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STANDING COMMITTEE ON LABOUR

(2019-20)

(SEVENTEENTH LOK SABHA)

MINISTRY OF LABOUR AND EMPLOYMENT

THE OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS CODE, 2019

FOURTH REPORT

LOK SABHA SECRETARIAT

NEW DELHI

February, 2020/Magha, 1941 (Saka)

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Presented to Lok Sabha on 11.02.2020

Laid in Rajya Sabha on 11.02.2020

LOK SABHA SECRETARIAT

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(2019-20)

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3. Shri John Barla
4. Shri Raju Bista
5. Shri Pallab Lochan Das
6. Shri Pasunoori Dayakar
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28. Shri Rajaram
29. Ms. Dola Sen
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31. *Vacant*

SECRETARIAT

1. Shri T.G. Chandrasekhar - Joint Secretary
2. Shri D.R. Mohanty - Additional Director

INTRODUCTION

I, the Chairperson, Standing Committee on Labour (2019-20) having been authorized by the Committee do present on their behalf this Fourth Report on 'The Occupational Safety, Health and Working Conditions Code, 2019' relating to the Ministry of Labour and Employment.

2. The Occupational Safety, Health and Working Conditions Code, 2019 was introduced in Lok Sabha on 23.7.2019 and referred to the Committee by the Hon'ble Speaker, Lok Sabha for examination and report within three months i.e. by 08.01.2020 from the date of publication of the reference of the Code in Bulletin Part- II of Lok Sabha dated 09.10.2019. The Committee obtained extension of time from Hon'ble Speaker to present the Report to the House by 14.02.2020.

3. In the process of examination of the Code, Committee invited the views/suggestions on the Code from Trade Unions/Organizations/Individuals through a Press Communiqué and received around 100 views/suggestions. The Committee took oral evidence of the representatives of the Ministry of Labour and Employment on 25th October, 3rd January, 2020 and 9th January, 2020, besides obtaining written clarifications from them on some major amendments proposed. The Committee also took oral evidence of the representatives of Central Trade Unions and various other Associations/Organisations/ Stakeholders viz. Bhartiya Mazdoor Sangh (BMS), Indian National Trade Union Congress (INTUC), All India Trade Union Congress (AITUC), Hind Mazdoor Sabha (HMS), Centre of Indian Trade Unions (CITU), All India United Trade Union Centre (AIUTUC), Trade Union Coordination Centre (TUCC), Self Employed Women's Association (SEWA), All India Central Council of Trade Union (AICCTU), Labour Progressive Federation (LPF), National Front of Indian Trade Unions (NFITU), National Union of Journalists (NUJ), Indian Journalists Union (IJU), All India Federation of PTI Employees Union, All India Newspaper Employees Federation, and Indian Federation of Working Journalists (IFWJ), Confederation of Indian Industry (CII), Joint Forum of Plantation Workers Unions, Tea Association of India, Indian Film and TV Producers Council, Producers Guild of India, National Institute of Occupational Health (NIOH), Federation of Medical and Sales Representatives' Associations of India, Action Aid Association, National Labour Law Association, and Aide et Action at their sittings held on 19th and 20th December, 2019.

4. The Committee considered and adopted the Report at their sitting held on 7th February, 2020.

5. The Committee wish to express their thanks to the representatives of the Ministry of Labour and Employment for tendering oral evidence and placing before the Committee the detailed written notes and post evidence information as desired by the Committee in connection with the examination of the Code. The Committee also express their thanks to all those who submitted written memoranda in response to the Press advertisement as well as to the Trade Unions and other Associations/Organisations for appearing before them and furnishing valuable written suggestions on the proposed amendments.

6. The Committee would like to place on record their appreciation for the commitment, dedication and valuable assistance rendered by the officials of the Lok Sabha Secretariat attached to the Committee.

7. For ease of reference and convenience, the Observations/Recommendations of the Committee have been printed in thick type in the body of the Report.

