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**STANDING COMMITTEE ON LABOUR
(2013-2014)**

FIFTEENTH LOK SABHA

MINISTRY OF LABOUR AND EMPLOYMENT

**'The Building and Other Construction Workers Related Laws
(Amendment) Bill, 2013'**

FORTY- FOURTH REPORT



LOK SABHA SECRETARIAT

March, 2014/Phalguna , 1935 (Saka)

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Presented to Hon'ble Speaker on 15 March 2014



LOK SABHA SECRETARIAT

NEW DELHI

March, 2014/Phalguna, 1935 (Saka)

COMPOSITION OF THE STANDING COMMITTEE ON LABOUR

(2013-14)

SHRI DARA SINGH CHAUHAN - CHAIRMAN

MEMBERS
LOK SABHA

2. Shri Ashok Argal
3. Shri Ismail Hussain
4. Dr. Manda Jagannath
5. Dr. Virendra Kumar
6. Shri Nara Hari Mahato
7. Shri Hari Manjhi
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11. Shri Rajiv Ranjan Singh [Lalan]
12. Shri Ratan Singh
13. Shri Dinu Solanki
14. Shri Makansingh Solanki
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18. Shri Om Prakash Yadav
- *19. Shri Madhu Goud Yaskhi
20. Vacant
21. Vacant

Rajya Sabha

22. Smt. T. Ratna Bai
23. Shri D. Bandyopadhyay
24. Shri Thaawar Chand Gehlot
25. Shri P. Kannan
26. Shri Mohd. Ali Khan
27. Shri Ranbir Singh Parjapati
28. Smt. Renubala Pradhan
29. Shri Rajaram
30. Shri G.N. Ratanpuri
31. Shri Jai Prakash Narayan Singh

* Nominated w.e.f 17th December, 2013

SECRETARIAT

1. Shri A.K. Singh - Joint Secretary
2. Shri P.V.L.N Murthy - Director
3. Smt. Archana Srivastva - Under Secretary

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INTRODUCTION

I, the Chairman of the Standing Committee on Labour having been authorized by the Committee to submit the Report on their behalf, present this Forty-Fourth Report on 'The Building and Other Construction Workers Related Laws (Amendment) Bill, 2013' of the Ministry of Labour and Employment.

2. 'The Building and Other Construction Workers Related Laws (Amendment) Bill, 2013' as introduced in Rajya Sabha on 18th March, 2013 was referred to the Committee by the Speaker, Lok Sabha in consultation with the Chairman, Rajya Sabha for examination and report.

3. In the process of examination of the Bill, the Committee invited the representatives of the Ministry of Labour and Employment on 21st June, 2013 and 11th December, 2013 to hear their views. The Committee also sought written information on various aspects of the Bill from the Ministry.

4. The Committee invited the representatives of Central Trade Unions to hear their views/suggestions on the proposed amendments in 'The Building and Other Construction Workers Related Laws (Amendment) Bill, 2013' on 22nd January, 2014 .

5. The Standing Committee on Labour at their sitting held on 21st February, 2014 considered and adopted the draft report and authorized the Chairman to finalise the same and present it to the Hon'ble Speaker/Parliament.

6. The Committee wish to express their thanks to the representatives of Ministry of Labour and Employment and Central Trade Unions for tendering evidence before the Committee and furnishing written inputs/suggestions on the amending Bill.

7. For facilitation of reference and convenience, the observations and recommendations of the Committee have been printed in bold in the body of the Report.

New Delhi;
21 February , 2014
Magha ,1935 (Saka)

DARA SINGH CHAUHAN,
CHAIRMAN,
STANDING COMMITTEE ON LABOUR

REPORT
CHAPTER-I

Introductory

Building and Other Construction Workers (Regulation of Employment and Conditions of Services) Act, 1996 and Building and Other Construction Workers Welfare Cess Act, 1996 were enacted with a view to regulating the wages, working conditions, safety and health, welfare measures etc. of these workers. It is proposed to amend the aforesaid Acts by the Building and other Construction Workers Related Laws (Amendment) Bill, 2013 as introduced in Rajya Sabha on 18th March, 2013.

1.2 As per estimates of National Sample Survey (2009-10) there are around 4.46 crore building and other construction workers in India. They are one of the most vulnerable segments of the unorganized sector workers in India. Their work is of temporary nature and working hours are uncertain. The building and other construction work is characterized by inherent risk to life and limb of workers. The construction workers are basically unskilled, migrant, socially backward, uneducated with low bargaining power.

