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Analysing the Impact of New Labour Code on Workers Safety in India: A Comparative Study of Old Acts and OSHWC Code, 2020

KOKILA BERIYA¹

ABSTRACT

The safety of workers in India has long been a concern, with frequent reports of workplace accidents and injuries. In response, the Indian government has enacted new labour laws to address this issue, with the goal of improving workplace worker safety. However, it is critical to assess the effectiveness of these new labour codes in achieving their intended goals.

The purpose of this paper is to compare the old and new labour codes in order to assess the impact of new labour acts on worker safety in India. It aims to examine the effectiveness of the new labour codes in improving worker safety, identify any gaps or loopholes in the new codes, and make recommendations to policymakers and stakeholders in India to improve worker safety.

The paper begins with an examination of the evolution of labour laws in the country, as well as the significance of worker safety in the workplace. It then presents the findings of an analysis of industrial injury incidents to workers, safety provisions in old and new labour codes, and identification of loopholes in the new code. The study concludes with a discussion of the findings, implications, recommendations for policymakers and stakeholders. Overall, this project provides a thorough examination of the impact of new labour laws on worker safety in India, as well as insights into the country's challenges and opportunities for promoting worker safety and avoid industrial accidents.

Keywords: *New Labour Codes, Safety of Workers, Industrial accidents.*

I. INTRODUCTION

The Labor laws are intended to adapt to the changing needs of both industry and workers. Labor is listed on the Concurrent List in the Indian Constitution, which means that both the Central and State Governments can review, rationalise, and amend these laws. As a result, numerous amendments to various labour legislations have been made in recent years by both Parliament and various State Legislatures. Reforms have also been implemented through notifications.

¹ Author is a student at University of Petroleum and Energy Studies, India.

Recognizing the needs of workers and industry in various sectors and sub-sectors of the economy, the current government has taken the lead in comprehensively reforming labour laws. This entails codifying a large number of existing labour laws into four major Labour Codes. These codes, which include the Labour Code on Wages, the Labour Code on Industrial Relations, the Labour Code on Social Security, and the Labour Code on Occupational Safety and Health, will amalgamate and rationalise the key features of various labour laws².

Ensuring a steady supply of goods and services is critical for human survival and existence, with both capital and labour playing equal roles in achieving this goal. However, the interests of these two production factors are not always in sync, with employers seeking maximum profits and employees seeking higher wages and better working conditions. To maintain a balance between these competing interests, the state steps in by enacting labour laws that outline both employers' and employees' basic rights, entitlements, and obligations³.

The Indian Constitution empowers both the Parliament and the State Legislatures to pass labour laws, which has resulted in the passage of over 200 labour laws over the years. Wages, employment relations, working conditions, occupational safety and health, labour welfare measures, and social security are all covered by these laws. The laws are reviewed and revised on a regular basis to meet the changing needs of society and to avoid becoming an impediment to development.

Various forums, including the Indian Labor Conference and the Standing Labor Committee, hold deliberations and discussions on labour law review⁴. Furthermore, the government frequently appoints committees, expert groups, and commissions to debate and make recommendations on labor-related issues. The first National Commission on Labor (1966), the National Commission on Rural Labor (1991), the second National Commission on Labor (2002), and the National Commission for Enterprises in the Unorganized Sector (2004) are all notable examples.

Numerous studies and on-the-ground realities have revealed that many employers and workers, particularly those in the informal and unorganised sectors, are denied their statutory labour rights and social security benefits. Several factors contribute to this situation, including existing labour laws' limitations on wage/salary ceilings, minimum employment duration, and the minimum number of employees required for coverage under these laws⁵. Furthermore, most

² The Factories Act 1948

³ II National Commission on Labour, Ministry of Labour and Employment, 2002.

⁴ "Suggested Labour Policy Reforms", FICCI 2014.

⁵ The Occupational Safety, Health and Working Conditions Code, 2019.

labour laws are written in a technical and legalistic language that makes understanding workers' and their representatives' rights and entitlements difficult. Furthermore, there are far too many labour laws, many of which are obsolete and have insufficient penalties for violations.

To address these issues, one effective approach would be to combine, simplify, and rationalise these laws in a language that workers can understand, thereby making these laws more accessible to a larger number of beneficiaries.

II. INDUSTRIAL SAFETY & ACCIDENTS

The primary goal of industrial safety is to reduce the occurrence of various hazards in the workplace. A hazard is any physical or chemical situation that can cause harm or injury to an individual's health. Hazards can lead to a variety of threats and dangers⁶. The importance of industrial safety has grown as a result of millions of industrial accidents resulting in death, disability, and massive losses to property, assets, and productivity.

Currently, efforts are being made to reduce the frequency and severity of accidents. To protect society's interests, safety rules have been developed for various areas. Accident prevention is now recognised as a benefit by industries and corporations all over the world⁷.

Any industry is concerned about the occurrence of industrial accidents. These incidents are distinguished by an abrupt and unexpected disruption in normal operations. The severity and likelihood of such incidents vary depending on the industry. Industrial accidents can cause physical or mental harm to workers, including bodily harm, disease exposure, and even death. As a result, industries put in place a variety of safety measures to prevent and mitigate the effects of such incidents. These measures seek to identify worker attitudes, working conditions, management concerns, and potential productivity conflicts. Implementing safety measures assists the industry in avoiding legal ramifications, establishing a positive reputation, increasing productivity, and lowering employee turnover rates⁸.

