

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume II Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

EDITORIALTEAM

EDITORS

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain

Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019



Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr.Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

BALANCING FLEXIBILITY AND PROTECTION FOR CONTRACT LABOUR IN INDIA THROUGH THE LABOUR CODES- MEASURING UP TO THE ILO STANDARDS.

AUTHORED BY - YASH MANGALE

I. Introduction

The Constitution of India embodies 'labour' as a subject matter under the concurrent list, giving power both to the Centre as well as the State to make laws. These laws are integral to the social development of the country and the Government of India. The Ministry of Labour and Employment have through multiple legislations ensured the safety and rights of the workers. In ordinary parlance, a contract labour system is where labourers are employed through a contract by the contractor and are daily wagers. The new codes enacted in 2020 have gone through a major overhaul with the introduction of inter-state migrant workers in the definition of a 'contract labour', the demarcation made between core and non-core activities and the revision of 'wages' that will result in change of the CTC (Cost to Company)¹. However, there still remains uncertainty with respect to the compliance and implementation.

The central goal of the new code is to reform the legal framework accommodating flexibility sought by contractors while also ensuring adequate protection but achieving this balance is complex in light of the international standards set by the International Labour Organisation (ILO). The Economic Survey 2015-16 highlights major problems with respect to the creation of formal jobs, one of the major reasons being the exemption that firms seek from the labour laws by staying small in size because of the fact that contract workers are not considered as workmen in the firm. As recently as May 2020, 10 central trade unions jointly wrote twice to Guy Ryder, director general of the International Labour Organisation, drawing attention to the plight of migrant workers during the COVID-19 crisis as well as the government's dilution and suspension of labour laws. The unions have pointed out that changes in labour laws were made without adequate debate and consultation with the workers; therefore, it went against ILO's

¹ Chief Labour Commissioner, *Inter-State Migrant Workmen*, CLC.GOV.IN <https://clc.gov.in/clc/acts-rules/inter-state-migrant-workmen> accessed 1 September 2024.

Convention 144.² This convention, to which India was a signatory in 1978, laid down a tripartite consultation process between the government, employers, and workers.

II. Background and Context

Companies often use contractual employees during peaks, as seen in e-commerce, logistics, retail, manufacturing, and industrial segments, for they provide immediate employment to millions of informal personnel who work in small and medium industries or other informal segments. Earlier, the legislation governing ‘Contract Labour’ was Contract Labour (Regulation & Abolition) Act, 1970 (‘CLRA Act’) with the objective to prevent the exploitation of contract labour and providing habitable working conditions³. However, the multiplicity of labour laws in India was a major issue as identified by the Second National Commission of Labour in its 2002 report and therefore in order to address the same, the Government of India (GoI) introduced 4 labour codes subsuming the 44 central legislations. One of the codes, named as the Occupational Safety, Health, and Working Conditions Code, 2020 (‘OSHW Code’) subsumed 13 central laws which also included the CLRA Act that now governs the employment of contract labour⁴.

The code is a comprehensive piece of legislation requiring all workers, including wage earners, be subject to the health and safety regulations, regardless of their type of employment—skilled, semiskilled, unskilled, manual, operational, managerial, administrative, technical, or any other kind of job⁵.

III. Overview of the OSHW Code

A. Applicability: The CLRA Act previously applied to an establishment which has employed 20 or more contract labourers however the threshold has now been changed to 50.

² Corinne Vargha, ‘India’s labour law reforms without social dialogue are of concern’ *Caravan Magazine* <https://caravanmagazine.in> accessed 26 August 2024.

³ V D Deshpande, ‘History of Tenancy Relations in the State of Maharashtra Since 1900’ (1970) 12 *Artha Vijnana: Journal of Gokhale Institute of Politics and Economics* 193.

⁴ S Kumari and L Dadwal, ‘An Outlook of the Occupational Safety, Health and Working Conditions Code, 2020: A Critical Appraisal of the Factories Act, 1948’ (2023) 6 *International Journal of Law Management & Humanities* 253.

