing discharge of duties of Inspector, punishable with imprisonment upto 3 months and fine upto 1 lakh rupees, (ii) death of employee, punishable with imprisonment upto 2 years, or fine upto 5 lakh rupees, or both, (iii) where penalty is not

Work hours and leave

Health and welfare facilities

Special provisions

Offences and Penalties

vary between imprisonment of one month to two years along with fines between one hundred rupees to five thousand rupees.

specified, fine on employer of 2-3 lakh rupees, and (iv) if employee violates provisions of the Code, fine upto Rs 10,000.

Sources: Respective 13 Acts; 2019 Code; PRS.

[1]. [“Suggested Labour Policy Reforms”](#), Federation of Indian Chambers of Commerce & Industry, 2014.

[2]. [Report of the 2nd National Commission on Labour](#), Ministry of Labour and Employment, 2002.

[3]. [Statement of Objects and Reasons](#), The Occupational Safety, Health and Working Conditions Code, 2019.

[4]. [“Towards an optimal regulatory framework in India”](#), Implementation Group, Planning Commission, 12th Five Year Plan.

[5]. [“Reorienting policies for MSME growth”](#), Economic Survey 2018-19.

[6]. [“Labour and Labour-related Laws in Micro and Small and Enterprises: Innovative Regulatory Approaches”](#), International Labour Organisation, 2007.

[7]. [LEGOSH](#), Occupational Safety and Health, Country Profiles, International Labour Organisation.

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