

SECRET

THE CONSTRUCTION WORKERS (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE ACT 1995

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THE CONSTRUCTION WORKERS (REGULATION OF EMPLOYMENT
AND CONDITIONS OF SERVICE) ACT 1995

A

ACT

to provide for the regulation of employment and conditions of
service of construction workers and for matters connected therewith

Be it enacted by Parliament in the Forty Sixth Year of the
Republic of India as follows :-

A. STATEMENT OF OBJECTS AND REASONS

1. There are nearly two crores of construction workers in India. The construction industry employs, next only to agriculture, the largest number of workers in our country. This industry covers a variety of workers and operations ranging from construction of dams, power houses, defence projects and bridges, harbours, road, railway tracks and runways, to factories and offices, schools, hospitals, hotels and all other residential buildings. These activities extend over the entire length and breadth of India.

2. Construction has been an age old industry in our country. The superb monuments found all over the country are symbols of a civilization built by the blood and sweat of the toiling people. Since independence various developmental works like dams, roads, industries and bridges have been built and crores of rupees have been spent through budgetary provisions and five-year plans. However, the quality of life of the workers involved in all these developmental activities is appalling. They have no security of employment. They get very low wages. They have no educational, housing or other social welfare facilities; Accidents are very frequent while medical facilities are almost nil. Neither are safety measures enforced nor is any compensation paid to the victims of accidents.

Unlike the organised industrial sector, there is no fixed employment relationship in the construction industry. The peculiar nature of the construction industry is in its changing employer-employee relationship. In the construction industry, the product of labour is stationary whereas the contractors, sub-contractors and workers move to different locations to work for different principal employers. In addition thereto, in the construction industry, there is a hierarchy of relationships. The employment is contractual, most often on a sub-contract basis, and is unregulated by any existing law. Thus, to ensure security of employment and protection of workers, it is imperative to regulate employment in the industry.

Though various labour laws enacted to protect labour, such as the Minimum Wages Act, Contract labour (Regulation and Abolition) Act, etc. are sought to be applied to construction labour, they are not capable of being implemented due to the changing employer-employee relationship, inadequacy of labour law administration and the lack of provisions to involve workers, in the implementation or to protect them against victimisation.

5. Though social security laws such as the Payment of Gratuity Act, etc. have been sought to be extended to the construction industry, constraints in their application have been experienced due to lack of continuity of employment, the changing employer-employee relationship and the total lack of records pertaining to details of employment.

6. Thus, the major contributing cause to this state of affairs is the total inapplicability of the normal type of labour laws to the situation obtaining in the construction industry. The beneficiaries of the labour of construction workers, have thus a collective obligation to meet the human needs of those, the fruits of whose labour benefits the people at large. If the benefits of labour legislation are to reach this large mass of workers, it is then necessary that the law should take note of the unique features of the industry and should provide not merely for welfare of the workmen, but also for the regulation of employment itself in the industry. Such regulation could not be left to be taken care of by the employers or by the administrative hierarchy, but must be entrusted to an autonomous body statutorily set up and consisting of representatives of the workers, Government and the employers. The Dock Labour Boards which are analogous provide useful examples.

The proposed law intends to incorporate the following features based on the above stated nature of employment in construction industry :-

- (a) compulsory registration of the employers and of the Workers;
- (b) restriction on employment in the industry to only those workers who are registered under provisions of the proposed legislation;
- (c) Prohibition of construction work by unregistered employers;
- (d) equitable sharing of the available employment, categorywise, on the basis of rotational booking of workers;
- (e) vesting of the responsibility for determining wages and their disbursement in the autonomous body; and
- (f) provision for various other entitlements including social security and a minimum guarantee of wages by the autonomous body. The Bill seeks to achieve the above objectives.

CHAPTER I

PRELIMINARY

(1) This Act may be called the Construction Workers (Regulation of Employment and Conditions of Service) Act, 1995.

Short title, extent and commencement.

(2) It extends to the whole of India.

(3) Chapter I shall come into force at once and the rest of the provisions shall come into force on such date or dates as the appropriate Government may, by notification in the Official Gazette, appoint but no such appointed date shall be later than six months from the date of assent.

It is hereby declared that it is expedient in the public interest that the construction work be declared as an industry, employing, as it does, a very large number of workers, both women and men and whose conditions of work and living need amelioration and to whom regularity of employment must be assured and regulated by law so that the Directive Principles of the Constitution more particularly the relevant provisions in articles 39, 41, 42, 43 and 43A of the Constitution are given effect to by a law made by Parliament with reference to entries 22, 23 and 24 of List III in the Seventh Schedule to the Constitution.