New Delhi; **BHARTRUHARI MAHTAB**
10th February, 2020 ***CHAIRPERSON,***
21st Magha, 1941 (Saka) ***STANDING COMMITTEE ON LABOUR***

REPORT

I. INTRODUCTORY

Pursuant to the recommendations of the Second National Commission on Labour and as a part of the Labour Reform Initiatives, 29 Labour Acts are being amalgamated, simplified and rationalised into four Codes viz. Code on Wages, Occupational Safety, Health and Working Conditions Code, Industrial Relations Code and Code on Social Security to make the existing Central Labour Acts in sync with the changing economic and industrial scenario, technological advancements and emerging need for wage security, social security and better working conditions for workers. As 18 Acts out of 29 Central Labour Acts are more than 50 years old and a few of them are even 70 years old, a need was felt to reduce the complexity, provide uniform definitions, minimise multiple authorities under various Acts so as to bring transparency and accountability in the enforcement of Labour Laws.

2. The Occupational Safety, Health and Working Conditions (OSHWC) Code, 2019 which was introduced in Lok Sabha on 23rd July, 2019 by the Ministry of Labour & Employment after inter-ministerial consultations and suggestions received from the public/stakeholders, incorporates the essential features of the 13 enactments relating to Factories, Dock Workers, Building and other Construction Workers, Plantation Labour, Contract Labour, Inter-State Migrant Workers, Working Journalists and other News Paper Employees, Motor Transport Workers, Sales Promotion Employees, Beedi and Cigar Workers, Cine Workers and Cinema Theatre Workers. The OSHWC Code intends to simplify, rationalise and amalgamate the provisions of the following Labour Laws:

(i) The Factories Act, 1948;
(ii) The Mines Act, 1952;
(iii) The Dock Workers (Safety, Health and Welfare) Act, 1986;
(iv) The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996;
(v) The Plantations Labour Act, 1951;
(vi) The Contract Labour (Regulation and Abolition) Act, 1970;
(vii) The Inter-State Migrant workmen (Regulation of Employment and Conditions of Service) Act, 1979;
(viii) The Working Journalist and other News Paper Employees (Conditions of Service and Miscellaneous Provision) Act, 1955;
(ix) The Working Journalist (Fixation of Rates of Wages) Act, 1958;
(x) The Motor Transport Workers Act, 1961;
(xi) The Sales Promotion Employees (Conditions of Service) Act, 1976;
(xii) The Beedi and Cigar Workers (Conditions of Employment) Act, 1966; and
(xiii) The Cine Workers and Cinema Theatre Workers Act, 1981.

3. The OSHWC Code envisages:

- Occupational Safety standards for different sectors.
- Health and Working Conditions - ventilation, drinking water, etc.
- Hours of Work, overtime Hours, Leave, Holiday, etc.
- Welfare Provision - Canteen, Crèche, Rest Rooms, First Aid, etc.
- Duties of Employers, Employees, Manufacturers, etc.
- Registration of Establishments including deemed Registration.
- Licence for Contract Workers, Factories, Beedi and Cigar Workers, etc.

4. The Salient Features and Impact of the Code according to the Ministry are as under:

i. The Code provides basic broad legislative framework with enabling provisions for framing rules, regulations, standards, and bye-laws.

Impact: Resulted in reduction of 622 sections to 134 sections in the Code. This would result in simple legislation with flexibility in changing the provisions in tune with emerging technologies and makes the legislation dynamic.

ii. One registration for an establishment instead of multiple registrations. Presently 6 labour Acts out of 13 provide for separate registration of the establishment.

Impact: Create a centralized data base. Promote ease of doing business. At present, separate registration is required to be obtained under 6 Acts namely: Factories Act, Contract Labour Act, BOCW Act, Motor Transport Workers Act, Plantation Act and Inter-State Migrant Workers Act. The provisions of online and deemed registration have been incorporated.

iii. The Code is applicable to all establishments employing 10 or more workers except mine and dock where it is applicable on even 1 worker. The offices of Central and State Government have been kept out of the ambit of the Code.

Impact: Enhances the coverage of the safety and health provisions manifold as the establishments in service sector and other establishments would now be regulated by the safety, health and working conditions provisions of the Code.

iv. Definition of Cine worker has been modified to include all audio-visual workers and definition of working journalist has also been modified to include journalists working in electronic media also. Further, the definition of inter-state migrant worker has been modified on the basis of suggestions received to include those migrant workers who have been employed directly by the employer besides the migrant workers employed through a contractor.