These measures include enforcing proper safety protocols, hiring suitable employees, implementing incentives for accident-free days, maintaining machinery, equipment, and infrastructure facilities on a regular basis, and providing employees with safety training.

NEED FOR INDUSTRIAL SAFETY

Industrial safety is required to prevent incidents that can result in fatalities, permanent disability

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.

⁸ "Reorienting policies for MSME growth", Economic Survey 2018-19.

of employees, and damage to machines and materials, resulting in organisational losses. Accidents that can result in work stoppages and production losses are avoided. Accidents can be avoided by reducing hazards in the industry. Industrial safety contributes to lower compensation, insurance premiums, and accident costs. It is critical to raise employee awareness of safety guidelines in order to prevent industrial accidents. It also aids in improving employee morale. Improving human relations in the industry. Improving production tools and raising living standards⁹.

An accident-free workplace provides several benefits, including significant cost savings, improved morale and legal standing, and increased productivity.

Cost Saving:

A workplace accident results in two types of costs for management. Compensation is provided to the victim's dependents in the event of a fatal accident, whereas non-fatal accidents necessitate medical treatment expenses. However, if the victim is covered by the ESI scheme, the management is not required to pay any direct costs. If the affected employee is not covered by insurance, the management must bear the medical expenses and compensation, which is a risk management cost. Accident-related hidden costs, such as slow production rates, downtime, material and equipment damage, and cleaning labour, can be three to four times higher than direct costs.

Increased Productivity:

Productivity is increased when safety is prioritised, and plants that prioritise safety are known to be more productive. Employees in safe plants are more concerned with improving output quality and quantity than with safety and security concerns.

Moral:

Employee safety is a critical humanitarian concern. Management must take steps to alleviate the injured employee's and their family members' pain and suffering. Employees are not only workers, but also primary breadwinners for their families.

Legal:

Occupational health and safety laws are inextricably linked to safety initiatives. These laws impose severe penalties for noncompliance, emphasising the significance of ensuring the safety and well-being of the surrounding community.

⁹ Sridevi. (2017). Prevention of industrial accidents: Measures and challenges. *Journal of recent development in engineering, science, humanities and management*. 36(7). Pp 17-42.

FACTORS LEADING TO INDUSTRIAL ACCIDENT:

Inadequate safety measures, worker attitudes, the working environment, communication among coworkers, a lack of management concern for employee safety, and conflicts between productivity and safety are all factors that contribute to major industrial accidents¹⁰. Workers are frequently ignorant, arrogant, or lazy, and fail to adhere to implemented safety measures, making them oblivious to their surroundings and prone to injury or death. Inadequate safety measures, such as mandatory equipment such as helmets, gloves, and lifeguard jackets, can also endanger employees. Accidents are also caused by technical factors such as defective machinery, unsupervised equipment, faulty plant layout, insufficient lighting, unsafe storage, and insufficient safety devices.

Psychological factors such as boredom, frustration, tiredness, lack of sleep, fatigue, sickness, overtime work, and a lack of knowledge about operating heavy machinery can all contribute to unsafe work environments. Extreme heat, humidity, dust, smog, and fumes are all factors that can contribute¹¹. Furthermore, a lack of communication between management and employees, as well as among coworkers, can lead to accidents, with workers unaware of safety measures in place and working in hazardous environments. Overall, these factors show that management is unconcerned about employee safety.

SAFETY MEASURES

It is the management's responsibility to implement safety measures in industries in order to reduce and eliminate industrial accidents. Training, supervision, regular staff meetings, physical and medical checks to screen unqualified employees, educating workers about potential hazards, and rewarding accident-free days are examples of such measures. To prevent accidents, mandatory protective equipment such as safety goggles, helmets, gas masks, gloves, safety shoes, overalls, and skin guards should be implemented¹². Employee exhaustion and fatigue can be avoided with adequate staffing and shift management, resulting in an orderly workplace environment. To prevent PTSD and compensate workers, psychological counselling and compensation should be provided following life-threatening accidents.

PREVENTIVE MEASURES VS. SAFETY MEASURES: Preventive measures aim to reduce the likelihood of major industrial accidents, whereas safety measures focus on protecting and ensuring the safety of workers. Proper maintenance of machinery, equipment, and infrastructure

¹⁰ The 1st National Commission on Labour submitted its report in 1969.

¹¹ This National Commission for Enterprises in the Unorganized Sector, popularly known as Arjun Sengupta submitted its report in 2007.

¹² Archana Shukla, Workplace accidents: Inside India's 'factories of death', BBC News

facilities is critical in preventing accidents, as unused machinery can be a major cause of accidents. To avoid accidents, management should limit the speed and continuous use of machinery and instruct workers to work at a steady pace. Workers should only be assigned tasks that they can complete efficiently. Workers can be trained in emergency situations and drills to understand the consequences of not following instructions.