1.3 Under these Acts, the States have to frame and notify Rules, constitute Advisory Committees/Expert Committees, appoint various authorities for registration of workers, cess collection, Inspection and Appealing Authority and constitute State Building and Other Construction Workers welfare Boards to frame and implement various welfare schemes.

1.4 The major source of the fund to the Board is collection of cess @ one percent of the cost of construction incurred by the employer under the Building and Other Construction Workers Welfare Cess Act, 1996. The fund has to be utilized for the welfare of such workers.

1.5 Central Government is the implementing agency in the central sphere for the purpose of enforcement of various provisions of the Act, while States are the implementing authority under State sphere.

1.6 The matter of slow progress of implementation of these Acts has been raised at various fora. The Supreme Court has also expressed serious concerns about the delay in the implementation of the provisions of the Act. In the judgment dated 10th September, 2010 it has even directed the Central Government to issue notices under section 60 of the Building and Other Construction Workers Act, 1996. The Central Government has been writing to the States at various levels. Regular meetings have also been held. Now, notices under section 60 have also been issued.

1.7 A draft Cabinet Note for amending the BOCW Act and BOCW Welfare Cess Act was circulated to all States/Union Territories and concerned Ministries/Departments of the Central Government inviting their comments thereon. One of the proposed amendments related to empowering the Central Government to levy and collect cess where the State Government fails to levy and collect cess as mandated under the Act and formulate and implement welfare schemes. However, some States/Union Territories expressed the view that the proposed amendment will erode the state autonomy and interfere in the sphere of state work and the same is not in conformity with the federal principles of the Constitution of India.

1.8 The Cabinet approved the proposal to carry out the amendments in the Acts. Accordingly, the bill viz. The Building and Other Construction Workers Related Laws (Amendment) Bill, 2013 was introduced in Rajya Sabha on 18th March, 2013.

1.9 The salient features of the Bill are:-

(a) to empower the Central Government to specify, by notification, the maximum cost of construction in the definition of 'establishment' under

clause (j) of sub-section (1) of section 2 of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 instead of rupees ten lakhs for application of the said Act;

(b) to substitute sub-section (1) of section 12 of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 to amplify the scope of the Act for registration of workers;

(c) to amend sub-section (3) of section 24 of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 to empower the Central Government to notify percentage of total expenditure for meeting administrative expenses incurred by the State Building and Other Construction Workers Welfare Board; and

(d) to amend sub-section (3) of section 12 of the Building and Other Construction Workers' Welfare Cess Act, 1996 so as to empower the State Governments to file complaints in the courts to take cognizance of an offence.

CHAPTER-II

CLAUSE BY CLAUSE ANALYSIS OF `THE BUILDING AND OTHER CONSTRUCTION WORKERS RELATED LAWS (AMENDMENT) ACT, 2013`

Short Title and commencement

- (1) This Act may be called the Building and Other Construction Workers Related Laws (Amendment) Act, 2013.
- (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2.1 The Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 was enacted in August, 1996. When asked as to when was the need felt to have a separate legislation for building and other construction worker, the Ministry informed as under :-

Reply
to
point
No.1-
LOP-II

- (i) The need for a separate legislation was felt in late 1980s. Further at the 41st labour ministers' conference held on 18th May 1995 an urgent need was felt to introduce a legislation at the earliest.
- (ii) Pursuant to the above Labour ministers' conference a committee was formed of state Labour ministers where a general consensus had emerged on the need for a separate legislation.
- (iii) Initially ordinances was promulgated which was succeeded by the Acts."

Amendment of section 2

2.2 In section 2 of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 [hereinafter in this Chapter referred to as the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act], in sub-section (1),—

(a) in clause (a), in sub-clause (iii), for the words “the Government of the State”, the words “the Government of the State or Union territory, as the case may be,” shall be substituted;

2.3 The Ministry in their explanatory note to the amendment stated as follows:-

“Such inclusion will enable Union Territories to take appropriate action under the Act”.

(b) in clause (j), for the words “the total cost of such construction not being more than rupees ten lakhs”, the words “the total cost of such construction being not exceeding such amount as the Central Government may, by notification, specify in this behalf” shall be substituted.

2.4 The Ministry in their explanatory note to the amendment stated as follows:-

“It will not be prudent to go for amendment in the Act frequently on account of variation in the cost of construction as amendment takes considerable time. In view of this, the existing provision requires modification.”

