



LABOUR

The Shift in Industries: A Comprehensive Legal Analysis of the OSH Code, 2020

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PUBLISHED 18 December 2025

Abstract

An important turning point in the history of Indian labour law was the adoption of the Occupational Safety, Health and Working Conditions Code, 2020. The legislature has attempted to strike a compromise between the welfare of the workforce and the ease of doing business by combining 13 central labour enactments into a single law. The expanded definitions, the transformation from a “policing” to a “facilitating” compliance regime, the new statutory rights of interstate migrant workers, and the effects of these changes on the Indian industrial ecosystem are all covered in this article’s thorough examination of the Code.

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I. Introduction: The Rationale for Codification

For many years, India’s labour regulations were typified by a variety of laws, overlapping jurisdictions, and antiquated restrictions that frequently impeded industrial development while failing to offer workers uniform safety coverage. To improve uniformity and ease of compliance, the Second National Commission on Labour (2002) suggested grouping central labour legislation together.

This suggestion is implemented in the OSH Code, 2020. It unifies and modifies the rules governing the health, safety, and working conditions of employees in an establishment. Thirteen important laws are repealed and replaced, including

1. The Factories Act, 1948
2. The Mines Act, 1952
3. The Dock Workers (Safety, Health and Welfare) Act, 1986
4. The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996
5. The Plantations Labour Act, 1951
6. The Contract Labour (Regulation and Abolition) Act, 1970
7. The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979
8. The Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955
9. The Working Journalists (Fixation of Rates of Wages) Act, 1958
10. The Motor Transport Workers Act, 1961
11. The Sales Promotion Employees (Conditions of Service) Act, 1976
12. The Beidi and Cigar Workers (Conditions of Employment) Act, 1966
13. The Cine-Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981

Through digitization as well as a single-window approval process, the Code seeks to both lessen the burden of compliance on businesses and broaden the scope of the legal system to cover workers who have previously been excluded from the safety net.

II. Applicability and Jurisdictional Thresholds

The rationalization of applicability thresholds is one of the Code's most important modifications. By lowering the number of businesses subject to stringent regulatory monitoring while ostensibly upholding safety standards, this modification responds to the "inspector raj" critique.

1. The Definition of "Establishment"

Any location where an industry, trade, business, manufacture, or vocation is conducted that employs ten or more people is considered an establishment under Section 2(v). The goal of this consistent definition is to eliminate any ambiguity that may have existed between various acts.

2. Revised Thresholds for Factories

The Code modifies what constitutes a "Factory" in order to promote the expansion of smaller businesses without the immediate threat of regulatory burden:

With Power: The cutoff is increased from 10 to 20 employees.

Without Power: The cutoff point is increased from 20 to 40 employees.

For the MSME (Micro, Small, and Medium Enterprises) sector, this change is essential since it enables them to expand operations prior to reaching the Factories Act's compliance ceiling.

3. Contract Labour

The Code raises the bar for contract labour laws to be applicable. In the past, businesses with 20 or more contract workers were subject to the Contract Labour (Regulation and Abolition) Act, 1970. This cap is increased to more than fifty contract workers by the OSH Code. This is a contentious clause that, although it makes compliance easier for smaller businesses, others contend that it might exempt a sizable segment of the contract workers from certain legal rights.

III. Definitional Clarity and Expansion

The Code clarifies a number of important concepts in order to reduce lawsuits resulting from interpretive ambiguity.

"Worker" versus "Employee"

The Code upholds a difference that is essential for attorneys to comprehend:

- Worker: This term refers to people who work in any industry performing manual, unskilled, skilled, technical, operational, clerical, or supervisory tasks. Employees in managerial or administrative roles, as well as supervisors earning more than

?18,000 a month, are expressly excluded.

- **Employee:** This is a more general term. For the purposes of several chapters (such as Chapter III on Duties of Employer), it encompasses “workers” as well as anyone working in management, administrative, or supervisory roles (regardless of wage ceilings).

Legal Consequences: This guarantees that everyone has the right to safety. Even though they are not entitled to overtime pay or union representation in the same manner as a “worker,” high-ranking managers nevertheless have a right to a safe workplace.

“Wages”

The consistent definition of “Wages” found in the Code on Wages, 2019 is adopted by the Code. It covers all compensation (base salary, DA, retention allowance), but it leaves out certain elements like overtime compensation, pension contributions, and HRA.

The 50% Cap: A crucial clause stipulates that any amount that the excluded components above 50% of the overall compensation would be considered “wages.” In order to lower social security contributions, this stops employers from arranging salaries with low basic pay.

“Migrant Worker Across States”

Section 2(zf) greatly broadens the definition. It now includes anyone who: Has been hired by a contractor or employer to work in another state; OR Has moved from one state on their own and found work in another state.

The 2020 migration crisis revealed legislative flaws, which prompted the inclusion of self-migrating workers. It guarantees that statutory benefits, such as journey allowance, are still available to workers who relocate without a contractor.

IV. Institutional Framework: The Move to Facilitation

The Code replaces the traditional “Labour Inspector” with an “Inspector-cum-Facilitator.”

1. Role of the Inspector-cum-Facilitator

- The Inspector-cum-Facilitator’s duties under Section 34 include advising employers and employees on compliance in addition to enforcing the law.
- **Online Inspection:** The Code requires web-based inspection programs with randomly assigned inspectors in order to minimize corruption and harassment.
- **Opportunity to Correct:** Before filing charges, the Inspector frequently has to offer the employer a chance to abide with the rules, which signifies a change from instant punishment to remedial action.