CHALLENGES:

Over 90% of India's workforce works in the unorganised sector, which has limited access to occupational health management systems and benefits. Despite advances in a variety of fields, occupational health legislation intended to protect workers is frequently inadequately enforced¹³. The lack of qualified occupational health professionals, appropriate institutions, qualification courses, training modules, and funding all pose significant challenges to effectively implementing legislation. The country's high population density and low unemployment levels result in an abundant labour supply, putting low-wage workers' health and safety at risk at work. Many occupational illnesses go undiagnosed and unreported, resulting in a scarcity of reliable data on their prevalence.

Employers, employees, the general public, and other stakeholders are often apathetic and indifferent to occupational health issues, with insufficient awareness among all groups. Another significant challenge is distinguishing occupational health from primary health care and general health services, making it difficult to reach the unorganised sector. Occupational health nursing is a new concept in India, and it is almost non-existent in the unorganised sector¹⁴. Child labour is still a major issue, with poverty and high-risk occupations like agriculture, mining, and construction contributing to health issues. Despite the fact that the national policy on workplace safety, health, and the environment was launched in 2009, it has yet to be fully implemented.

Implementing safety and preventive measures can be difficult because they may reduce machinery productivity. Although the effect on productivity is minor, it has long-term implications. Furthermore, workers' attitudes towards safety measures can be a challenge, as some workers may be stubborn or resistant to change. Furthermore, implementing such measures may have a negative impact on industry profits, leading management to regard them as a burden. Management may not see the need for such measures in some cases and thus fail to implement them. Workers may also believe that safety measures limit their productivity, complicating the implementation process even further.

¹⁴ Health and Safety, Paycheck.in <https://paycheck.in/labour-law-india/health-and-safety>.

III. LEGAL FRAMEWORK FOR OCCUPATIONAL SAFETY IN INDIA

CONSTITUTION:

Article 24 makes it illegal to employ children under the age of 14. The Directive Principles of State Policy require the state to develop policies and laws that ensure both men and women have the right to earn a living, maintain workers' health and well-being (as stated in Article 39), provide public assistance to those facing unemployment, old age, sickness, disability, and other forms of destitution (as stated in Article 41), ensure fair and humane working conditions (as stated in Article 42), and provide a living wage and suitable working conditions for a decent standard of living (as stated in Article 43)¹⁵.

This essentially means that workplaces in all economic sectors should be safe and secure, and workers should be able to work continuously. They should be adequately compensated in the event of a work disruption. Furthermore, the International Labour Organization (ILO) has created a number of international labour standards, conventions, and recommendations to promote occupational safety and health (OSH) and to enforce labour laws through labour administration and inspection systems¹⁶.

Despite this, India has only ratified a few OSH conventions (C 032, C 115, C 136, C 174), none of which are the primary one, C 155, Occupational Safety and Health Convention, 1981. (No 155).

Various judicial pronouncements in India have recognised the right to workplace health and safety as a fundamental right. The Indian Supreme Court has declared workplace health and safety to be a fundamental right that falls under the umbrella of the rights to life, dignity, and social justice. The Supreme Court issued a landmark decision in this regard in the case of *Consumer Education and Research Centre v Union of India*.

According to the Supreme Court, the right to health is an essential component of a worker's right to life because it allows them to live a meaningful life in good health and vigour. A worker's livelihood is jeopardised without good health, and the economic necessity of working in industries exposed to health hazards should not come at the expense of the worker's health and well-being. Facilities and opportunities must be provided to protect workers' health, as mandated by Article 38 of the Indian Constitution. Medical testing and treatment also promotes increased productivity and efficiency.

¹⁵ Occupational Safety Continues to be Ignored as a Right, *Economic and Political Weekly* (Sept. 24, 2020), <https://www.epw.in/engage/article/occupational-safety-continues-be-ignored-right>.

¹⁶ Rajat Kumar Saha, *Annals of Global Health*.

Furthermore, both the employer and the state have a moral, legal, and constitutional obligation to provide workers with ongoing medical care both during and after their service. As a result, the right to health and medical care is a fundamental right under the Indian Constitution, as specified in Articles 21, 39(c), 41, and 43, and it ensures that the worker's life is meaningful and purposeful, and that they are treated with dignity.

The decision in this case has had a significant impact on Indian workers, particularly women and children, by providing them with significant judicial protection against various workplace hazards. The Supreme Court's directives to the federal and state governments have also played a significant role in improving working conditions throughout the country¹⁷. As a result, the right to health and medical care is a fundamental right under the Indian Constitution, and it is the employer's and the state's responsibility to ensure that workers are provided with adequate facilities and opportunities to protect their health and well-being.

OLD ACTS

There are currently 16 laws governing working hours, working conditions, and employment. The primary provisions for legal measures to protect workers' health and safety are contained in two primary acts: the Factories Act of 1948 and the Mines Act of 1952. In 1987, the Factories Act was amended to include pre-employment examination requirements as well as mandatory periodic medical exams for jobs in hazardous areas¹⁸.