2.5 When asked whether the State Governments will not confront the Central Government in respect of the State autonomy on this issue, the Ministry in their written replies informed as under :-

Reply to
point
No.15(i)

“The states have been consulted on the provision of notifying the threshold cost of Construction under Section 2(1) (a) (j). No state has objected to the provision.”

2.6 When asked about the mechanism devised by Govt. to work out the cost of construction, as the rates of various taxes levied by States varies apart from the costs of transportation building material which would affect overall costs from place to place, the Ministry replied as under :-

Reply to
point
No.15(ii)

“The amount shall be fixed taking into account the inflation in the economy and increase in the cost of construction from time to time. Mechanism to work out the cost will be set up after amendment.”

2.7 During the course of evidence on the aspect of specifying the maximum cost of construction, the representatives of Trade Unions submitted as under :-

“the limit of Rs. 10 Lakh which the Government would notify from time to time is not appropriate as per Bhartiya Mazdoor Sangh. It would mean that the Government is going to give relaxation to corporate house as an when they do it by notification. Bhartiya Mazdoor Sangh oppose it. If any person is building a house for his own residential purpose, the relaxation may be considered upto 20-25 lakh but it should not be given to a Builder”

Amendment of section 12

2.8 In section 12 of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) Every building worker who has completed eighteen years of age and who has been engaged in any building or other construction work shall be eligible for registration as a beneficiary under this Act.”.

2.9 The Ministry in their explanatory note to the amendment stated as follows:-

“Most of the employers employing building and other construction workers do not give any certificate to the construction workers. Hence, genuine workers are also denied benefits. In order to overcome this difficulty the provision of engagement of 90 days is proposed to be done away with. In order to extend benefits to the workers who are engaged in building and construction work after attaining the age of sixty years, the criteria of age limit of sixty years is proposed to be done away with.”

2.10 When asked about the number of workers State/UT wise as per the NSSO survey vis-à-vis number of workers registered with the Welfare Boards and the number of establishments registered vis-à-vis number of workers in each establishment, State/UT wise, the Ministry informed as under :-

Reply to
point
No.1(i)
& (ii)

“The number of workers State/UT wise are not available in NSSO survey 2009-10. The data extrapolated from NSSO Survey 2009-10 and published in EPW June 8th 2013 is given at **Annexure I**. A statement indicating State/UT wise number of registered workers with Welfare boards, Cess collected and Cess spent is at **Annexure II**. The information in respect of the establishments/ employers registered in Central sphere is at **Annexure III**.”

2.11 When asked about the provision for issuance of Identity Cards to each of the registered workers and the number of I Cards issued the Ministry informed as under :-

Reply
to
Point
No.2

“Yes. Under Section 13 of the Act, it is mandatory that all registered workers be issued Identity cards by the concerned board.”

2.12 When asked about the number of beneficiaries issued Identity Cards vis-à-vis non-issuance of I Cards to all the registered workers, the Ministry informed as under :-

Reply
to
point
No.2 –
LOP-II

“The issuance of Identity cards to the beneficiaries is the responsibility of the respective state Building and other Construction Workers’ Welfare Boards under Section 13 of the Act. The information relating to the number of Identity cards issued is not maintained at Central level. However the Ministry has asked the respective state governments to furnish the information at the earliest.”

2.13 When asked how is it ensured that there is no duplication in the registration as most of the construction workers are migrant workers and the

Reply
to

steps taken for making every worker aware of such registration, the Ministry informed as under :-

“At present there is no system to ensure that there is no duplication in the registration of workers. Awareness campaigns are held by the respective boards/ state labour departments with the cooperation of trade unions and NGOs.”

2.14 When asked about the uniform basis for identification of workers engaged in construction work with different employers and in the absence of such certificate how would be the non-entitled workers be prevented from entering and taking benefits of the scheme(s) meant for building and construction workers, the Ministry replied as under :-

Reply to
point
No.16 (i)
& (ii)

“Registration will be given only after certification that the worker has been engaged in any Building or other construction work. The workers who are registered with the board are only the entitled workers. Only they will be eligible for benefits. The State Advisory Committees constituted under Section 4 of the Act are responsible for advising the State Government on matters arising from administration of the Act.”

2.15 During evidence the representatives of Trade Unions submitted as under:-

“requirement of 90 days work being waived is alright but we apprehend that non-entitled persons may not come under the name of construction worker”.