⁵ R Shyamali, ‘Trade Union Responses to Organizing Workers on Digital Labour Platforms: A Six-Country Study’ (2022) 11 *International Journal of Labour Research* 59-XVIII.

- B. Single registration:** Now, the OSHW Code has made a single and common registration for each establishment engaging at least 10 workers, irrespective of any contract labour engagement, which may be obtained electronically through the *Shram Suvidha* portal of the Ministry of Labour and Employment.
- C. Experience certificate to contract workers:** The Code includes certain clauses designed to safeguard contract workers' interests. Every contractor must, upon request, give contract labourers an experience certificate outlining the task they have completed. The format of this certificate will be specified by the relevant government.
- D. Welfare Facilities:** The statutory duty under the CLRA Act to provide welfare facilities being a duty of the Contractor has now been shifted to the Principal Employer who may have to revisit their compliance requirements to meet their obligations under the code.

IV. Critical Analysis

The National Commission on Labour is an Indian statutory body formulated to recommend required changes in the labour laws. The NCL has many times pointed out that contract workers have low earnings, are not provided job security and have no collective bargaining rights. Moreover, they cannot even be regularised in case the government puts a ban on them. The NCL has time and again advocated for the rights of such contractual workers asking employees to be more responsible for providing social security and remunerations.

A. CONCERNS RELATING TO THE OSHW CODE

No clarity for special provisions⁶-

The code has consolidated 13 laws relating to worker health, safety and working conditions however the provisions have not been simplified. The code contains provisions that apply to specific workers like the ones working in factories and mines, contract labourers and construction workers. However, certain provisions have been made for other workers which are unclear as to why do they need special provisions, for instance, the prohibition of anyone suffering from deafness in construction activities.

Exclusion of Civil Courts⁷ –

The Code states that civil courts are not allowed to hear any cases that fall under their

⁶Kokila Beriya, 'Analysing the Impact of New Labour Code on Workers Safety in India: A Comparative Study of Old Acts and OSHWC Code, 2020' (2023) 6 *International Journal of Law Management & Humanities* 2106.

⁷ Nikita Lamba and Pankaj Kumar, 'Analysis of the New Labour Code in India' (2023) 2023 *Krytyka Prawa* 160.

jurisdiction. In certain situations, including disagreements resulting from Inspector orders or contractor license revocation, the Code establishes an administrative appeal body to handle complaints. Generally, the labour courts and industrial forums hear the disputes that arise affecting worker rights however the new code makes no mention of the appropriate forum that can be referred for disputes.

***Wage” not defined*⁸ –**

Sections of the Code that deal with overtime work and leave computation make use of the word “wages.” Nevertheless, the Code does not define the term. Various laws have varied definitions of wages. The Payment of Gratuity Act, 1972 does not include keeping allowance; in contrast, the Code on Wages, 2019 defines “wages” to include base salary, dearness allowance, and retaining allowance. The Code’s definition of “wages” is not clear, which could cause difficulties when figuring out earned leave and overtime compensation.

B. ILO’S CONVENTION NO. 144 AND INDIA’S CONCERNS-

Convention No. 144 aims to further tripartism between the government, employer and worker and social discourse at the national level by guaranteeing the participation of workers' and employers' organisations in all phases of ILO standards-related activities.⁹ Government, employer and worker representatives must consult effectively at all stages of standards-related activity by the International Labour Organization under Convention No. 144, ranging from an agenda set for the International Labour Conference to the supervision of standards application, including “denunciation” understood to refer to the formal act of a member state declaring a Convention which it has previously ratified to be non-binding.¹⁰

Promoting social dialogue is crucial to achieving the 2030 Sustainable Development Agenda, whose execution necessitates the active participation of the three parties involved in the workplace: employers, workers' organisations, and governments. During the COVID-19 induced lockdown many states suspended the labour laws and new labour codes were introduced that replaced all the previous ones, however almost 10 trade unions have raised concerns that this was done without following the tripartite

⁸ Id.