The Factories Act of 1948 and the Mines Act of 1952 are two acts in India that contain the main provisions for legal measures to protect the health and safety of workers. The Factories Act of 1948 aims to regulate factory working conditions, health, safety, welfare, and annual leave, as well as enact special provisions for young people, women, and children who work in factories. The act requires the submission of plans for any class or description of factory to the Chief Inspector or the State Government, and the State Government may exempt any factory from the provisions of this section, subject to such conditions as may be prescribed. The act also requires the fencing of machinery in every factory, and the State Government may make rules requiring the submission of plans of any class or description of factories to the Chief Inspector or the State Government for the purposes of this act.

The Mines Act, 1952, governs the regulation and inspection of mines and applies throughout India. The act aims to amend and consolidate the law governing labour regulation and mine safety. Before beginning any mining operation, the owner, agent, or manager of a mine must

¹⁷ The Occupational Safety, Health and Working Conditions Code, 2019.

¹⁸ The Workmen Act 1923

provide written notice to the Chief Inspector, the Controller, Indian Bureau of Mines, and the District Magistrate of the district in which the mine is located⁴. The act also requires the appointment of Inspectors under this act, and the Chief Inspector shall declare the local area or areas within which each Inspector shall exercise his powers, as well as the group or class of mines with respect to which each Inspector shall exercise his powers. The act also requires the mine's owner and agent to make adequate provisions for the safety, health, and welfare of all mine workers.

NEW CODE: OSHWC CODE, 2020

Introduction

The Occupational Safety, Health, and Working Conditions Code, 2020 is a comprehensive piece of legislation that consolidates and rationalises the provisions of 13 existing labour laws, including the 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 Migration Act 1970¹⁹.

The code contains 143 sections divided into 13 chapters and three schedules, covering a wide range of topics such as hazardous industries, occupational safety and health standards, and notifiable diseases. The First Schedule lists the industries that use hazardous processes, while the Second Schedule establishes occupational safety and health standards. The Third Schedule contains a list of diseases that must be reported in accordance with Section 12(1) of the Code, which addresses the notification of certain diseases.

The amalgamation, consolidation, and rationalisation of the 13 existing labour laws, as well as the incorporation of new provisions to protect workers' interests, are key features of the Occupational Safety, Health, and Working Conditions Code, 2020. The code aims to improve working conditions, promote workplace safety and health, and provide workers with social security benefits. Overall, the code aims to simplify and streamline existing laws in order to make them more accessible and effective for both employers and employees.

Key Provisions

The proposed legislation aims to establish safety standards for various occupational sectors, including health and safety regulations, working hours, overtime, leaves, holidays, and welfare provisions such as canteens, creches, and restrooms.

¹⁹ <https://acadpubl.eu/hub/2018-120-5/1/61.pdf>.

The Code also outlines the responsibilities of employers, employees, and manufacturers, as well as requiring establishment registration, including online and deemed registration.

The legislation establishes a comprehensive framework for the adoption of rules, regulations, and standards, obviating the need for multiple registrations. Currently, six different Acts, including the Factories Act, Contract Labour Act, BOCW Act, Motor Transport Workers Act, Plantation Act, and Inter-State Migrant Workers Act, necessitate separate registrations.

The Code applies to all establishments with ten or more employees, except mines and docks, where it applies to a single employee. It does not apply to apprentices under the Apprentices Act, Central and State Government offices (except contract workers), or any nationality warships.

The Code requires that all employees, including workers and those employed on wages, be covered by the provisions on health and working conditions, whether they are skilled, semi-skilled, unskilled, manual, operational, supervisory, managerial, administrative, technical, or any other work. Furthermore, any person designated as an employee by the appropriate government is covered by these provisions.

Civil courts are prohibited by the Code from hearing cases that fall under their jurisdiction. As a result, the only legal recourse available to a person who has suffered a grievance under the Code is to file a writ petition with the appropriate High Court. Some may argue that the prohibition on civil courts will prevent people from challenging issues at a lower level of the judicial system.

The primary goal of the Code is to ensure that there are no potential hazards in the workplace. To accomplish this, employers in factories, mines, docks, plantations, and building and construction work must meet certain requirements. These include providing free annual health checks to employees, issuing appointment letters, and notifying relevant authorities in the event of a workplace accident that results in an employee's death or serious bodily injury.

Regulations governing welfare facilities, working conditions, and work hours for various types of establishments and workers will be enacted by the federal or state governments²⁰.

Under the Code, occupational safety boards will be established at both the national and state levels to advise the central and state governments on the standards, rules, and regulations that will be developed.

²⁰ (Apr. 8, 2021), <https://www.ijlmh.com/wp-content/uploads/Critical-Analysis-of-Occupational-Safety-Health-Working-Conditions-Code-Bill-2020.pdf>.

Employees must also take care of their own health and safety, follow safety and health standards, and report any unsafe work incidents to the Inspector, according to the Code. Employees have rights as well, such as the right to receive information on safety and health standards from their employer or a member of the Safety Committee.

Furthermore, the code outlines several regulations on working conditions and welfare facilities, such as maintaining a sanitary work environment, providing clean drinking water and toilets, canteens, first aid kits, and crèches that meet central government standards.

The Code allows women to work after 7 p.m. and before 6 a.m. with their consent, as long as the employer follows the Government's safety, holiday, and working hour requirements. However, the government may forbid women from working in certain operations that endanger their health and safety.