Declaration as to expediency of regulation.

3. In this Act, unless the context otherwise requires -

Definitions.

(a) 'appropriate Government' means the concerned State Government or the Union Territory Administration;

3. (b) 'construction work' means the construction, alteration, repair, maintenance and/or demolition of -

- (i) building works including excavation, laying of foundation;
- (ii) any railway line or sidings;
- (iii) docks, harbours, canals, dams, reservoirs, embankments including river valley projects, river works, water works, tanks and water courses for inland navigation;
- (iv) rock tunnels, bridges, viaducts, pipelines, aqueducts, sewage works, airfields, sea defence works and gas works;
- (v) any other structural engineering work of steel or reinforced concrete structure;
- (vi) construction operations connected with the installation of machinery wherever such installations take place in a factory or establishment or any engineering construction or in a mine;
- (vii) any other civil or structural work similar to any of the aforesaid construction activities; and
- (viii) any other operation such as stone breaking, earth brick making, or work in a brick kiln or lime kiln;

(c) 'construction worker' means a person who is directly involved in any construction work and includes one who is indirectly involved in any activity ancillary or incidental to construction work but does not include a contractor by whatever name called;

'Workers' means a person, male or female, who are employed to do any High Skilled, Semi-Skilled or Un-skilled, manual, supervisory, technical or clerical work. Whether the terms of employment are expressed or implied in connection with any construction work as defined above.

(d) 'establishment' means any establishment or industry engaged in any construction work;

(e) (i) 'employer' means any person who utilises construction labour for the purpose of construction work and includes any promoter of building activities, agent, contractor, or sub-contractor by whatever name called who has undertaken the construction work on his own or on behalf of any person;

(ii) The Owner of any establishment engaged in construction work; and

(iii) The Chief Executive of any establishment belonging to or under the control of the Govt., any body corporate or firm.

(f) 'Wages' means all remunerations capable of being expressed in terms of money which under the terms of employment expressed or implied are fulfilled to be payable to a worker in respect of his employment or work done in such employment

and includes Dearness Allowance, House Rent Allowance, Height Allowance @ 20% of Wage (above 30' height), Tunnel Allowance @ 20% of Wage, Backward Area Allowance @ 10% of Wage, Supply of light, water, medical treatment under the conditions of service. Overtime Allowance will be @ double the ordinary rate of Wages.

Cost of Living Index Number: The appropriate Government can appoint a competent authority to ascertain from time to time the cost of living index number applicable to the employers employed in the Scheduled employments. The Index Numbers are notified in the Official Gazette.

The term wages includes remuneration in respect of days of rest.

The provisions of this Act shall have effect notwithstanding any thing inconsistent therein contained in any other law for the time being in force or in any contract or instrument having effect by virtue of any law other than this Act or any other decree or order of any Court, tribunal or authority.

Effect of laws and agreements inconsistent with this Act.

For the purposes of the Act "may" means "shall", wherever it refers to some obligations to be discharged or power to be exercised.

Interpretation.

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In this Act, notwithstanding anything contained in the Indian Evidence Act, 1872, the burden of proof that compliance with the provisions of this Act and the Scheme have been effected shall be entirely on the employer and the different Board wherever applicable.

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In implementing the provisions of this Act, the authorities constituted under this Act shall strive to apply as the situation may require the principles contained in articles 41, 42, 43, 42A, and 45 of Part IV and clauses (h) and (j) of article 51A of Part IVA of the Constitution.

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CHAPTER II

CONSTITUTION OF CONSTRUCTION LABOUR BOARDS AND FRAMING OF SCHEMES

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(1) The Central Government shall, by notification in the Official Gazette, establish a Central Construction Labour Board, hereinafter to be known as the 'Central Board' consisting of a Chairman and such number of members as may be prescribed representing the State Governments by rotation, Union Ministries/Departments, experts in the field of Labour Welfare and employers.

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(2) The Chairman shall be appointed by rotation from any of the members of the Board and the term of the Chairman shall be two years.

(3) The Board shall have such number of members as may be prescribed representing construction workers who shall be not less than the total strength of members representing employers and State Governments.

9. (1) The Central Government shall, by notification in the Official Gazette, establish a Construction Labour Board in every State and Union territory, hereinafter to be known as "State Board" and "Union territory Board" respectively.

