

NATIONAL CAMPAIGN COMMITTEE

For Central Legislation on Construction Labour

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1. The proposed code will result in repeal of 13 Labour Laws including

(a) The Factories Act, 1948;

(b) The Mines Act, 1952;

(c) The Dock Workers (Safety, Health and Welfare) Act, 1986;

(d) The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996;

(e) The Plantations Labour Act, 1951;

(f) The Contract Labour (Regulation and Abolition) Act, 1970;

(g) The Inter-State Migrant workmen (Regulation of Employment and Conditions of Service) Act, 1979;

(h) The Working Journalist and other News Paper Employees (Conditions of Service and Miscellaneous Provision) Act, 1955;

(i) The Working Journalist (Fixation of rates of wages) Act, 1958;

(j) The Motor Transport Workers Act, 1961;

(k) The Sales Promotion Employees (Conditions of Service) Act, 1976

(l) The Beedi and Cigar Workers (Conditions of Employment) Act;

(m) The Cine Workers and Cinema Theatre Workers Act, 1981.

1. None of the provisions related to the Safety and Social Security contained in the **The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996** have been included in the proposed **The Occupational Safety, Health and Working Conditions Code, 2019**.

2. NCC-CL representatives were orally told by the officials of the Labour Ministry that these Safety and Social Security provisions will be included in the Rules to **The Occupational Safety, Health and Working Conditions Code, 2019**.

3. However, the proposed **Occupational Safety, Health and Working Conditions Code, 2019** does not have even provisions like section 40 **Power of appropriate government to make rules for the Safety and Health of the Building Workers** and Section 41 Framing of Model Rules for Safety measures of the BOCW Act.

4. The 3rd version of Code on Social Security, 2019 has taken only three of the 64 section of the BOCW Act 1996 as Section 6 which is not sufficient to extend the benefits which are being provided by the BOCW Acts to over four crore Construction Workers who have already been

registered as beneficiaries across 36 States & UT and already receiving few of the several benefits in these State/UTs.

5. The Proposed Code has not cleared the confusion about the dual proposal of collecting contribution of 12.5% to 20 % of the income from the individual Construction Workers and **“collective contribution of Cess from Construction establishment”** as Chapter VIII of proposed Code on Social Security, 2019.

6. NCC-CL strongly feel that from all unorganized Sector Workers where most of the workers have been receiving much less than the prescribed monthly minimum wages, the only correct and feasible method to collect resources is to collect “Collective Contribution” such as Cess on cost of Construction proposed under the BOCW Welfare Cess Act,1996.

7. Rather than enact a new code clubbing the subjects of occupational safety and health and working conditions, the Government should focus on better implementation of the existing 13 laws on the subject both in law and in spirit. In this connection, the Supreme Court in the W.P (Civil) No 318/2006, has given 4 clear directions for the implementation of BOCW Act 1996. The SC directions have been circumvented by the Code.

8. The Social security provisions for various sectors provided in Sectorial Laws are sought to be withdrawn and that will have a negative impact on the workers in Building Construction, Beedi, etc.

9. The new code is not of universal application and excludes the majority of the workers in the unorganized sector including Agricultural workers, Domestic workers; Home based workers from its scope. This seriously limits the scope of the code to bring about any significant improvement in the occupational safety and health conditions of most of the workers in the country.

10. The new code is largely to be implemented by framing rules and regulations. The coverage and scope of the Rules are not spelt out in the Code, as in the case of BOCW Act Sec. 40. The provisions regarding safety, accidents etc in a hazardous industry such as Building and other construction work present in BOCW Act are absent in this Code.

11. The schedules to the code containing the list of Notifiable Diseases and the list of hazardous processes have merely been cut and pasted from the Factories Act the List of Occupational Diseases (107) in the ILO Recommendation No.194. There is an urgent need to update the schedules taking into consideration the realities of the present day.in the new Code.

12. The proposal to increase the number of hours of permissible overtime 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.

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

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

17. The provision permitting the Government to exempt any industry from the application of the provisions relating to the employment of contract labour is an issue of concern.

18. 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.

19. 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.

20. 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.

21. Therefore till the rules and other suggestions are incorporated and approved by the trade Unions of the Construction workers, including the trade unions and federation of Trade unions affiliated with the Central Trade Unions the BOCW Acts should not be repealed.

21.NCC-CL request the Standing Committee to please recommend that the two BOCW acts should not be repealed and continued to be implemented in accordance with the directions of the Supreme Court of India issued in the 18th March,2019 Judgment on the NCC-CL Petition.

22. Similar opportunities must be given to the trade unions of other segments of Organized and Unorganized Sector whose legislations are proposed to be repealed through Section 134 of the OSH Code.

23. NCC-CL further request he Standing Committee to please give a proposed hearing to the representatives of the NCC-CL before submitting its report to the Parliament.

With thanks.

Your Sincerely
Subhash Bhatnagar