The Code contains specific provisions to protect the interests of contract workers. It requires that every contractor provide an experience certificate to contract labour upon request, detailing the work performed by them. The appropriate government will specify the format for this certificate.

Furthermore, the benefits that apply to contract labour are extended to interstate migrant workers. The definition of interstate migrant worker has also been expanded to include employees who are directly employed by employers²¹.

The Code establishes a social security fund to finance the welfare needs of workers in the unorganised sector. The fund will be administered by the appropriate government, and the amount received from the composition of offences and penalties will be credited to it. The fund will be used for the benefit of unorganised workers, as determined by the relevant government.

IV. COMPARISON

COVERAGE:

OLD ACT-

Depending on the number of employees employed by an establishment, different Acts have different coverage thresholds. For example, the Act governing factories applies to establishments with 10 or more employees with power and 20 or more employees without power. Similarly, the Act governing motor transport workers applies to establishments with 5 or more employees, whereas the Act governing contract labour applies to establishments with

²¹ Code on Social Security, 2020 envisages social security benefits for gig and platform workers, (Mar. 20, 2023), <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1908967>.

20 or more contract employees. Furthermore, certain Acts require establishments to obtain registrations or licences.

NEW ACT-

The Code's application is limited to establishments with a minimum of ten employees, which includes all mines and docks. All such establishments that fall under the purview of the Code must register. Aside from registration, factories must obtain an additional licence. Contractors who hire 20 or more employees are eligible for a 5-year licence. Licenses for beedi workers have been extended from one year to three years²².

AUTHORITIES MENTIONED:

OLD ACT-

Inspectors, among other things, have the authority to conduct surprise inspections and investigate accidents. Advisory committees/boards may be established in the case of mines, building and construction workers, dock workers, and contract labour to provide advice to the government on matters covered by the Act.

NEW ACT-

Under the Code, inspectors-cum-facilitators have the authority to conduct inspections and investigate accidents. The Code also requires the establishment of National and State Occupational Safety and Health Advisory Boards. These boards will advise and make recommendations to the respective central and state governments on the development of occupational safety and health rules and regulations.

DUTIES:

OLD ACT-

Employers are required by the Factories Act to ensure the safe handling, storage, and transportation of hazardous articles, as well as to provide appropriate instruction and training to ensure the health and safety of all workers.

Contractors must provide the authorities with information about interstate migrant workers, issue them a passbook, and report any accidents to the authorities. Contractors must provide welfare facilities for contract labour.

NEW ACT-

Employers are responsible for ensuring that their workplace is safe and free of hazards that may

²² 1798LS_1.p65, (July 19, 2019), http://164.100.47.4/billtexts/lsbilltexts/asintroduced/186_2019_LS_Eng.pdf.

endanger the health of their employees. They must also provide appointment letters to their employees. Employers in factories, mines, docks, plantations, and building and construction work have additional responsibilities, such as providing a safe workplace and ensuring that their employees are properly trained. Contract labour employers are also required to provide welfare services to their employees.

WORKING HOURS AND LEAVE:

OLD ACT-

Certain provisions are available to factory, mine, beedi, and cigar workers. No employee may work more than six days per week, and the maximum number of hours worked per week is 48, or nine hours per day (8 hours for underground mines). Workers must be given paid annual leave for at least one out of every twenty days on the job. Overtime work will be paid at twice the rate. Working journalists are not permitted to work more than 144 hours in a four-week period. Employees in sales promotion are entitled to earned leave for 1/11th of their working time and medical leave (50% of their pay) for 1/18th of their working time.

NEW ACT-

The Code stipulates that workers cannot work for more than six days in a week, except for motor transport workers who may be given exceptions. The government will notify the maximum hours of work for different establishments. Workers are also entitled to paid annual leave for at least one out of every twenty days on the job. Overtime work will be compensated at twice the rate²³. Furthermore, working journalists are not permitted to work more than 144 hours in four weeks, whereas sales promotion employees are entitled to earned leave for 1/11th of the time on duty and medical leave (at 50% pay) for 1/18th of the time on duty.

OHSWC FACILITIES:

OLD ACT-

Various Acts provide for various types of worker welfare. The following are some examples of such facilities. Mine, plantation, and construction workers have the right to safe drinking water, toilets, and first-aid facilities. Beedi and cigar workers are provided with ventilation, overcrowding control, canteens, and creches. Plantation and construction workers are entitled to canteens, creches, and housing.

²³ NewsClick Team, One More Labour Code with Loopholes and Defects, NewsClick (Nov. 27, 2020), <https://www.newsclick.in/one-more-labour-code-with-loopholes-defects>.

NEW ACT-

The central government will notify workers about the working conditions, which may include a clean and sanitary work environment, safe drinking water, and toilets. Furthermore, the central government may mandate additional welfare services such as canteens, first-aid boxes, and creches.

SPECIAL PROVISION:**OLD ACT-**

Women are only permitted to work in plantations, beedi and cigar establishments, factories, and mines between 6 a.m. and 7 p.m., with the exception that women are not permitted to work underground in mines.

NEW ACT-

Female employees, with their consent, may work after 7 p.m. and before 6 a.m., subject to certain conditions. Children under the age of 14 are, however, strictly prohibited from working²⁴.