2.16 During evidence the representatives of Ministry of Labour and Employment stated as under:-

“I have got the information of all the States. In most of the States nothing has been spent. We are aware of the pathetic conditions of Brick Kiln workers. These workers are mostly migratory workers who migrate from one State to other for seasonal periods. They are nowhere

registered. We have decided that their registration would be done at one place either the place of work or the residence”.

Amendment of section 18

2.17 In section 18 of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, after sub-section (1), the following sub-section shall be inserted, namely:—

“ (1A) Until the Board is constituted in accordance with the provisions of subsection

(1), the following persons shall constitute a Board as from the date of commencement of the Building and Other Construction Workers Related Laws (Amendment) Act, 2013 and such Board shall be deemed to be the Board established and constituted for a period not exceeding one year from such commencement for the purpose of carrying out the provisions of this Act, namely:—

- (a) the Secretary in charge of the Department dealing with the labour—chairperson;
- (b) the Secretary in charge of the Department dealing with the finance or his nominee— member;
- (c) the Secretary in charge of the Department dealing with the planning or his nominee—member;
- (d) the Secretary in charge of the Department dealing with the social welfare or his nominee —member.”

2.18 The Ministry in their explanatory note to the amendment stated as follows:-

“In many States the Welfare Board has not been constituted with its full manpower. This provision is necessary to allow carrying out the functions of the Board in order to provide welfare measures to the construction workers.”

2.19 The Ministry informed that for a period of one year such a Committee would perform the functions of the Board.

Amendment of section 24

2.20 In section 24 of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, in sub-section (3), for the words “expenses exceeding five per cent. of its total expenses during that financial year”, the words “expenses exceeding such percentage of its total expenses during that financial year, as may be notified in the Official Gazette, by the Central Government in this behalf” shall be substituted.

2.21 The Ministry in their explanatory note to the amendment stated as follows:-

“The Central Advisory Committee and the State Governments have been of the view that the limit of 5% is not practicable. The Boards take some time to roll out scheme and all the administrative expenses have to be met out of this Fund without any other support. In view of this, the amendment is required.”

2.22 When asked whether the Central Government would also be empowered to revise the percentage of 5% administrative expenses from time to time, even if the expenses exceed the prescribed limits and the appropriate authority to allow such expenses, the Ministry replied as under :-

Reply
to
point
No.18

“Yes. The Central Government would be revising the percentage from time to time after due notification. Powers regarding budgeting and expenditure is vested in the Board which is responsible for compliance.”

2.23 During the course of evidence the representatives of Trade Union submitted as under :-

“The fourth amendment is waiving of 5% for administrative expenses. A Working Group has already debated upon this who had given four

different opinions but no one has said for waiving it off. It would be dangerous waive or increase it. In Delhi itself there are about 10 lakh construction workers out of which only 1-1/2 lakh workers are registered. Even if 5-6 lakh workers are registered, the 5% of expenses would be more than substantial for meeting the administrative costs”.

2.24 On the question of percentage of administrative expenses, the Secretary of Ministry of Labour and Employment stated as under :-

“We were talking of the 5 per cent problem that the State Boards are having and I must very candidly mention that it is 5 per cent of expenses; it is not 5 per cent of the Fund. Now, in places where there is no expenditure, clearly they have a problem. We are now saying that these schemes are mandatory. As the expenditure rises, the 5 per cent problem will come down. The 5 per cent problem is essentially there in States where the expenditure level is so poor. They are doing nothing and so they still have those 5-6 people sitting there and drawing salaries. So, there is a problem. I will be happy to have the Committee’s suggestions not exceeding something. It should not be exceeding something. It would be 8 per cent or whatever. If it is 8 per cent, we have a tendency to go up to 8 per cent. We will have to keep calibrating. That was the purpose of the amendment of not mentioning a limit because the moment the expenditure starts rising, there will not be any problem. I think, 5 per cent is more than enough.”

Amendment of section 42

2.25 In section 42 of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, in sub-section (1),—

(i) for the words “a Gazetted Officer of that Government to be the Director-General of Inspection who shall be responsible for”, the words “such number of Gazetted Officers, not exceeding ten, of that Government to be Director-Generals for such area as may be specified in the notification who shall coordinate with the Central Government in carrying out its responsibility of” shall be substituted;

(ii) for the words “throughout India”, the words “in the respective area” shall be substituted.

2.26 The Ministry in their explanatory note to the amendment stated as follows:-

“Appointment of more Gazetted Officers for conducting inspections will facilitate speedy disposal of complaints/public grievances.”

