

A Broad Picture of Indian Labour Legislation System and Labour Law Reforms
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The Occupational Safety, Health And Working Conditions Code, 2020														
1	2	3	4	5	6	7	8	9	10	11	12&13			
Old and New Legislation, coverage and Important provisions	Additional Sectors (Shifted from Shops and Establishments Act)	The Factories Act 1948	The Mines Act 1952	The plantation Labour Act 1951	The Cine Workers and Cinema Theatres Workers (Regulation of Employment) Act, 1981	The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996	The Motor Transport Workers Act, 1961	The Beedi and Cigar Workers (Conditions of Employment) Act, 1966	The Sales Promotion Employees (Conditions of Service) Act, 1976	The Dock Workers (Safety, Health and Welfare) Act, 1986	The Contract Labour (Regulation and Abolition) Act, 1970	Inter-State Migrant workmen (Regulation of Employment and Conditions of Service) Act, 1979	Working Journalist & Other Newspapers Employees (Conditions of Service) & Miscellaneous Provisions Act, 1955; Working Journalists (Fixation of Rates of Wages) Act, 1958	The Shops and Establishments Act
Units with 10 or more workers in sectors not covered in 12 Acts and hence were put in Shops and Establishments Act, now shifted in OSH Code	Manufacturing units with 10 & more with use of power, and 20 and more without power	All mines with more than 20 and more workers	Tea, coffee, rubber and cinchona plantations of 5 acres or more with 30 workers or more	All cinema workers	Establishments employing 10 or more workers	Establishments employing 5 or more workers	All workers including home based, engaged by principal employer / contractor	All establishments engaged in pharmaceutical industry, but extendable to other sector as well	All Dock workers	establishments engaging 20 or more regular workers and to all contractors employing 20 or more workers	Persons recruited through contractor for employment in other States	Journalists employed in News papers establishment	The law for residual sectors - and workers (Shops and Establishments-where at least one worker is engaged)	
Occupational Safety, Health and Working Conditions: Continuity	<p>Continuity:</p> <ul style="list-style-type: none"> • Formality of Employment, Paid holidays & leaves, and weekly offs, health and safety measures: Applied to all workers, although with variations according to sectors. Legally all workers were/are required to be formally employed. In this sense, legally there cannot be any informal workers where employer-employee relation exists. Even home based workers working for any employers were/are required to be formally contracted. Only self employed workers, those not working directly for any employer, were/are legally informal workers. • Caps and thresholds related to rest rooms, canteens, ambulance, crech, formation of committees, appointment of welfare officers and safety officers etc are retained and differences in various provisions for different sectors is also retained, as they existed in previous laws. 												Units with 10 or more workers in	

and Change

Change:

- **Covers all establishments in** any industry, trade, business, manufacturing or occupation, motor transport, newspaper, audio-video production, construction work or plantation, engaging 10 or more workers, and all hazardous operations
- **Factory definition changes:** Now establishments with use of power in manufacturing and engaging 20 or more workers, and establishment not using power and engaging 40 or more workers are considered factory for this act. However all units with hazardous processes are included without any number cap. Therefore, even when manufacturing establishments with 10 or more workers are covered under the code, the section of Factories applies only to units with 20 or more workers with power and 40 and more without power.
- Similarly, all plantations with 10 or more workers are covered but section on plantation applies to only those plantations with 5 hectare or more area, as definitions remain same.
- **Similarly, contractors and establishments with 10 or more workers are covered but provisions for contract labour abolition and regulation will now apply only to** establishments or contractors employing 50 (earlier 20) or more workers
- **Apprentices are excluded from coverage (as also in all other codes)**
- **Employers in all establishments are now clearly required to provide appointment letter to all workers. It applied earlier also but was not clearly spelled out**
- Every employer of factory, dock, mine and building or other construction work shall arrange to conduct free of cost, medical examination for every worker annually i.e. within 120 days from the commencement of the every calendar year who has completed 45 years of age.
- **Working hours:** No worker shall be required or allowed to work in an establishment for more than forty eight hours in any week. **But spread over of working hours in a day is increased- shall not be for more than twelve hours in a day.** No worker shall work for more than five hours before he has had an interval for rest of atleast half an hour. The working hours in a day may be modified subject to sub-rules (1), (2) and (3), so that the total number of working hours in a week shall be so fixed and followed.
- **Definition of interstate migrant worker is widened to also include those persons who are not engaged through contractors** but directly move to another state and obtain employment, with a condition that their earning is not more than 18000 per month.
- **Three benefits are extended to interstate migrant workers:** (i) option to avail the benefits of the public distribution system either in native state or the state of employment, (ii) availing benefits under the building and other construction cess fund in the state of employment, and (iii) insurance and provident fund benefits as available to other workers in the same establishment. iv) transport allowance once in a year (in Rules). However, other benefits like displacement allowance and accommodation facilities are removed
- **Introduction of fix term employees** and extending same benefits as that of regular workers
- **Engagement of contract labour is allowed in non core** activities of industries such as (i) sanitation works, (ii) watch and ward; (iii) canteen (iv) loading and unloading; (v) running of support services like hospitals, educational and training Institutions, guest houses, clubs; (vi) courier services; (vii) civil and other constructional works, including maintenance; (viii) gardening and maintenance of lawns; (ix) housekeeping and laundry, (x) transport services including, ambulance services; (xi) any activity of intermittent nature even if that constitutes a core activity of an establishment; but prohibited in core activities that are of perennial nature
- **Women can be employed in hazardous occupations as well**
- **Crech Facility:** here code and rule say: Establishments with 50 or more workers (irrespective of number of women workers). BUT Rules framed under social security code says: in every establishment where fifty or more women employees are ordinarily employed, there shall be provided and maintained a creche for the use of children under the age of six years of such women.
- **Safety Committee:** Establishments and factories employing 500 or more workers OR Factories carrying on hazardous process and BoCW employing 250 or more workers; and mines employing 100 or more workers. (see table on **Details of various Health and Welfare Amenities provided, annexed under** OHS rules)

sectors not covered in 12 earlier laws are now shifted to OSH Code -No new provisions of health, safety, welfare