OFFENCE AND PENALTY PROVISIONS:**OLD ACT-**

Factories, motor vehicles, beedi and cigar factories, contract labour, and interstate migrant workers: Offences include: (i) obstructing an inspector from performing their duties; and (ii) violating employment conditions. Penalties for such offences can range from one month to two years in prison, as well as fines ranging from one hundred rupees to five thousand rupees.

NEW ACT-

1. obstruction of the Inspector's duty, punishable with imprisonment up to 3 months and a fine of up to 1 lakh rupees
2. death of an employee, punishable with imprisonment of up to 2 years, or a fine of up to 5 lakh rupees, or both
3. in cases where the penalty is not specified, a fine of 2-3 lakh rupees on the employer,
4. if an employee violates provisions of the Code, a fine of up to Rs 10,000 may be imposed²⁵.

²⁴ Occupational Safety, Health and Working Conditions Code 2020, UPSC (Mar. 30, 2021), <https://byjus.com/free-ias-prep/occupational-safety-health-working-conditions-code-2020/>.

²⁵ 1798LS_1.p65, (July 19, 2019), http://164.100.47.4/billtexts/lsbilltexts/asintroduced/186_2019_LS_Eng.pdf.

V. ANALYSIS

THE NEED FOR SPECIAL PROVISIONS IS UNCLEAR:

As recommended by the National Commission on Labour in 2002, the Code consolidates and simplifies 13 laws governing worker health, safety, and working conditions. However, while the Code consolidates the existing Acts, its provisions are not simplified. The Code contains general provisions that apply to all establishments, such as registration, return filing, and employer duties. However, it also includes provisions that apply to specific types of workers, such as those in factories and mines, as well as audio-visual workers, journalists, sales promotion employees, contract labour, and construction workers²⁶.

While certain hazardous establishments, such as factories and mines, may necessitate special health and safety provisions, and specific categories of vulnerable workers, such as contract labour and migrant workers, may necessitate additional safeguards, it is unclear why special provisions are mandated for other workers. For example, the Code prohibits anyone suffering from deafness or giddiness from working in construction activities that pose an accident risk, but this requirement does not apply to all workers. Similarly, the Code requires the registration of employment contracts for audio-visual workers, raising concerns about the special treatment accorded to this group.

The Code also specifies additional leave for sales promotion employees and limits working journalists to a maximum of 144 hours in four weeks, while minimum leave and maximum work hours are prescribed by rules for all other workers covered by the Code. It is unclear why working journalists and sales promotion employees, on the one hand, and all other workers, on the other, are treated differently in terms of working conditions.

MATTERS UNDER THE CODE ARE NOT WITHIN THE JURISDICTION OF THE CIVIL COURT.:

Civil courts, according to the Code, are not permitted to hear any matters within their jurisdiction. In some cases, such as disputes arising from orders issued by Inspectors or the revocation of contractor licences, the Code provides for an administrative appellate authority to address grievances. The absence of a judicial mechanism to hear disputes under the Code, on the other hand, is a significant gap.

Disputes affecting workers' rights, such as wage, work hours, and leave, are typically heard by

²⁶ (Dec. 3, 2021), https://www.nishithdesai.com/fileadmin/user_upload/pdfs/NDA%20In%20The%20Media/News%20Articles/India-Unfair-Labor-Practices-and-Employment-Termination-Updates.pdf.

labour courts and industrial tribunals under existing health and safety laws. However, the Code expressly prohibits civil courts from hearing disputes and makes no mention of such disputes being referred to labour courts or tribunals²⁷.

Furthermore, there may be other health and safety-related disputes that are not covered by the Code. For example, an employer may wish to challenge an Inspector's order identifying workplace safety violations. In such a case, the employer may choose to file a civil court case to seek redress against the Inspector's orders. However, because the Code prohibits civil courts from hearing Code disputes, the employer will be unable to challenge the Inspector's or the administrative appellate authority's orders in a civil court. The only option would be to file a writ petition directly with the appropriate High Court.

The Code's prohibition on civil courts hearing matters may deter aggrieved parties from challenging issues in lower courts. It could be argued that the lack of a judicial mechanism to hear disputes under the Code disadvantages those affected by it.

TERM WAGE IS NOT DEFINED:

The Code contains provisions relating to overtime work and leave calculation that use the term "wages." However, there is no definition of the term in the Code. Wages are defined differently in different laws. The Code on Wages, 2019, for example, includes basic pay, dearness allowance, and retaining allowance in its definition of 'wages,' whereas the Payment of Gratuity Act, 1972 excludes retaining allowance. It is unclear which definition of "wages" will apply to the Code, which could lead to confusion when calculating overtime pay and earned leave.

SEVERAL MATTERS UNDER GOVERNMENT NOTIFICATION:

The Code includes provisions for various welfare facilities, health and safety standards, and work hours for employees, but it delegated the task of specifying these standards to the appropriate government via notification. The Code incorporates Acts that provide guidance on topics such as maximum work hours, drinking water, restrooms, and first aid facilities. This raises the question of whether the Code, rather than leaving it to the discretion of the government, should specify minimum requirements for work hours, safety standards, and working conditions such as washrooms and drinking water.