2.27 In the Building and Other Construction Workers' Welfare Cess Act, 1996 (hereinafter referred to as the Building and Other Construction Workers' Welfare Cess Act), in section 2, after clause (a), the following clause shall be inserted, namely:—

‘(aa) “employer”, shall have the same meaning as assigned to it in clause (i) of sub-section (1) of section 2 of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996’.

2.28 The Ministry in their explanatory note to the amendment stated as follows:-

“The definition of the ‘employer’ requires to be included in the BOCW Welfare Cess Act, 1996 as given in Section 2 (1) (i) of Building and Other Construction Workers (RECS) Act, 1996.”

Amendment of section 3

2.29 In section 3 of the Building and Other Construction Workers' Welfare Cess Act, in sub-section (3), for the words “collecting the cess to the Board”, the words “within a period of thirty days of collecting cess, to the Board” shall be substituted.

2.30 The Ministry in their explanatory note to the amendment stated as follows:-

“Time limit is required to be prescribed for depositing cess for proper implementation of the Act.”

2.31 When asked about the non prescription of the penalty for the collecting authority when the penalty for the employer has been prescribed, the Ministry informed as under :-

Reply to
Point
No.19

“Since cess collecting authorities are government servants or local authorities no penalty has been proposed in the Amendment as it is presumed that government and quasi-government authorities who violate legal provisions can be proceeded against under disciplinary rules.”

Amendment of section 12

2.32 In section 12 of the Building and Other Construction Workers' Welfare Cess Act, in sub-section (3), for the words “the Central Government”, the words “the Central Government or, as the case may be, the State Government” shall be substituted.

2.33 The Ministry in their explanatory note to the amendment stated as follows:-

“This provision will enable the State Governments also to initiate action in the Court of Law by filing complaints for offences punishable under section 12 of the Act.”

Reply
to
point
No.20

2.34 When asked about the reasons for not revising the penalty for not furnishing a return under the Act or furnishing false information which is currently one thousand rupees or with imprisonment which may extend to six

months or with both and whether the prescribed penalty is adequate to serve as a deterrent, the Ministry informed as under :-

“Such a recommendation was not received from the Task Force.”

2.35 When asked about the experience of the Govt. in regard to penalty since the inception of the Act, the Ministry informed as under :-

Reply to
point
No.20

“The statement showing prosecution proposals, in Central sphere during last four years, filed under Section 47, 48 and 49 of the Building and Other Construction Workers (RECS) Act, 1996 is at **Annexure IV.**”

2.36 Regarding the number of cases in which penalties have been imposed or defaulters imprisoned, the Ministry informed as under:-

Reply
to
point
No.20)

“The detail of the penal action taken against the defaulting employers under Section 50 of the Act is at **Annexure V.**”

CHAPTER-III

OBSERVATIONS/RECOMMENDATIONS

3.1 The Committee note that the process of having a separate legislation for Building and other construction workers started during late 1980s and culminating in present Act enacted in the year 1996 taking more than a decade in formulation thereof. Further, the Act remained dormant for nearly 15 years after its enactment. As stated by the Ministry, a Task Force was constituted to suggest amendments in the existing Act as there were some problems in its implementation. The

Committee find that the Task Force had made 20 recommendations of which only nine recommendations were accepted by the Government and rest of the recommendations mostly relating to the welfare of the workers have not been considered on the ground that amendment to the Rules has not been taken up. The Committee find that the Government seems to be only concerned with the paraphernalia instead of the welfare of construction workers. The Committee expect the Ministry to come up with comprehensive amendments instead of a piece-meal approach to ensure welfare of workers.

3.2 The Committee are surprised to note that the Government have no centralized data about the number of workers engaged in construction work. They are simply relying on the data extrapolated from the data collected by NSSO survey carried out way back in the year 2009-10. The Committee are anguished to note that though the implementation of the Act is primarily the responsibility of State Governments and inspite of the subject being in Concurrent List, no State-wise data of number of construction workers is neither available with the Ministry nor State Governments. The Committee are of the view that considering the boom in construction industry the number of workers must have increased manifold. They are also unhappy to find that the State Governments are sluggish in the matter of registration/issuance of Identity Cards even to

the identified workers. The Committee attribute this to lack of awareness regarding the registration or the benefits of such registration amongst the workers. The Committee strongly recommend that the pace of work of registration of workers needs acceleration and also wide publicity should be given wherever the Government/Executive officers of Panchayat/Labour officers find the construction work is in progress and it should also be made mandatory for contractor/principal employer to display banners highlighting the benefits of such registration at the construction site in Hindi and the regional languages of the area. The Committee also desire that steps may immediately be taken up to persuade the State Governments/Welfare Boards to register/issue I cards/publicize the benefits of registration so that the workers could on their own come forward for registration.