	<ul style="list-style-type: none"> ■ Safety Officer: In establishments with 500 or more workers and in hazardous establishments and construction with 250 or more workers, and in mines with 100 or more workers ■ Labour inspectors are made facilitators, inspections are restricted, No provision to increase number of inspectors ■ No clear provisions spelled out for health and safety measures; The Code says that a National Occupational Safety and Health Advisory Board may be constituted to review all provisions, hence it creates a Vacuum, however, we may assume that earlier provisions may apply till review 	
<p>The Code on Social Security, 2020</p> <p>(The Employees' Compensation Act, 1923; The Employees' State Insurance Act, 1948; The Employees' Provident Funds and Miscellaneous Provisions Act, 1952; The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959; The Maternity Benefit Act, 1961; The Payment of Gratuity Act, 1972; The Cine Workers Welfare Fund Act, 1981; The Building and Other Construction Workers Welfare Cess Act, 1996 and The Unorganized Workers' Social Security Act, 2008)</p>	<p>Continuity:</p> <ul style="list-style-type: none"> • The provisions under Employees compensation Act: apply to all establishments and all Workers that are not covered under ESI; Lays down provisions for compensation to the workers in case of personal injury caused by accident arising out of and in the course of employment • Provident Fund (PF): applies to employees of all factories, and all establishments with 20 or more workers within wage limit of INR 15000 per month • Gratuity: applies to employees in all establishments with 10 or more workers. Provides for payment (when leaving job) of 15 days wages per year if completed 5 or more yrs of continuous service. Gratuity at the rate of seven days' wages for each season to seasonal employees and on pro rata basis to fixed term employees or in case of deceased employee. • Maternity benefit: applies to all establishments with 10 or more workers <p>Change:</p> <ul style="list-style-type: none"> • Employees State Insurance (ESI): applies to all establishments with 10 or more workers, and all hazardous factories, earlier many sectors were excluded • Crech Facility: OHS Code and Rules say: Crech is applicable in establishments with 50 or more workers (irrespective of number of women workers). BUT Rules framed under social security code says: in every establishment where fifty or more women employees are ordinarily employed, there shall be provided and maintained a creche for the use of children under the age of six years of such women. • Gratuity: a) The qualifying gratuity period for working journalists is reduced from five years to three years; b) An employee on fixed term employment shall be eligible for gratuity, if he renders service under the contract for a period of one year. • Note: a) In August 2020, the parliamentary standing committee on Labour in its report on Code on Social Security 2019 recommended to reduce the eligibility period for all to 1 year of continuous service (Reduce eligibility period for gratuity to one year: parliamentary panel - The Hindu; and Parliamentary Panel Recommends Reduction of Gratuity Eligibility to One Year (thewire.in)); b) Industrial Employment (Standing Orders) Central (Amendment) Rules, 2018 provided that fix term workers shall be eligible for all statutory benefits available to a permanent workman proportionately according to the period of service rendered by him even if his period of employment does not extend to the qualifying period of employment required in the statute; and hence there was no cap for 1 year of service for eligibility;and even the social security code provides the same, but it is changed in Rules framed under Social Security Code. • Definition of wage excludes any overtime allowance; hence ESI contribution of employer on overtime wages is removed • No schemes for unorganized workers, gig workers and platform workers; the act only says that Central Government may, by notification, frame scheme for these sections of workers, and that National Social Security Board may also act as the Board for the purposes of welfare of gig workers and platform workers and that the central government will set up such a fund. 	<p>Workmen Compensation Act 1923 applies and extends compensation for accident injury</p> <p>No social security schemes spelled out in New Code</p>
<p>The Industrial Relations Code, 2020</p> <p>(Trade Unions Act, 1926; The Industrial</p>	<p>Continuity:</p> <ul style="list-style-type: none"> • Provisions related to Trade Union apply to all workers • General Provisions related to Industrial Disputes Act apply to all workers with employer-employee relationship in any industry and trade • No one can be fired without following legal procedures, and if completed one year of service, he is required to be given one month' s notice or payment in liu off before retrenchment • Requirement of 10% or 100 members for registering trade union. It also requires that trade union shall at all times continue to have this much membership, which means it may lose its registration if membership falls below this. • Permissible number of outsiders TU office bearers in General: One third or 5 whichever is less (retired/retrenched may not be considered outsiders) 	