One provision of the Code overlaps with the Maternity Benefit Act of 1961, which is not incorporated into the Code. The Code allows the central government to establish rules for crèches in establishments with more than 50 employees, but this provision is optional. The

²⁷ (Apr. 29, 2023), <http://ncbi.nlm.nih.gov/pmc/articles/PMC9135385/>.

Maternity Benefit Act of 1961 requires such establishments to provide crèches.

VI. CASE STUDY ON VIZAG GAS TRAGEDY:

The Vizag gas tragedy, also known as the LG Polymers gas leak, occurred in Visakhapatnam, Andhra Pradesh, India, in the early hours of May 7, 2020. The gas leak killed 12 people and exposed over 5000 others to the toxic gas. Many workers at the plant were also injured²⁸.

The leak happened while styrene, a highly flammable liquid used in the manufacture of plastic, was being stored in tanks at the plant. The plant was shut down due to the COVID-19 lockdown, and the styrene had been left unattended for more than 40 days. This caused a rise in temperature and pressure inside the tanks, causing the styrene to vaporise and escape. The toxic gas quickly spread throughout the nearby villages, affecting thousands of people.

The initial response to the gas leak was slow and uncoordinated, exacerbating the situation. The local government was unprepared to deal with such a disaster, and emergency response teams were not adequately trained to deal with chemical disasters. It took several hours for authorities to realise the scope of the disaster and mobilise resources to bring it under control.

Many workers at the LG Polymers plant were injured as a result of the gas leak. Workers at the plant at the time of the incident experienced breathing difficulties, dizziness, nausea, and skin irritation. Many employees were hospitalised and required medical attention. The long-term impact of the toxic gas exposure on the workers' health has yet to be determined.

The Vizag gas tragedy raised several concerns about the safety of chemical plants and the authorities' ability to handle chemical disasters. The incident highlighted the need for stringent safety regulations for chemical plants, as well as the importance of regular equipment maintenance to avoid such incidents. It also revealed the country's inadequate emergency response mechanisms and the need for better training of emergency response teams.

The LG Polymers gas leak sparked widespread outrage and protests from residents and environmental activists. The incident emphasised the critical need for stricter regulations and improved enforcement of safety standards in the chemical industry. Andhra Pradesh's government ordered an investigation into the incident and formed a high-level committee to investigate the causes of the tragedy and recommend measures to prevent similar incidents in the future. The Vizag gas tragedy served as a wake-up call for the chemical industry and the authorities in charge of public safety²⁹.

²⁸ The complete story of Vizag gas leak, https://www.downtoearth.org.in/dte-infographics/vizag_gas_leak/index.html.

²⁹ Critical Analysis of Vizag Gas Leak Case - *International Journal of Law Management & Humanities*,

Despite some employers and academics criticising labour laws for being too rigid and costly for businesses, the incident has revealed significant gaps in our laws. The ILO Convention on Occupational Safety and Health, 1981 (No. 155) has not been ratified by India for two reasons: the inability of some sectors, such as agriculture, and the high costs of complying with the safety regulations contained in it.

Following the Bhopal gas tragedy, the Factories Act of 1948 was amended in 1987 to include a separate chapter on hazardous processes. Thousands of people were killed and over half a million were injured on December 2-3, 1984, as a result of a methyl isocyanate gas leak from the Union Carbide India Ltd pesticide plant in Bhopal. Even after the significant 1987 amendment, there are still issues with the Act.

The reports on the operation of the Safety Committee required by Section 41G must be submitted to the appropriate authorities for technical validation by experts and as a regular governance measure. The Act establishes several committees, including the Safety Committee, the Works Committee, and the Grievance Redressal Mechanism, but they have not been effective

The Act does not provide for the inclusion of local representatives in the larger Safety Committee, such as panchayati institutions or community and medical experts. The Act requires occupiers to develop and disseminate disaster control measures, including worker and nearby resident safety measures [Section 41B(4)].

Hazardous industries should have hospital facilities and medical specialists on hand to deal with immediate consequences of a disaster, but this is not covered by the Factories Act. Several states, including Andhra Pradesh, have implemented boiler self-certification and third-party auditing measures.

The labour department website in Andhra Pradesh includes a circular that liberalises factory inspections based on risk criteria. Low-risk factories with 20-150 employees will be inspected every three years, medium-risk factories with 150-1,000 employees will be inspected every two years, and high-risk factories with 1,000 or more employees and major accident hazards will be inspected once a year³⁰.

India has ratified the 1947 International Labour Organization Convention on Labor Inspection.

International Journal of Law Management & Humaniti (Nov. 22, 2020), <https://www.ijlmh.com/critical-analysis-of-vizag-gas-leak-case/>.

³⁰ KR Shyam Sundar, Vizag gas tragedy exposes gaps in labour laws, *The Hindu BusinessLine* (May 10, 2020), <https://www.thehindubusinessline.com/opinion/vizag-gas-tragedy-shows-up-gaps-in-labour-laws/article31551111.ece>.

There may be reforms to combat corruption and harassment, but eliminating inspection is tantamount to throwing out the baby with the bathwater.

