

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 4

2023

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An Outlook of the Occupational Safety, Health and Working Conditions Code, 2020: A Critical Appraisal of the Factories Act, 1948

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ABSTRACT

Workers are the backbone of our country, and a country's economic prosperity is largely dependent on them, however, the workers who work behind the scenes are often overlooked. Our legislative body has passed several labour laws for the benefit of workers, like the Factories Act of 1948, which was enacted with the goal of improving workers' working conditions. In this respect, the Factories Act of 1948 has specific provisions and rules relating to worker health, safety, and welfare. Although, there are various Labour Laws, which provided numerous provisions for the welfare of the workers but still it appears that certain lacunas are there and to cover up those lacunas the Legislative body has adopted the Code on Occupational Safety, Health, and Working (OSHW) Conditions, 2020, which replaces 13 labour laws, one of which being the Factory Act of 1948. This Code was created in order to integrate and harmonize workplace rules governing occupational safety, health, and working conditions across all work sectors in India. If the Occupational Safety, Health, and Working Conditions Code, 2020 is enacted, it will make business compliance easier for business owners while also benefiting workers. The Government had good intentions while drafting and creating this Labour Code but it failed to meet the majority of the worker's expectations as its execution remains an ongoing cause of concern.

Keywords: OSHW Code, Factories Act, workers, critical appraisal.

I. INTRODUCTION

"Labourers and workers are that part of our society that aids in the execution of great ideas born from a person's intellect." We are prone to putting such intellects on a pedestal and rewarding them with position and money. Workers who exist behind the scenes frequently get overlooked. Their rights, respect, quality of life, and even a better working environment are often overlooked, despite the fact that they are critical for human survival. Many labour laws have been implemented in India since independence for the rights and welfare of employees. Despite these laws, employees continue to experience exploitation at the hands of their employers. With

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good intentions, the government has attempted to meet most of the employees' requests, but their inadequate execution remains a source of worry on the ground. The new Labour Codes attempted to handle the majority of the issues, but still persist. The Centre and the States must collaborate to create regulations that are consistent and to put the Codes into effect in their entirety. The Ministry of Labour and Employment has recommended four distinct Codes to make it easier to comply with Labour Laws in India. The Code on Occupational Safety, Health, and Working (OSHW) Conditions is one of those four Codes.³

II. THE OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS CODE, 2020⁴

As the government recognizes, employee safety and health have a favourable influence on productivity, economic growth, and social development. This Code on Occupational Safety, Health, and Working (OSHW) Conditions was passed to repeal and replace the 13 previous labour laws with a vision to consolidate and standardize the workplace laws that govern occupational safety, health, and working conditions, and it also attempts to regulate the employment of workers, as well as those hired by contractors, and their operational circumstances across the country. The Code has been replaced with the following Acts:

- The Factories Act, 1948
- The Mines Act, 1952
- The Dock Workers (Safety, Health and Welfare) Act, 1986
- The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996
- The Plantations Labour Act, 1951
- The Contract Labour (Regulation and Abolition) Act, 1970
- The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979
- The Working Journalist and Other News Paper Employees (Conditions of Service) and
• Miscellaneous Provisions Act, 1955
- The Working Journalists (Fixation of rates of wages) Act, 1958

³ Trishaljeet Singh, *The Occupational Safety Health and Working Conditions Code*, (May 1, 2023, 12:05 PM), <https://www.lawrbit.com/article/the-occupational-safety-health-and-working-conditions-code-2019/>

⁴ S. Kazi, *Brief on New Labour Codes by Advocate Anees*, (May 1, 2023, 1:48 PM), <https://www.wirc-icai.org/images/material/New-Labour-Laws-2020-AK.pdf>.

- The Motor Transport Workers Act, 1961
- The Sales Promotion Employees (Condition of Service) Act, 1976
- The Beedi and Cigar Workers (Conditions of Employment) Act, 1966
- The Cine-Workers and Cinema Theatre Workers Act, 1981.

III. BACKGROUND OF THE OSHW CODE, 2020⁵

The Indian Constitution contains detailed protections for people's rights as well as the Directive Principles of State Policy, which provide a goal for the state's operations. The government is dedicated to regulating all economic activity for the benefit of the people.

Four bills were submitted in 2019 to combine the 29 central Labour Legislation. Wages, Industrial Relations, Social Security, Occupational Safety, Health, and Working Conditions were all regulated by these Codes. This bill was first tabled before the Lok Sabha on July 23, 2019.

The Ministry of Labour and Employment, which was subjected to revisions and reintroduced on September 19, 2020, received President's Assent on September 28, 2020, and went into effect on September 29, 2020. The code governs not only the employment of people, but also their health, safety, and working conditions. It will give pay security, social security, safety, health, and grievance redressal systems to employees.