2. Safety Committees and Safety Officers

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V. Duties and Responsibilities

The Code codifies the “Duty of Care” principle, placing specific obligations on various stakeholders.

1. Duties of the Employer (Section 6)

- The employer’s responsibilities are extensive and non-negotiable:
- **Workplace Maintenance:** Make sure there are no risks that could result in an injury or occupational illness.
- **Health Examinations:** Employees in a designated age range should receive free yearly health exams.
- **Letters of Appointment:** Give each employee a letter of appointment. This is a significant step toward formalizing the informal sector, since the main obstacle to worker legal issues is the absence of written contracts.
- **Hazardous garbage:** Make sure that toxic and hazardous garbage are disposed of properly.

2. Duties of the Employee (Section 13)

- Safety is a two-way street. Employees are required under the Code to: Take reasonable precautions for their own and others health and safety.
- Respect health and safety regulations.
- Inform the employer or Safety Committee of any hazardous or unhealthy circumstances.

3. Duties of Designers and Manufacturers

Section 12, which places obligations on those who create, produce, import, or supply goods for use in establishments, is a progressive addition. When used correctly, they must guarantee that the product is safe and poses no health risks. This brings “Product Liability” ideas into the field of industrial safety law.

VI. Welfare Provisions and Working Conditions

1. Working Hours and Overtime

- Standardization: The Code sets a maximum of 8 hours a day and 48 hours a week.
- Consent for Overtime: Overtime is no longer a unilateral demand by the employer. It requires the consent of the worker.
- Double Wages: Wages for overtime work must be at twice the ordinary rate of wages.

2. Leave with Wages

There is now less time to qualify for leave. A worker is entitled to paid time off after working 180 days, or roughly six months, in a calendar year. This used to be 240 days under the Factories Act. This greatly advantages contract and temporary employees.

3. Women in the Workforce (Section 43)

- The Code promotes gender equality. It states that women have the right to work in all types of establishments.
- Night Shifts: Women are permitted to work from 7 p.m. to 6 a.m. as long as they consent.
- The employer offers suitable working hours, holiday conditions, and safety.
- This effectively opens up the industrial and logistics sectors to female workers around-the-clock by eliminating the legal bar that prohibited them from working in specific industries or shifts.

VII. Special Provisions: Contract Labour and Inter-State Migrants

1. Contract Labour: Licensing vs. Registration

- Single License: Previously requiring several state-specific permits, contractors operating in multiple states can now receive a single “Common Licence,” simplifying operations.
- Core Activities: Using contract workers in an establishment’s “core activities” is prohibited by the Code. Nevertheless, there are several caveats to the notion of “core activity” (e.g., if the activity is intermittent). Because businesses frequently label normal work as “intermittent” in order to use less expensive contract labour, this is still a contentious subject.

2. Inter-State Migrant Workers Benefits

- Journey Allowance: Once a year, the employer is required to cover the whole cost of the employee’s travel to and from their home country.
- PDS Portability: The Code establishes a legal framework that permits migrant workers to receive benefits from the Public Distribution System (ration) in the state of destination (One Nation, One Ration Card).
- Toll-Free Helpline: Governments are required to have a helpline open for migratory labourers.

VIII. Offences, Penalties, and Decriminalization

The government’s intention to remove the penalty for minor technical offenses in order to enhance the “Ease of Doing Business” is reflected in the OSH Code.

1. Criminal prosecution versus civil penalties

Many crimes that were once punishable by jail time are now punishable by fines.

Blocking an Inspector: continues to be a serious offense that carries a maximum sentence of three months in jail or a fine of ₹1 lakh.

Crimes That Lead to Death: An employer faces up to two years in prison or a fine of at least ₹5 lakhs if their breach results in the death of a worker.

2. The Social Security Fund

Section 115, which permits the court to order that a portion of the penalty levied be allocated to a “Social Security Fund” for the benefit of unorganized workers, is a novel provision of the Code. As an alternative, the court may order that the fine be given to the victim or their heirs as compensation in situations involving death or severe harm.

IX. Critical Analysis and Conclusion

Challenges and Criticisms

Although the OSH Code is a modernizing law, legal experts and labour unions have criticized it:

1. **Absence of Small Units:** Raising the factory threshold to 20/40 workers exempts many micro-enterprises from strict safety checks. The most vulnerable workers, according to critics, are left unprotected.
2. **Delegated Legislation:** The Code leaves a great deal of information up to the “Appropriate Government” to decide through notifications, such as safety regulations and the particulars of work hours. Until the final State Rules are announced, there is uncertainty due to this excessive delegation.
3. **Diminished Authority of Inspectors:** The transition to randomized, web-based inspections may lessen harassment, but in high-risk businesses, it may also result in fewer actual safety assessments.

Conclusion

A significant step towards unifying India’s disparate labour laws is the Occupational Safety, Health and Working Conditions Code, 2020. It offers a new area of compliance practice to the legal community. It provides a simplified, digital-first interface for employers, but it also requires greater accountability with regard to “Duty of Care.” It promises greater rights and dignity for workers, especially women and migrants.

However, how the State Rules are framed and how strong the enforcement apparatus is will determine how effective this Code is. The legal emphasis must change from “checkbox compliance” to a true workplace safety culture as we go into this new environment.

For more details, write to us at: contact@indialaw.in

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