3.3 The Committee note that Section 46 of the Act requires an employer to send a written notice to the Inspector having jurisdiction in the area at least thirty days before the commencement of any building or other construction work. Since most of the construction workers are migrated workers, the Committee suggest, that as and when such notice is received and the actual work starts, the Inspector concerned should visit the site for verifying the process of registration of workers so that in no case any worker is left un-registered. The Committee further find

that there is no mechanism available with the Government to register individual or naka worker. In the given circumstances, the Committee apprehend that these workers would be deprived of the welfare schemes being run for them. The Committee therefore, desire, that all the building and other construction workers be registered/issued identity cards irrespective of their status.

3.4 The Bill proposes to include the Union Territories within the definition of appropriate Government under Clause (a) of sub-section (1) of Section 2 of the Building and other Construction workers (Regulation of Employment and conditions of Service) Act. Though the Committee have not found any Union Territories barring the applicability of the Act on the grounds that 'Union Territories' are not included in the definition of appropriate Government, still they agree to the amendment.

3.5 The Bill propose to empower the Central Government to specify the maximum cost of construction which shall fall within the definition of establishment under clause (j) of sub-section (1) of Section 2 of the Building and other Construction workers (Regulation of Employment and conditions of Service) Act. The Committee find that at present, the BOCW (RECS) Act is also applicable to the individual constructing house for his residential purpose of value exceeding Rs.10 lakh. The Committee note that due to inflation and other factors the cost of construction

varies from time to time and in the present scenario the amount of Rs. 10 lakh has little meaning. Though the Committee agree to revising the limit of Rs.10 lakh, they, however, desire that the authority of such revision may remain in the hands of Parliament as it entails implementation/collection of Cess.

3.6 The Bill propose to remove the condition of minimum 90 days work for qualifying for registration of the beneficiary under sub-section (1) of Section 12 of BOCW (RECS) Act. The Committee opine that in the absence of such requirement any person can be registered and take the benefit of the welfare schemes meant for the construction workers and it would give scope for malpractices erupting into the process of registration of workers. Moreover, the Committee find that the Government do not have any mechanism available to prevent non-entitled person entering into this sphere. Though the Committee are aware of the good intention of the Government behind making such amendment, still they are concerned about the non-entitled entrants. They, therefore, desire that certification of workers must stay which could be given by the registered Construction Workers' Unions/Executive Officers of Panchayats/Labour Officers.

Further, the Committee find the criterion of age limit of sixty years is proposed to be done away with for registration of workers as

beneficiaries under the Act. The Committee also find that the Government has not chalked out any mechanism as to how the benefit/disbursement of pension would reach the worker who attains the age of sixty years and still want to work as construction worker. The Committee therefore, recommend that this amendment should not be made as this would create complication in providing pension benefit to the beneficiary unless the Government finds a mechanism for disbursement of pension on attaining the age of sixty years.

3.7 The Bill propose to insert Sub-section (1A) under Section 18(1) for constitution of a Board, deemed to be the Board established and constituted for the purpose of carrying out the provisions of this Act. The Committee find that as of now all the States have constituted the Boards and thus there is hardly any need for constitution of deemed Boards. The Committee are also of the view that in the absence of a provision for deemed Boards, pressure could be built up on the State Governments to re-constitute the Boards wherever they cease to function for any grounds whatsoever. They, therefore, desire that insertion of sub-section (1A) may be dispensed with as there is no need at present for insertion of clause (1A) as proposed.

3.8 The Bill proposes to amend Section 24, sub-section (3) which allows expenses upto 5% of its total expenses during the financial year towards salaries, allowances and other remuneration to its members, officers and other employees and for meeting the other administrative expenses. The Committee find that after persuasion of the Central Government, State Governments have lately constituted the Welfare Boards. In the given scenario had the Welfare Boards been constituted and had they started implementing the Welfare Schemes vigorously, 5% of the total expenses would have been sufficient for salaries, allowances and other remuneration to its members, officers and other employees and for meeting the other administrative expenses. The Committee also note that in some States like Kerala, Chhatisgarh and Tamilnadu where the amount of Cess is spent on the Welfare Schemes, they have no constraints for administrative expenses. The Committee opine that once the limit of 5% is enhanced, the implementation of the Act will be put on back-burner as there would be sufficient funds for carrying out administrative expenses of the Boards. The Committee therefore, desire that the limit of 5% may not be revised at this stage so that the States would be compelled spend the cess to generate money for their expenses.