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(2) The State Board or the Union territory Board, as the case may be, shall consist of a Chairman and such number of members as may be prescribed representing construction workers, employers, experts in the field of labour welfare and one representative from the Central Government.

(3) The Chairman of the State Board or the Union territory Board shall be appointed from any of the members of the concerned Board annually on rotation basis.

10. (1) The appropriate Government shall after consulting the concerned Board, by notification in the Official Gazette and subject to condition of prior publication, establish a Construction Labour Board in every district to be known as "District Board".

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(2) The District Board shall consist of a Chairman and such number of members as may be nominated by the State Board representing employers, experts in the field of labour welfare, one representative each from the concerned State Government and the Central Government and construction workers elected by the registered construction workers :

Provided that women construction workers shall have proportionate representation among representatives of construction workers.

11. The term of members of all the Boards established under this Act shall be for a period of three years.

12. (1) The appropriate Government may, in consultation with its Construction Labour Board and after consulting the Central Government, frame a scheme or schemes to be called the "Construction Workers (Regulation of Employment and Conditions of Service) Scheme, 1992" for ensuring greater regularity of employment, for regulating the employment of construction workers and for prescribing conditions of service of the construction workers, covered by the scheme.

(2) The Schemes may be for a specified area and/or for a specified category of construction workers or for the whole State Union territory and for all categories of workers.

(3) In particular, the Scheme may provide for any or all of the following :

(a) for the application of the Scheme to such classes of construction workers and employers as may be specified therein;

(b) for regulating employment in the construction industry and providing benefits to workers;

(c) for laying down norms for the discharge of statutory obligation by employers and construction workers;

(d) for registration of construction workers and employers, including maintenance of registers and the removal, either temporarily or permanently of names of the workers or the employers from the registers and the imposition of fees for registration;

(e) for regulating the employment of construction workers and the terms and conditions of such employment, including rates of remuneration, hours of work and conditions as to holidays, and pay in respect thereof;

(f) for providing for a minimum payment to workers who are available for work in respect of periods during which full employment or even part employment, is not available.

(g) for prohibiting, restricting or otherwise regulating the employment of construction workers who are not registered workers and the employment of construction workers by employers who are not registered employers;

(h) for creating such fund or funds as may be necessary or expedient for the purposes of social security and other welfare benefits and for the administration of such fund or funds:

(i) for training and imparting skills to construction workers:

(j) for the welfare of the officers and other staff of the State Board and District Boards;

(k) for health and safety measures in places where construction workers are employed;

(l) for formulating the manner in which, and the persons by whom, the cost of operating the Scheme and the functions of the Board is to be defrayed; and

(m) for formulating appropriate provisions for taking disciplinary action if necessary against the functionaries of the Boards and its bodies.

) The Scheme may further provide for the consequences and penalties of contravention of any provisions of the Scheme.

(5) In framing the scheme, the appropriate Government shall keep in view the provisions of the model scheme as may be framed by the Central Government, and ensure that the provisions of the scheme framed are not inconsistent with or less beneficial to the construction workers than the provisions of the model scheme.

3. (1) The appropriate Government may, by notification in the Officials Gazette, amend, alter or vary the Scheme or Schemes made by it for the purposes of more effective implementation of the Scheme or Schemes having regard to any special condition ~~obtaining~~ obtaining in the State and/or for conferring additional benefits to the construction workers. Variation and re-vocation of scheme

(2) Such amendments, alterations or variations of the Scheme or Schemes may be effected in consultation with the Central Construction Labour Board.

(3) Pending the formulation and final publication of the Scheme or Schemes by the State Government, the provisions of the model Scheme or Schemes as may be framed by the Central Government shall be applicable in that State.

14. (1) The Central Construction Labour Board shall be a coordinating and advisory body without executive functions and the entire expenditure of the Central Board shall be borne by the Central Government.

(2) The Construction Labour Boards set up in a State or in a Union territory shall be responsible for administering the schemes and shall exercise such powers and perform such functions as may be conferred on them by the Schemes.

(3) The District Boards shall be responsible for execution of the Schemes and the concerned State Board or Union territory Board may issue such directions in this regard as it may deem fit.