<p>Employment (Standing Orders) Act, 1946; and the Industrial Disputes Act, 1947)</p>	<ul style="list-style-type: none"> • Permissible number of outsiders TU office bearers in Unorganized (informal) sector: 50% <p>Change:</p> <ul style="list-style-type: none"> ● Requirement of prior government permission for retrenchment, closure and Layoff now applies only in establishments with 300 (earlier 100) or more workers ● Requirement of one month notice or payment in lieu of and retrenchment compensation at the rate 15 days wage per completed year of service for establishments with 50-300 workers (in earlier law 50-100); and in case of layoff 50% wages for lay off period with a maximum of 45 days ● Requirement of three month notice or payment in lieu of and retrenchment compensation at the rate 15 days wage per completed year of service for establishments with 300 (in earlier law 100) and more workers; and in case of layoff 50% wages for lay off period with a maximum of 45 days • Standing orders (with clear and detail terms and conditions of employment) applies only to establishment with 300 and more workers (earlier it varied in state from 50 to 100) • Provision of Fix term contract and provision for extending same benefits to them as regular workers. Fix term workers may be eligible for gratuity if completed one year of service • No minimum and maximum period specified for fix term contract. No restrictions on the nature of work for which fix term workers may be hired. No rules for renewal of contract, the power to renew contract is at the discretion of employer. Therefore permanent workers may be replaced by fix term workers who may be a highly vulnerable workforce. • Note: a) 2nd National Commission on Labour (2002) had recommended that no worker should be kept continuously as a casual or temporary worker against a permanent job for more than two years; and b) The Standing Committee on Labour examined identical provisions in the 2019 Bill and recommended the conditions under which, and areas where fixed term employment may be utilized should be clearly specified; and a minimum and maximum tenure for hiring fixed term employees should be specified; c) Several countries restrict the use of fixed term contracts by: (i) limiting renewal of employment contracts (e.g., Vietnam, Brazil and China allow two successive fixed term contracts), (ii) limiting the duration of contract (e.g., Philippines and Botswana limit it up to a year), or (iii) limiting the proportion of fixed term workers in the overall workforce (e.g., Italy limits fixed term and agency workers to 20%) (ILO 2016, “ Non-Standard Employment Around the World ” , https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_534326.pdf); d) In Industrial Employment (Standing Orders) Central (Amendment) Rules, 2018, Rule 3-A stated that “ No employer shall convert the posts of permanent workmen existing to his industrial establishment” . • For the first time brings provision for recognition of trade unions in central law (in some state laws it was already there). In case of single union, the employers is required to recognize the union, however, in case of multiple union, in order to claim status of sole negotiating agent, the union membership must be equal to at least 51% of workforce on rolls; otherwise a Negotiating council needs to be formed including all the unions with membership equal to at least 20% of the workforce. The earlier law The Code of Discipline 1961-1980 directed to recognize the union with largest membership. Code of discipline also provides for recognition of TU for industry wide CB and required 25% of membership for recognition of Industry Union; but new law is completely silent on industry wide CB. • IR Code makes it a general requirement to give fourteen days of notice before strike; earlier this was only for workers in public utility services so declared. Moreover, strike notice may necessarily lead to conciliatory proceedings and the Code prohibits strikes and lock-outs: during and up to seven days after a conciliation proceeding, and during and up to sixty days after proceedings before a tribunal. This means that a legal strike may be next to impossible. 		
<p>THE CODE ON WAGES, 2019 (Payment of Wages Act, 1936; Minimum Wages Act, 1948; Payment of Bonus Act, 1965; and Equal Remuneration Act, 1976)</p>	<p>Continuity:</p> <ul style="list-style-type: none"> • State minimum wages apply to scheduled employments (sectors added in scheduled lists if size of workforce is significant) • Minimum wage determination formula not revised: a) 2 adult+2 children are considered 3 units and not 4 for all consumption items; b) Periodic increments in MW is only for adjustment of inflation, no provision to include new needs like communication, transport; and principle of distributive justice like GDP growth • No policy of wage increment with experience and years of service; a worker remains eligible only for the minimum for his whole life. • Provisions related to payment of wages act apply to all workers (provisions insuring payment of wages in due time and punishments for defaults) <table border="1" data-bbox="338 1273 2101 1340"> <tr> <td data-bbox="338 1273 1951 1340"> <ul style="list-style-type: none"> • Payment of minimum annual bonus @8.33% of annual wages or according to profit earned, to employees of all factories and all establishments with 20 or more workers </td> <td data-bbox="1957 1273 2101 1340"> <p>Not Covered</p> </td> </tr> </table> <p>Change:</p> <ul style="list-style-type: none"> • Provision for a National and Zone level (minimum) Floor Wage, which may form the minimum, applicable to all workers, and the base level for minimum wages declared by state government 	<ul style="list-style-type: none"> • Payment of minimum annual bonus @8.33% of annual wages or according to profit earned, to employees of all factories and all establishments with 20 or more workers 	<p>Not Covered</p>