3.9 The Bill proposed to insert clause (aa) after clause (a) of Section 2 of the Building and other Construction Workers' Welfare Cess Act, 1996. The Committee agree to the proposed insertion as the definition of 'employer' require to be included in the Act.

3.10 The Bill proposes to amend Section 3, sub-section (3) for the words “collecting the cess to the Board” the words “within a period of thirty days of collecting cess, to the Board” shall be substituted. The Committee note that the Cess Act was enacted in 1996 and since then it was obligatory on the part of the State Government to collect Cess @ 1%. However, the Government have no data as to when the States started collecting Cess and are also not aware about who the custodian of the Cess is where the Welfare Boards were not constituted. The Government have been able to provide information only about the States of Andhra Pradesh, Karnataka, Delhi and Punjab. In the given circumstances, the Committee apprehend the misappropriation/diversion of huge amounts of public money. The Committee also find that there is no penalty prescribed in cases of deviation as the collecting authority are the Government officials. The Committee are of the view that non-prescription of penalty would lead to laxity in depositing the cess to the Board. They, therefore, desire that at least some kind of penalty should be prescribed to deter the misuse or sluggishness in depositing the amount with the Board, addition to the departmental proceedings under relevant Conduct Rules for the Government Servants.

3.11 The Committee find that an amount of Rs.9863.18 crore is lying unspent with various State Governments. Moreover, the Government

have no details as to when and which State Government has started collection of Cess and who was the custodian thereof till the constitution of Welfare Boards in respective States. The Committee recommend that the Ministry may consult the State Government for setting up of a Trust at Central level with the consent of the State Governments, who may act as custodian of the total Cess collected and formulate and run welfare schemes for building and other construction workers uniformly throughout India.

3.12 The Committee also note that after taking up the matter by them, the Government have issued directions in the year 2013 to States for constitution of Welfare Board. The Committee desire, that a strong monitoring system must be evolved at the Centre for rigorous monitoring on the non-performing States and if it still does not yield any results, amendment should be made in the Act to empower the Central Government to levy and collect cess where the State Governments fail.

3.13 The Committee find that there is no grievance redressal mechanism available with the Government for the workers aggrieved with the implementation of welfare schemes meant for them. The Committee desire that a provision for grievance redressal machinery must be made in the extant rules.

3.14 The Committee find that the penalty prescribed under Section 47, 48 and 49 are negligible. They also find that the prosecution proposals filed before DG (Inspection) under these sections do not have any significance as the ultimate fine imposed in various courts runs into hundreds. The Committee are of the view that the expenditure on these cases would have been much more than the fine imposed on defaulters. They therefore, recommend that the penalty under these sections may suitably be enhanced to serve as a deterrent.

3.15 The Committee find that a Working Group has been constituted to make recommendations, among other aspects, to increase enrolment and improve administration of welfare schemes which is yet to give their report. Since the present proposed amendments are relating to Clauses of the Act and the Rules have not been touched for amendment, the Committee, recommend that the Bill be returned to the Government for bringing a comprehensive amendment Bill to the Act as well as Rules so that the problems of the building and other construction workers could be addressed in their entirety.

Annexure - I

State wise number of construction workers*

State	Estimated Workers ('000)
Andhra Pradesh	2,656.03
Arunachal Pradesh	24.78
Assam	370.2
Bihar	2,392.22
Chhattisgarh	339.56
Goa	34.82
Gujarat	1,110.90
Haryana	939.16
Himachal Pradesh	442.88
Jammu & Kashmir	336.45
Jharkhand	1,699.42
Karnataka	1,587.16
Kerala	1,675.42
Madhya Pradesh	2,002.63
Maharashtra	2,175.07
Manipur	66.26
Meghalaya	47.97
Mizoram	14.94
Nagaland	10.86
Orissa	1,413.41
Punjab	1,102.11
Rajasthan	3,553.08
Sikkim	2525.99
Tamil Nadu	2,771.77
Tripura	305.47
Uttar Pradesh	6,682.18
Uttarakhand	432.98
West Bengal	1,665.90
Delhi	184.74
A & N Island	15.96
Chandigarh	30.77
Dadra and Nagar Haveli	5.918
Daman and Diu	NA
Lakshadweep	NA
Puducherry	NA
Total	36,117.14