When the non-implementation of labour laws is considered, the labour rigidity argument collapses like a pack of cards. In fact, the Code on Occupational Safety, Health, and Working Conditions (one of four 'codes' under the proposed labour laws) has watered down safety concerns. For example, the Code has removed the aforementioned Second Schedule and left it to the yet-to-be-written rules.

There is a tendency to move legal provisions into the realm of rule-making. According to Section 41G of the Factories Act, every occupier (the legal entity or individual designated as responsible for conditions in a unit) in a factory handling hazardous substances and/or using hazardous processes must form a bi-partite Safety Committee.

The Code, on the other hand, has left its constitution up to a general or special order by the appropriate government. The growing role of labour rule-making does not bode well for labour rights and safety.

VII. CONCLUSION

An analytical assessment of the central government's labour law reform initiatives reveals that these initiatives have effectively addressed several long-standing issues in the labour sector.

The Occupational Safety, Health, and Working Conditions Code of 2020 aims to create a risk-free workplace by mandating free annual health checks, issuing appointment letters to employees, and reporting workplace accidents resulting in serious injury or death to appropriate authorities. Employers in factories, mines, docks, plantations, building and construction work are subject to a variety of obligations under the code. Furthermore, manufacturers, importers, designers, and suppliers are responsible for ensuring the safety of any item they provide for use in a business and providing information on how to use it properly³¹.

There are several noteworthy features in the WHS Code 2019. To begin, the Code establishes a comprehensive legislative framework, with some provisions standing alone and others subordinate to sector-specific legislation and bye-laws. The Code also implements WHS institutional reforms by establishing National and State Occupational Safety and Health Advisory Bodies.

Furthermore, the Code formalises employment and provides free annual health checks to all

³¹ Technical Team, What is Industrial Safety and Why it is important?, Quality HUB India (June 28, 2021), <https://qualityhubindia.com/https-qualityhubindia-com-2021-06-28-what-is-industrial-safety-and-why-it-is-important/>.

workers, including retirees. It is important to note for this paper that the Code strengthens criminal sanctions for long-term violations of the Code involving hazardous processes and works, with fines of up to 20 lakhs. It is worth noting, however, that the Code forbids civil suits³².

Following enactment, the Code will supersede all existing WHS legislation. Nonetheless, it appears that the Code does not cover some critical aspects of WHS rights and the corresponding sanctions for noncompliance. Furthermore, the code recognises and protects the rights of contract workers and migrant workers, two of the most vulnerable and exploited groups of workers, and includes measures to protect their interests. To ensure effective enforcement, penalties for violations of the code's provisions have been rationalised and strengthened.

To reduce the impact of industrial accidents on workers' health and industry productivity, strict adherence to safety and preventative measures is required. Workers and supervisors should be educated on the importance of safety protocols. Implementing a reward and penalty system for employees who follow or violate safety protocols can encourage employees to work in a safer environment. Management must also train employees on emergency procedures in order to reduce the severity of accidents and collateral damage³³. Adequate training is essential for workers operating heavy machinery, and the company must ensure that workers are not subjected to hazardous working conditions or inhumane working hours. These measures must be implemented and closely monitored by management.

The OSHWCC has numerous serious flaws. The code has failed to address the OSH issues effectively and has squandered a critical opportunity to do so. This, combined with insufficient enforcement measures and a lack of vision for labour inspection under the guise of promoting business ease, is cause for serious concern. Furthermore, regional changes call into question the importance of national legislation, no matter how inadequate it may be. The institutional framework for occupational safety and health should be redesigned in accordance with the International Labor Organization's International Labor Standards framework and our Constitution's Directive Principles of State Policy.

VIII. RECOMMENDATIONS:

The current occupational health legislation and facilities must be expanded and made available to workers in the unorganised sector. This should be implemented immediately, with periodic

³² <https://rvkassociates.com/blog/comparative-analysis-on-labour-code-with-earlier-laws/>.

³³ Orchie Bandyopadhyay, Industrial accidents kill hundreds in India during Covid-19, (Aug. 4, 2021), <https://www.britsafe.in/publications-and-blogs/safety-management-magazine/safety-management-magazine/2021/industrial-accidents-kill-hundreds-in-india-during-covid-19/>.

reviews for improvement. It is also necessary to establish occupational health institutions and infrastructure while also training professionals in the field. Employers, employees, legislators, workers' organisations, non-governmental organisations, and the general public must all be made aware of occupational health issues. BOHS should be implemented in order to integrate occupational health into primary and secondary health care services.

To keep up with global standards, modern occupational health and safety legislation, adequate enforcement mechanisms, and centres of excellence in occupational medicine in all states controlled by a central institute are critical³⁴. Occupational health nursing should be made known to all stakeholders, and occupational health nurses should be adequately trained to provide basic occupational health services.

Economic development stumbling blocks like dense population, unemployment, poverty, illiteracy, ignorance, and unskilled labour must be addressed as soon as possible. The national policy on workplace safety, health, and the environment should be fully implemented beginning in 2009, with a thorough review every five years.

³⁴ Occupational Safety Continues to be Ignored as a Right, Economic and Political Weekly (Sept. 24, 2020), <https://www.epw.in/engage/article/occupational-safety-continues-be-ignored-right>.

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