CHAPTER - III

SAFETY AND HEALTH

The Appropriate Government may after previous publication of notification in the official gazette make rules relating to measures to be taken for the safety and health by construction workers in the course of their employment and the appropriate testing, certification and periodical check-up of equipment and appliances used for the work and provided to them for their safety, health and protection during such employment. Without prejudice to the generality of the foregoing, rules may provide for all or any of the following matters -

- 1) The safe means of access to and the safety of any working place including a provision of suitable and sufficient scaffolding at various stages when work cannot be done safely from the ground or from any part of the building or from ladder or such other means of support.
- 2) Worker shall have the right to remove himself from danger when he has sufficient reason to believe that there is an immense and serious danger to his safety or health and his duty is to inform the supervisor immediately.
- 3) Precaution to be taken in respect of scaffolding or after elevated parts of work, ladders, stairs, ramps, lifting appliances and gears, steam boilers, compressor, air

receivers, wood working machines, abrasive wheels, transport vehicles, earth-moving and materials handling equipment, other plant and machinery used in connection with the construction work and for all other work, excavation, underground work and tunnels, confardans caissons, work under compressed air, erection of structural frames and roofs, concrete construction, chimney construction, work on fragile material or sloping roofs, work in confined spaces, welding and flame igniting, surface treatment, erection of electric supply lines etc.

4) Precautions to be taken in connection with demolition of the whole or any substantial part of the building or other structure under the supervision of a competent person and the avoidance of danger from the collapse of any building or other structure while removing any part of the same building or other structure by shoring or otherwise.

5) The handling of use of explosive under the control of competent persons so that there is no exposure of the risk of injury from the explosion or from flying materials.

6) Precautions, in respect of installation, use and maintenance of transporting equipment, such as locomotives, trucks, wagons and other mobile equipment and trailers, such as, tractors, dozers, excavators, dumpers, pay-loader cranes, etc. by competent persons at required intervals.

7) Erection, installation, use and maintenance of hoist, lifting appliances and lifting gear including periodicals testing and

and examination and heat-arrangement where necessary, precautions to be taken while raising or lowering roads and use of other lifting appliance.

- 8) Adequate and suitable lighting of other works building and approach there too or the building where raising or lowering the operations with use of the hoist, lifting appliances or lifting gears are in progress and avoidances of danger of other workers employed.
- 9) Precautions to be taken to prevent inhalation of dust, gears or other particular while grinding cleaning spraying or doing such job and to secure adequate ventilation of other working places of confined placed.
- 10) Measures to be taken during stacking or unstacking of materials during the handling thereof and other connected hazards.
- 11) Safeguarding all machinery including the function of all prime movers and other parts of transmission and other machineries unless it is otherwise considered safe by all workers working in that operation.
- 12) Precautions to be taken in case of fire
- 13) Limits of weight to be lifted or moved by workers safe transport of working materials to or from any working place by workers himself and the means of rescue from that operations

14. Steps to be taken to prevent danger from workers from live electric wires or other apparatus including electrical machinery and tools and from overhead wires.
15. Standard to be applied with in regard to scaffolding ladders and steers lifting appliances change earth moving equipments and other heavy operations equipments.
16. Precaution to be taken in regard to driving of crane, roads ^{and} ~~and~~ ^{and} other similar insulation work duration operation escalation underground construction.
17. Safety rules to be framed to ensure safety and health of construction workers. The administrative arrangement therefor and the water connected there with to be framed by the employers and contractor for the operation to be carried on in building or any other construction works. The information to be furnished to the bureau of Indian Standard established under Indian standard Act 1956 regarding the use of any articles of process. Covered under that set in a building of other construction work.
18. The previous of maintenance of medical facilities to workers.
19. Any other matter concerning safety and health of workers working in any of the operation being carried out in the construction work.

CHAPTER - IV

DISPUTE RESOLUTION PROCESS

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disputes.

16. All disputes arising out of the enforcement of the provisions of this Act and the Scheme shall be resolved by Dispute Resolution Councils duly constituted under this Act within 10 days of receipt of such dispute. If the disputes not resolved within 10 days the disputes to be referred to the conciliation machinery as per provisions of Industrial Dispute Act 1947 for solution.

There shall be set up a Dispute Resolution Council, hereinafter to be known as the "Council" , in every district consisting of members with legal background representing the State Government, the Construction Workers and the employees.