Management of workplace safety and health concerns, as well as provision of measures to guarantee safe and healthy working conditions for all employees in the country. The Ministry of Labour and Employment has a vision for better working conditions and a better quality of life for employees by ensuring that no child labour is employed to the greatest extent possible in dangerous areas of the nation. The ministry's aim is to put plans into action. Policies and programmes, as well as other initiatives, aimed at providing social security and welfare measures, regulating working conditions, occupational health and safety, and fostering skill development and employment services. As strong safety and health standards at work are as important as successful business performance for new and established industries.

IV. SCOPE AND OBJECTIVE OF THE OCCUPATIONAL SAFETY, HEALTH, AND WORKING (OSHW) CONDITIONS CODE, 2020

- The OHSW Code applies to every organization with more than ten workers in any

⁵ Manvi Jain¹ and Mahek Jain, *Critical Analysis of Occupational Safety, Health Working Conditions Code Bill 2020*, 5 IJLMH, 2136-2142 (2022).

business or industrial area. Previously, different registrations were essential for factories, plantations, and institutions, among other things.⁶

- The factory's definition was broadened, which indicates that if the production process is carried out using power, the workforce limit is 20. If the production process takes place without the use of electricity, the maximum number of employees is 40. Employers profit from this law since it raises the thresholds from the prior limits of 10 and 20 employees, respectively.
- The labour department's suggestion for a wide framework that allows for the insertion of regulations and the corresponding by-laws has reduced the total 622 sections of the preceding Acts to 134 sections.
- Existing establishments that are registered under any other central labour Legislation or any other law declared by the central government are exempt from obtaining new registration under the OSHWC Code. Such establishments are presumed to be registered under the OSHWC Code. According to the proposed guidelines, the employer must update the registration details in the Shram Suvidha portal within 6 (six) months of the OSHWC Code coming into effect.
- Every new establishment covered by the Code is required to register electronically with the registering officers appointed by the Central or State government within 60 days (of the Code's implementation). Additionally, some businesses, such as factories and mines, as well as those that employ individuals such as beedi and cigar workers, may require additional licenses to operate.
- A emphasis on the health, safety, and welfare of workers in a wide range of industries, including manufacturing, trade, business, factories, motor vehicle repair, buildings and other construction work, newspapers, audio-visual production, plantations, mining, and service sectors.
- The Code does not apply to Central Government offices, State Government offices, ships of war, or offices where the Central Government or State Government is the primary employer. It does, however, apply to contract labourers recruited at such offices via a contractor.
- Special provisions are included in the Code for various types of enterprises, such as

⁶ Aparna Kashyap, *The Occupational Safety Health and Working Conditions Code*, (May 11, 2023, 1:48 PM), <https://www.lawrbit.com/article/the-occupational-safety-health-and-working-conditions-code-2019/> .

factories, mines, dock workers, and construction employees. These contain distinct requirements on licensing, safety standards, and employer responsibilities.

- The Code is divided into schedules that include a list of industries involved in the hazardous process, a list of matters where standards for worker's health and safety must be followed, and a list of notifiable diseases that must be reported to the appropriate authorities.

The primary goal of this code is to ensure that workers in all sectors are treated fairly and that they have safe working conditions in terms of their health, safety, and welfare. The code aims to harmonize employment laws and simplify regulations that govern how businesses operate. Less paperwork is necessary for registration, making compliance easier for employers.

The Code aspires to reduce the burden on employers by replacing many registrations under different enactments with a single standard registration, one license, and one return, which will eventually build an integrated database centrally and will aid in the convenience of doing business.⁷

V. A GLIMPSE OF THE MAIN PROVISIONS OF OSHW CODE, 2020⁸

- The Code protects interstate migrant workers, unorganized labourers, and contract workers.
- For the first time, this Code recognizes gig and platform employees.
- A simplified explanation of "wages" has been provided to give a uniform definition.
- Employers must offer welfare and health amenities such as ventilation, humidification, drinkable drinking water, enough lighting, a creche, washing facilities, bathing places, locker rooms, and so on.
- Employers are required to provide free annual health checks to their workers.
- It puts a legal obligation on employers to offer steps to ensure a safe workplace and reduce the likelihood of unpleasant accidents happening while an employee is at work.
- It is the responsibility of employers to ensure the correct disposal of dangerous and dangerous materials, including e-waste.

⁷ Anirudh, *The Occupational Safety Health Working Conditions Code 2020*, (May 15, 2023, 2:36 PM), <https://lumierelp.com/articles/the-occupational-safety-health-and-working-conditions-code-2020/>.

⁸ *Summary of The Occupational Safety Health Working Conditions Code 2020*, (May 15, 2023, 1:17 PM), <https://byjus.com/free-ias-prep/occupational-safety-health-working-conditions-code-2020/>.