***Data from NSSO 66th round of 2009-10**
(As per EPW, June, 8th, 2013)

Annexure-II

State-wise position of Cess Collected and Amount Spent under the Building and Other Construction Workers Act, 1996

Sl. No.	Name of the States/Uts.	Amount of cess collected (In Crores)	Amount spent (In Crores)
1	Andhra Pradesh	993.94	73.42
2	Arunachal Pradesh	22.96	4.56
3	Assam	164	0.35
4	Bihar	254.5	16.63
5	Chhattisgarh	156.08	44.35
6	Goa	12.3	0
7	Gujarat	190.22	0.41
8	Haryana	740.13	15.17
9	Himachal Pradesh	51.22	0
10	J&K	0	0
11	Jharkhand	21.09	0.11
12	Karnataka	1439.55	22.75
13	Kerala	546.88	453.43
14	Madhya Pradesh	786.54	230.82
15	Maharashtra	822.99	1.9
16	Manipur	0	0
17	Meghalaya	14.45	0.04
18	Mizoram	0	0
19	Nagaland	3.49	0.05
20	Odisha	312.32	0.34
21	Punjab	333.48	5.27
22	Rajasthan	286.95	5.33
23	Sikkim	18.64	2.44
24	Tamilnadu	604.31	277.95
25	Tripura	48.97	0.79
26	Uttar Pradesh	739.81	6.72
27	Uttarakhand	23.45	0.1

28	West Bengal	290.62	4.59
29	Delhi	1029.71	92.29
30	A & N Island	13.81	0.11
31	Chandigarh	28.9	0.85
32	Dadra & Nagar Haveli	0.17	0
33	Daman and Diu	0.73	0
34	Lakshadweep	0.49	0
35	Puducherry	20.65	4.62
Total		9973.35	1265.39

Annexure-III

Details of registration of employers under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 in Central sphere

Sl. No.	Regions	No. of registration of employers			
		2010-11	2011-12	2012-13	2013-14 (upto September)
1.	Ajmer	113	76	103	58
2.	Bhubaneswar	90	88	104	68
3.	Cochin	91	60	62	35
4.	Asansol (WB)	110	178	106	41
5.	Ahmedabad	449	336	376	242
6.	Jabalpur	130	141	181	147
7.	Patna	149	154	92	94
8.	Bangalore*	277	245	251	272
9.	Dhanbad*	145	120	201	207
10.	Hyderabad*	181	233	155	184
11.	Kolkata	464	368	302	251
12.	Nagpur	212	133	153	96
13.	Raipur/Chhattisgarh	35	143	127	70
14.	Chennai	166	81	137	306
15.	Jaipur	58	26	48	30
16.	Ranchi	53	53	45	-
17.	Dehradun	49	52	60	23
18.	Kanpur	106	114	116	135
19.	Pune	70	57	55	43
20.	Delhi	132	87	165	82
21.	Lucknow	33	35	19	36

* Figures given are calendar year-wise.

Annexure-IV

Details of the Prosecution Proposals filed before DG(Inspection) under BOCW (RE&CS) Act, 1996 under section 47,48,49

Year	Prosecution Proposal Received	Prosecution Proposal sanctioned	Fine imposed in various Courts
2009-2010	670	622	Rs.1,28,600/-
2010-2011	922	894	Rs.2,13,800/-
2011-2012	609	585	Rs.1,09,750/-
2012-2013	655	633	Rs.1,17,600/-
2013-2014 up to 31 st October 2013	281	285	Rs.36,900/-

Annexure-V

The Details of the penal action taken against the defaulting employers under Section 50.

year	No. of cases Received	Fine Imposed	No. of Cases Decided	Fine Received
2009-2010	2192	Rs. 25,82,500/-	971	Rs. 25,22,000/-
2010-2011	1178	Rs. 20,10,500/-	629	Rs. 17,06,150/-
2011-2012	1090	Rs.22,81,800/-	694	Rs. 17,946,50/-
2012-2013	1012	Rs.31,36,900/-	769	Rs.24,07,644/-
2013-2014 up to 31 st October 2013	396	Rs. 4,06,900/-	119	Rs. 6,32,500/-