CHAPTER V

MISCELLANEOUS

17. (1) Whoever obstructs any person who is designated as Labour Officer by the State Board or any person appointed under this Act or Scheme (hereinafter referred to as the authorised person) in the discharge of the duties under this Act or refuses or wilfully neglects to afford the Labour Officer or the authorised person any reasonable facility for making any inspection,

Punishment for not assisting authorities under the Act.

examination, inquiry or investigation authorised by or under this Act in relation to an establishment to which, or a contractor to whom, this Act applies, shall be punishable with imprisonment for a term which may extend to two years, or with a fine which may extend to two thousand rupees, or with both.

(2) Whoever wilfully refuses to produce on the demand of any Labour Officer or authorised person any register or other document kept in pursuance of this Act or prevents or attempts to prevent or does anything which he has reason to believe is likely to prevent any person from appearing before or being examined by any Labour Officer or authorised person acting in pursuance of his duties under this Act, shall be punishable with imprisonment for a term which may extend to two years, or with a fine which may extend to two thousand rupees or with both.

(3) Such obstruction or wilful refusal as provided under sub-section (2) shall at once be reported to the Board within whose jurisdiction such obstruction wilful refusal takes place, and to the State Board.

1-19. (1) Notwithstanding anything in sub-section (4) of section 12, whoever contravenes any provision of this Act or of any rules made thereunder regarding the employment of construction workers shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to one thousand rupees or with both, and, in the case of continuing contravention, with an additional fine which may extend upto one hundred rupees for every day during which such contravention continues after conviction

for the first such contravention.

(2) If any person contravenes any of the other provisions of this Act or any rules made thereunder, he shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to one thousand rupees, or with both.

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panies.

(1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation--- For the purpose of this section ---

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

20. (1) Every offence punishable under this Act and the scheme shall be a cognisable offence and tried only by a Judicial Magistrate of the first class of the area concerned. Co sa of ce

(2) Whenever any contravention of the provisions of the Act and and Scheme takes place, the Labour Officer of the Board or any person aggrieved by such contravention may in writing complain to the Magistrate for taking cognisance of the offence.

(3) Whenever a Labour Officer without sufficient reason refuse or fails to make a complaint of such a contravention, the Board may, suo moto or on a report from the person aggrieved, make a report to the Magistrate in writing to take cognisance of the offence.

Provided that nothing in this section shall prevent the Board to take any disciplinary action as it may deem fit against the Labour Officer.

21. (1) The Central Government may make rules for carrying out the purposes of this Act. Powe to m rule

(2) Without prejudice to the generality of the forgoing power, such rules may provide for the following matters, namely :-

(a) the election of registered construction workers;

(b) health, safety and medical facilities, social security and maternity benefits and construction workers' welfare funds.

(c) enforcement of the provisions of the Act and the Scheme, including machinery for such enforcement;

(d) provisions in regard to creches, education and such other social welfare benefits for the children of construction workers.

(e) the conditions of service including recruitment, pay, allowances, tenure, discipline and appeal, retirement benefits of various categories of employees of the Boards and their welfare.

(f) the remuneration or honorarium payable to the Chairman and other office bearers of the Boards.

(g) provisions for leisure time activities, recreation, library and imparting of education including legal education to construction workers; and

(h) any other matter which is required to be so prescribed.

FINANCIAL MEMORANDUM

Clause 8 of the Bill provides for the constitution of the Central Construction Labour Board. Clause 9 provides for the constitution of State/Union Territory Construction Labour Boards. Clause 10 provides for the constitution of District Construction Labour Boards. Clause 12 provides for framing of a Scheme for ensuring regular employment of Construction workers and their welfare. Clause 14 provides that the entire expenditure of the Central Construction Labour Board shall be borne by the Central Government. Clause 16 provides for the constitution of Dispute Resolution Councils in every district in the country. Clause 17 provides for establishment of an Appellate Authority in every State and Union territory. Clause 25 provides for framing of rites in respect of welfare of construction workers etc. The Bill, therefore, will involve expenditure from the Consolidated Fund of India in respect of Central Construction Labour Board and implementing the provisions of the Bill in Union territories. The State Governments will incur expenditure from their respective Consolidated Funds in giving effect to the provisions of the Bill.

It is estimated that an annual recurring expenditure of rupees twenty five Lakhs is likely to be involved.

A non-recurring expenditure of about rupees five lakhs is also likely to be involved

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 12 empowers the appropriate Government to frame a Scheme for ensuring regularity of employment to construction workers and for their welfare. Clause 25 empowers the Central Government to make rules for carrying out the purposes of this Bill. The rules will relate to matters of detail only. The deletion of legislative power is, therefore, of a normal character.