- Providing each employee with a letter of appointment on the same day they begin working for the company.
- Payment of overtime pay at double the regular rate to workers and employees.
- Interstate migrant workers are required to have access to welfare facilities, which must be supplied by employers or contractors.
- The victim has just one legal remedy if they believe they have been victimized: they may file a writ petition with the relevant High Court. Civil courts are not permitted to consider cases governed by this Code.
- The code set up a National and State-level Occupational Safety and Health Advisory Board to carry out the duties delegated to them by or pursuant to this Code and to advise the Central and State Governments on the matters relating to regulations, guidelines, and standards to be framed pursuant to this Code.
- The Appropriate Government may require the establishment of safety committees in specific businesses and for a specific group of employees. The committees will include an equal number of representatives from the employer and the workers. These organizations will act as a conduit between businesses and employees.
- The license for hiring inter-state migrant labourers must be issued electronically along with every pertinent detail, including the total number of contract labourers who will be hired, what kind of work they are going to be performing, the contractor's responsibilities, as well as other details related to the work of inter-state migrant labourers.
- Inter-state migrant workers must have access to the same facilities as the rest of the institution's employees, including benefits under the Employees' State Insurance Act of 1948, the Employees' Provident Funds and Miscellaneous Provisions Act of 1952, or any other law for the time being enforced.
- Every employee on the plantation, including his family, must have access to basic house facilities including running water, a kitchen, and a restroom. Plantations with more than 50 employees, including those employed by the contractors, must also offer crèches and educational facilities for employees' children aged 6 to 12.

VI. THE FACTORIES ACT, 1948

The Factories Act of 1948 applies to every factory that employs or has employed more than 10 workers on any day in the previous year, and when the manufacturing process is carried out or

usually operates with the assistance of electricity. It also applies to all factories where 20 people are employed or have been employed in the last 12 months and the industrial process is carried out without the use of electricity. Mining or union military mobile units, railroad depots, hotels, restaurants, or canteens are not included.⁹

The major goal of the Indian Factories Act 1948 is to control and improve factory working conditions by providing health, safety, and welfare measures, as well as particular provisions for young people, women, and children who work in factories. It includes the following:¹⁰

1. Health: The Factories Act of 1948 mandates all factories to be maintained cleanliness and to take all necessary safeguards to preserve employees' health. The factory requires suitable lighting, drainage, ventilation, temperature, and enough drinking water facilities. Separate toilets and urinals for men and women must be provided at the appropriate location. These must be freely accessible to employees and maintained hygienically.¹¹
2. Safety: To ensure worker safety, the Factories Act of 1948 establishes requirements for machine fencing, prohibits young people from working on dangerous machines, and requires manholes to be properly maintained and arranged in a suitable size to allow employees to escape in an emergency.¹²
3. Welfare: The Factories Act of 1948 requires all factories to supply and maintain all equipment for the use of their employees. Seats, first-aid facilities, shelters, restrooms, dining rooms, and clothing storage and drying facilities must all be provided.¹³
4. Working hours: Adult workers cannot work more than 48 hours per week in the plant according to the Adult Working Hours Regulations. A weekly holiday should be provided.¹⁴
5. Penalty: Penalties are imposed for infractions of the 's regulations, norms, or written orders, and appeals under the Factories Act 1948.¹⁵

VII. CRITICISMS AND CONCERNS RELATED TO FACTORIES ACT, 1948

There are various provisions provided under the Factories Act, 1948 for promoting the health

⁹ SUNIL YADAV, *LABOUR AND INDUSTRIAL LAWS*, 514 (2nd edn., 2019).

¹⁰ The Factories-Act-1948, (Act 63 of 1948), Acts of Parliament, 2018 (India).

¹¹ *Id.* at, sec.11 to 20.

¹² *Id.* at sec. 21 to 41.

¹³ *Id.* at sec. 41 to 50.

¹⁴ *Id.* at sec. 78 to 84.

¹⁵ *Id.* at sec. 92 to 106A.

and welfare of factory workers and ensuring proper safety measures such as leave policies, working hours, and holiday schedules etc. but it appears that the Act is lacking somewhere in some of the provisions. The lacunas are mentioned as under:

