

NATIONAL CAMPAIGN COMMITTEE

For Central Legislation on Construction Labour

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On 23rd July 2019 the Occupational Safety and Health Code was introduced in Parliament and referred to Parliamentary Standing Committee on Labour on 9th Oct 2019.

On 11th Dec. 2019 the Code on Social Security 2019 has been introduced in the Lok Sabha as Bill No. 375 of 2019.

It has been stated by Union Labour Mnistr that OSH Code would be passed in the coming Budget Session of Parliament.

One major issue before Building and Construction workers and Unions is the provision relating to Repeal of BOCW Acts in both OSH Code Bill and Social Security Bill pending in the Parliament.

The following are the questions to be raised in this context:

1. Once the BOCW Acts are repealed, the existing BOCW Welfare Boards will be dissolved and wound up. Will the 4 crore Building workers registration with the Welfare Boards and their registration cards be made invalid?
2. In continuation of the previous query, what will happen to the Benefits such as Pension, Education Assistance etc, will they be stopped as a result?
3. In the absence of continuity of registration, the pensioners will not only lose the pension but also cannot get new regn nor pension.
4. With the repeal of the BOCW Cess Act, what will happen to the huge sums of money already collected and the interest accrued?

1.THE UNCERTAINTIES CREATED BY THE Code on Occupational Safety, Health & Working Conditions, 2018 and the Code on Social Security, 2019 ON THE FUNCTIONING OF THE BOCW BOARDS UNDER THE BOCW ACT AND BOCW CESS ACT, 1996:

The proposal to repeal the twin BOCW Acts of 1996 under the above mentioned two Codes has created an uncertainty about the continuation of the 37 existing State/UT BOCW Boards in spite of the fact that section 7(1) of the Code on Social Security provides for the constitution of the Boards “every State government shall constitute a Board to be known as the (Name of the State) Building and Other Construction Worker Welfare Board and Sec. 7(7) provides for the formation of one or more advisory committee.

There is uncertainty and anxiety about the fate of the huge cess fund which has been accumulated over a long period and the larger amount of interest earned on it. There is uncertainty about the continuation of the millions of registered beneficiaries. There is uncertainty about the continuation of the financial assistance for education currently being given to millions of children of registered beneficiaries. There is uncertainty about the continuation of pensions to aged construction workers.

The Central government has not shown much interest in the re-constitution of the Central Advisory Committee after the term of the previous Central Advisory Committee was over.

It is not clear whether the Central government will collect the 12.5% to 20% contribution from the registered construction workers in addition to the 1% cess on the cost of construction provided under chapter VIII of the proposed Code on Social Security. By dropping the comprehensive definition of “establishment” given in section 2(j) of the BOCW Act, 1996 and inserting only five words - “building and other construction work” in section 2(29)(b) this code has created uncertainty about the continuation of the collection of cess without which the benefits provided under section 7(6)(a) to (j) cannot be delivered.

There is no clarity about the collection of resources, in the form of collective contribution for the other segments of unorganized sectors. Therefore NCC-CL has decided to Reject the Four Codes and Campaign to Save the BOCW Acts.

II. THE LACUNAE:

1. The role of state governments and State Boards has been reduced while the role of the Central Government has been increased.

2. In Chapter VIII on **Social Security and Cess in Respect of Building and Other Construction Workers, self-assessment of cess** is included. This will definitely lead to lower Assessment and less Collection of Cess.

3. The provision of **registration of construction worker as beneficiary** has been added after our interventions with the Labour Ministry. But the very crucial **Section 13 on Identity Cards, with the provisions for the employer to enter the details of work done by the beneficiary in the identity card**, has been left out which will lead to serious problems.

III. IMPORTANT ISSUES REG OSH CODE:

1. The provisions regarding safety, accidents etc in a hazardous industry (Second most hazardous Industry in India and the World after Mines) such as Building and other construction workers present in Sec 40 of BOCW Act are absent in this Code.

2. There is no provision for Personal Protective Equipment, such as helmets, gloves, mask, shoes and safety belts (for eg. requirement in Building Construction) to be provided by Employers etc. for any sector.

3. The schedules to the code containing the list of Notifiable Diseases and the list of Occupational Diseases are only 29 in number and merely been cut and pasted from the old laws such as Factories Act etc. while the List of Occupational Diseases (107) in the ILO Recommendation No.194 must be the basis.

4. There is an urgent need to update the schedules taking into consideration the realities of the present day in the new Code. The provisions for treatment, compensation and Rehabilitation are also not provided nor indicated.

5. The system of inspection has been replaced by Inspection cum Facilitation. This is also contrary to ILO convention number 81 (Labour inspection convention) which India has ratified.

6. Permitting the compounding of offences would reduce the deterrent value of the penalties spelt out in the code. Permitting the Employer to deflect the alleged commission of the offence on the "Actual offender" would also reduce the deterrent value of the penalties spelt out in the code.

7. The Code seeks to negate Inter State Migrant Workers' Act, the only Law which permits Inspection of Source State Labour Department in the other State and also there is a need to provide for a Special scheme for Mobile Medical Vans, Shelters, ICDS and SSA for Migrant Labour families.

8. The new code is not of universal application and excludes the majority of the workers in the unorganized sector including crores of Agricultural workers, Domestic workers, Home based workers from its scope.

9. The Beedi workers require a work book to be provided to each worker by the sub contractor, in which the raw materials will be entered and after making the finished good, while the finished good is being handed over, the quantum and piece rate wage is entered in the book and signed. The payment of piece rate wage can be compared with Minimum rate of piece rate fixed by State Govt. While repealing the Beedi Act, the Bill does not have similar provision in the OSH Bill.

10. For Home based workers, a similar system as existing in Beedi Act is required but no such system is in place.

11. For Domestic workers, since there is no provision for 'placement agency' and their being registered establishment. and the required provision for recruitment in this OSH Bill is not taken into account.

12. The proposal to increase the number of hours of permissible over time work from 50 to 100 hours would cause serious hardship to workers and affect their health.

13. Night work should not be imposed on women workers without their consent.

14. There are no provisions regarding equal treatment for contract labourers who perform the same or similar kind of work as permanent workers in the establishment.

13. There is also no provision for permanent absorption of contract workers consequent upon abolition of contract work in any work, process or operation.

14. There is no requirement for specification of the type of work in the licence granted to the contractor. The provision relating to the conditions for the issue of licence to the contractor is unclear.

15. All the above points indicate that the aim of the Bill is stated to be amalgamation of 13 important existing Labour Laws while the Bill proposes to repeal the 13 Laws leading to denial of existing protection and consequently pushing working class into the abyss of bondage, exploitation of women, men and children and loss of lives and penury, negation of 'Development'. So we question and challenge the intent and scope of the Bill to bring about any significant improvement in the occupational safety and health conditions of most of the workers in the country but that the only aim of the said bill is intended to promote Capital inflow in all sectors without safeguards for workers and denial of Hard won Rights of working class.