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	<ul style="list-style-type: none"> • The Equal Remuneration Act has been diluted by restricting it to gender based discrimination only in respect of payment of wages, doing away with other types of discrimination related to recruitment, conditions of service such as promotion, vocational training, transfer etc • Code does away with the right of trade unions to legally access the audited accounts of establishments (which was their right in order to demand clarifications to ascertain 'allocable surplus' while bargaining for bonus above the minimum level) • The Code sets five years as the standard time for wages to be revised, while currently five years is the maximum period before which minimum wages need to be revised • The code allows deduction in wages for participation in strike, as it considers participating in a strike as absence. Deductions are also allowed for damage or loss of goods in employee custody. However, no procedure is spelled out to provide the employee to be heard before such deductions are made
Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013	Applies to all establishments and all workers
	<p>The Law mandates setting up Internal Complaint Committee (ICC) in all establishments with 10 or more workers</p> <p>Those not covered under ICC are to be covered under Local Complaints Committee formed at district level</p>
The Child Labour (Prohibition and Regulation) Amendment Act, 2016	The amended Act says that "No child shall be employed or permitted to work in any occupation or process" but then says that this will not apply where child "helps his family or family enterprise (other than hazardous occupations or processes) or works as an artist in an audio-visual entertainment industry, including advertisement, films, television serials or any such other entertainment or sports activities except the circus, subject to such conditions and safety measures, as may be prescribed: Provided that no such work under this clause shall effect the school education of the child". The Act does not even clearly limit the hours of work. Moreover, the list of hazardous occupations are reduced from 83 to a general list of 3, including Mining, Inflammable substances and Explosives, and hazardous process listed in the Factories Act. It is now unclear whether chemical mixing units, battery recycling, cotton farms, brick kilns etc may come under hazardous processes under this act.
The Bonded Labour System (Abolition) Act 1976; Amended Rehabilitation Scheme 2016	Applies to all establishments and prohibits all forms of forced labour practices and provides for compensation and rehabilitation of bonded labour discovered, along with punishment to employers. Bonded Labour Rehabilitation Scheme 2016 provides for rehabilitation package of 1 lakh per adult male, and 2 lakh for Children including orphans and women, and 3 lakh in case of people forced in sexual exploitation etc.
Apprentice (Amendment) Act Rules 2019	<p>i. Applicable in establishment with 4 (earlier 6) or more workers. The number of apprentices: min: 2.5% and max: 18% (earlier min: 2.5% Max: 10%). Period: min: 6 months, Max: 3 years (earlier 2 years)</p> <p>ii. Regulation of engagement of apprentices on the basis of assessment of infrastructures is removed, and now its is determined based on turnover. National Employability Enhancement Mission (NEEM) 2017 & 2019: Annual turnover of INR 50-150 million=Annual training capacity of 1000 workers)</p> <p>iii. Earlier, largely only engineering graduate-diploma apprentices were allowed and government reimbursed 50% of apprentice stipend to employers; but now ITI</p>

certificate holders, any graduates and post graduates or school passout are also allowed to be engaged as apprentices, and scheme of reimbursing part of stipend to employers is extended in case of these apprentices as well. Stipend: 5th to 9th passout-5000; 10th passout-6000; 12th passout-7000; ITIs-7000; Diplomas-8000; Graduate apprentice-9000. For Fresher apprentice, during Basic Training for a period up to three months, the stipend amount to be paid by the establishment shall be 50 Per cent; In case of simultaneous Basic Training (BT) and On-the-Job Training, full amount of the stipend is to be paid.

iv. National Apprentice Promotion Scheme allows engaging Graduates/ diploma holders / 10+2 vocational certificate holders or persons pursuing graduation/ diploma in Arts or Commerce or Science streams such as B.A., B.Sc., B.Com., L.L.B etc as apprentices for a period of one year, and provides for government reimbursing the employers 25% (Max 1500 per month) of stipend, and additional Rs 7500 for cost of basic training (Max 500 hrs/3months). In most cases only on the job training is necessary (no basic training required)

v. Apprentices are not considered employees/workers, and hence denied all labour rights. Hence apprentices emerge as new source of cheap and vulnerable workforce.

Source: Based on texts of various labour laws in India