- According to the Act's scope, it only applies to industries whose manufacturing processes are carried out by employees up to 10 with the aid of power and by workers up to 20 without power. It is not relevant to industries with less than 10 employees due to the restriction on the number of workers. Numerous industries in India that employ less than 10 people are not covered by the Factories Act and are therefore unable to benefit from the Act's protections. As a result, employees in these industries are at the mercy of their employers with regard to all of the contractual terms, legal privileges, and other legal protections that are outlined in the Act.
- Certain definitions are either not made clear or not provided under the code. The rationale behind several specific provisions isn't made clear.
- The Factories Act's welfare requirements are confined in scope and do not address all facets of workers' well-being. The welfare provisions should be expanded to cover areas like mental health and access to childcare facilities.
- The Act ought to include a few particular requirements for the welfare of women employees, such as menstrual hygiene facilities, and private rooms for feeding their children.
- The Act should encourage firms to create a good work-life balance for employees by offering flexible working hours, leave policies, and other strategies. The principal goals of the Factories Act were to improve working conditions and safeguard against exploitation. Yet, the expansion of the time restriction is counterintuitive and would actually worsen the working circumstances for workers, as well as their social and health issues.
- While the Act has mentioned all the contravention, and penalty provisions but there are no specific provisions regarding the procedure to file the complaint under this Act. Also, there is no specification on the authorities for such complaint filing.
- This Act imposes limitations on the number of workers for providing any facilities like canteen, ambulance, first aid boxes etc. This will prevent these benefits to those industries who are having a smaller number of workers than those prescribed under the Act.

VIII. SIGNIFICANT CHANGES BY OSHW CODE IN THE FACTORIES ACT, 1948¹⁶

- The code applies to enterprises where the manufacturing process occurs using power, in that event the worker's limit is 20. If the manufacturing process takes place without the use of power, the maximum number of workers is 40. Employers profit from this code since it raises the thresholds from the prior levels of 10 and 20 employees, respectively.
- The Code requires that the majority of the registration process be conducted online, resulting in minimal physical contact.
- Following the adoption of this Code, the number of workers for the appointment of a welfare officer will be reduced to 250 from the current limit of 500.
- The maximum number of female employees authorized to manage a creche facility for children under the age of six would be increased from the current limit of 30 to 50.
- The number of workers is reduced from 250 to 100 in order to provide a canteen.
- Provisions have been made for the hiring of female workers to work after 7 p.m. till 6 a.m. with their approval, subject to safety, holiday, and working hours constraints.
- A worker's daily working hours in an establishment have been reduced from 9 (nine) hours to 8 (eight) hours.
- A worker may work overtime only with his consent, and in such instances, he is entitled to double the rate of his usual earnings from the employer. Previously, consent of a worker was not necessary for overtime under the Factories Act but now under the Code for an employer to engage the worker for overtime his consent is necessary
- A worker cannot be forced to work more than six days a week in a factory. The qualifying term for leave entitlement has been decreased from 240 (two hundred and forty) days to 180 (hundred and eighty) days under the Factories Act. Workers who have worked 180 (hundred and eighty) days or more in a calendar year will be subject to the OSHWC Code.
- Under the OSHWC Code, employees who worked 180 (hundred and eighty) days or more in a calendar year are entitled to one (one) day of leave for every twenty (twenty) days of work.
- Furthermore, unlike in the past, a worker can use his or her leave in the year in which it

¹⁶ *supra* note 3.

is earned, as opposed to the previous calendar year.

- Regarding Covid-19, the Central Government has reserved the power to make regulations for the general safety and health of people in the event of an epidemic, pandemic, or disaster. This cannot be altered by any other legislation that is now in effect.
- Key definitions like Wages, Banking Company & Core Activity of an Establishment has been put in the OSHW Code
- In contrast to previous regulations, women employees have the right to be engaged in all establishments for all sorts of labour, including hazardous procedures, subject to the government requiring the employer to provide necessary precautions prior to their employment in hazardous operations.
- **Penalty provisions under OSHW Code:**
 - i. Obstructing Inspector's execution of duty, imprisonment for up to 3 months and a fine of up to INR 1 lakh
 - ii. An offence that results in the death of an employee is penalized by up to two years in jail, a fine of up to INR 5 lakhs or both.
 - iii. If no punishment is stated, the employer shall be fined between INR 2 and 3 lakhs.
 - iv. If an employee breaches the requirements of the Code, a fine of up to Rs 10,000 may be imposed.
 - v. Offences committed by a company shall hold liable any person who, at the time the offence was committed, was in control of, and responsible to, the company for the conduct of the business.

IX. CONCLUSION

The Occupational Safety, Health, and Working (OSHW) Conditions Code is one of four new labour laws that are expected to integrate the majority of India's labour legislation, improve labour compliance, and broaden the social security net for employees. The code governs not just the workers' employment, but also their health, safety, and working circumstances. It also covered various categories like gig workers, platform workers, interstate migrant workers etc. which are not covered under the Factories Act, 1948. It will give pay security, social security, safety, health, and grievance resolution methods to the workers. Overall, Code aims to empower

both employees and employers as well. On one side it allows flexibility in hiring and retrenchment on the other side it will expand the social security net for both formal and informal workers. It is a progressive outlook of the Factories Act as it covers all the aspects which are left over by the Factories Act,1948. However, its implementation has been postponed due to the delays on the part of states in preparing draft rules or state-level regulations. Only after properly executing these codes, the impact of such reforms can accurately be assessed.