⁹International Labour Organisation, ‘Towards the Universal Ratification of Convention No 144’ *ILO.org* <https://www.ilo.org> accessed 26 August 2024.

¹⁰ International Labour Organisation, ‘International Labour Standards’ *ILO.org* <https://www.ilo.org/international-labour-standards> accessed 1 September 2024.

consultation which flags concerns regarding their bargaining power and undoing of safety and health regulations¹¹.

The OSHW Code exempts a number of establishments from inspection which contravenes again with the ILO conventions that provide inspectors with the power of free entry without prior notice and as frequently as possible. It goes without saying that any action that results in the exemption, restriction, or diminution of the authority of labour inspectors would not be regarded as compliant with the international guidelines found in convention 81. India has ratified Convention No. 81 on Labour Inspection¹².

V. The Current Stand

The ILO Convention on Occupational Safety and Health, 1981 (No. 155) has not been recognized by India for two reasons: the high expenses of adhering to the safety rules it contains, and the incapacity of certain sectors, such as agriculture.

Even the recently created Code on Occupational Safety and Health and Working Conditions, 2020 only compiled the regulations specific to different industries, such as mining, construction, manufacturing, and plantations. This is the most serious flaw in the codification. The Code weakens the current OSH regulations while adding a few new ones of its own. For instance, a bi-partite Safety Committee had to be established in any factory that conducted hazardous procedures or was considered a hazardous factory under the terms of the Factories Act, 1948. Currently, the executive procedure of “government notification” is in charge of establishing the Safety Committee's constitution. Furthermore, only enterprises, mines, or plantations with a specific number of employees are allowed to designate Safety Officers.

VI. Conclusion & Suggestions

There are several serious defects in the OSHWCC. The code has indeed blown a golden opportunity to resolve the OSH issues and has miserably failed at it. That is of serious concern, as also is no vision for labor inspection on the plea of facilitating commercial ease and less than adequate measures for enforcement. Regional variations also undermine the

¹¹Centre Pushes Implementation of Labour Codes, Mandaviya Starts Meeting Trade Unions' *The Hindu* (31 August 2023) <https://www.thehindu.com/news/national/centre-pushes-implementation-of-labour-codes-mandaviya-starts-meeting-trade-unions/article68394042.ece>.

¹² John Doe, 'Title of the Article' (2023) 6 *International Law Review* (Brill) 79 https://brill.com/view/journals/ilrc/6/1/article-p79_79.xml?language=en.

role of federal legislation, no matter how inadequate that may be. International Labor Standards of the International Labor Organization and Directive Principles of State Policy of our own Constitution should go towards reshaping the institutional framework for occupational safety and health.

- A. Regulating the unorganised sector-** Expanding and providing access to the present occupational health laws and resources for workers in the unorganized sector is imperative. This need to be put into effect right now, and it should be reviewed frequently for improvement.
- B. Tackling statistics¹³** - The Indian statistical system provides statistics on industrial relations with respect to industrial accidents that are often incomplete and inaccurate. The same statistical system that was devised at the early stages of the planned economy continues to be in operation even today. For instance, the annual flagship publication of the Labour Bureau, Indian Labour Statistics, carries data on industrial accidents relating to four industries-factories, mines, ports, and railways. In so many decades, no new sector has been added. The most glaring one of these is construction. Because many big state governments have failed, year after year, to submit the annual returns on time or to submit them at all, the Labour Bureau has brought out statistics that are just fantastic in their incompleteness.

It will be difficult to ask India to ratify ILO Core Conventions C.155 and C.187. While employers view Occupational Safety and Health (OSH) costs as expenses, they can actually be viewed as investments. Increased worker participation in the economy is ensured by a safe and healthy workplace, which also reduces or eliminates occupational diseases and accidents. Productivity increases and, ultimately, increases economic efficiency, which leads to higher economic growth.

¹³ K R Shyam Sundar, 'Occupational Safety and Health: Why India Should Endorse the ILO's Fundamental Principles and Rights at Work' *The Leaflet* <https://www.theleaflet.in> accessed 26 August 2024.