Impact: This would enhance the coverage of the Inter State Migrant Workers for the purpose of benefits like housing, education, etc. There has been continuous

demand from various quarters including from the Standing Committee to make the definition of 'cine worker' more inclusive.

v. The definition of a family extended to include dependent grand-parents of the worker.

Impact: Due to increase in life expectancy, the grand-parents who are part of family will also get welfare benefits like compensation in case of death of the workers and under the Plantation Act.

vi. Employers to provide free of cost annual health check-up for employees above prescribed age for prescribed tests. Provision for appointment letter to every employee.

Impact: Increases productivity as it would be possible to detect diseases. Coverage of health would promote inclusion. The provision of appointment letter will result in formalization of employment.

vii. The multiple committees under five labour Acts have been substituted by one National Occupational Safety and Health Advisory Board. The National Board is of tripartite nature and has representation from employees, employers and State Governments.

Impact: Reduction in multiplicity of bodies/committees in various Acts. Results in simplified and coordinated policy-making.

viii. Enabling provision for constituting a bi-partite Safety Committee in any class of establishment by appropriate government.

Impact: It will promote safe and healthy working conditions in an establishment. The participatory nature of the committee will encourage implementation of decisions taken by the management.

ix. A part of the penalty (minimum 50 per cent) for contravention of provisions relating to duties of employer leading to death or serious bodily injury to any person may be given to the victim or the legal heirs of the victim by the Court.

Impact: The part of penalty would help in rehabilitation of injured worker or would provide financial support to the family of deceased.

x. Presently, different applicability thresholds exist for welfare provisions like crèche, canteen, first aid, welfare officer etc in different Acts. The proposed Code has envisaged uniform threshold for welfare provisions for all establishment as far as practicably feasible.

Impact: The revised thresholds are – for canteen 100 employees (earlier ranged from 100 to 250), crèche 50 workers (earlier ranged from 20 to 50 female workers), first aid for all (earlier in selected establishment), welfare officer 250 for factory/mines/ plantation (earlier ranged from 300 to 500).

xi. Women permitted to work beyond 7 PM and before 6 AM subject to the safety, holidays, working hours or any other condition as prescribed by appropriate government subject to taking consent from the woman worker.

Impact: Promote gender equality and is in tune with demands from the various forums. At present, women are prohibited in night for mines, factories, plantation, beedi and cigar.

xii. The concept of a single all India licence with 5 years validity de-linked with work order has been proposed as an option available for contractors who undertake a project or are supplying human resources.

Impact: At present a number of licenses are being obtained by a contractor for each work order. Promotes ease of doing business. Reduces corruption and reduces paper work also.

xiii. The provision of one license has been proposed for factory, contract labour and beedi and cigar establishments in the Code.

Impact: One license in place of multiple licenses.

xiv. The penalties have been rationalised, graded and the fine amount has been enhanced as an effective deterrent.

Impact: Penalty would act as an effective deterrent which would encourage compliance of the provisions of the Code.

xv. Presently, separate returns have to be filed under 9 out of 13 labour Acts. 58 registers (besides the number of registers prescribed by the State Governments in Rules) have to be maintained under 13 labour Acts.

Impact: One return proposed. Reduces number of registers to minimum and promotes e-governance.

xvi. The inspector cum facilitator may also be assigned of establishment outside his jurisdiction by the appropriate Government through randomised computer system. The inspector may also seek information and documents online from establishments.

Impact: Delinking of inspector from certain specific geographical region would discourage formation of nexus between inspector and employer of that region. Further, the online information sought by inspector cum facilitator may substitute physical inspection.

5. The OSHWC Code, 2019 was referred to the Standing Committee on Labour on 9th October, 2019 for examination and report within three months

viz. by 8th January, 2020. Since the examination of the Code could not be completed by the stipulated time line because of humongous issues involved, the Committee sought and obtained extension of time from the Speaker to present the Report by 14th February, 2020.

6. In the process of examination of the Code, the Committee held an initial sitting to have a briefing by the Ministry of Labour & Employment on 25th October, 2019 on various provisions contained in the Code. Subsequent to that the Committee issued a press release inviting written suggestions/views from various Unions/Associations/Organisations/Stakeholders including the State Governments. In response to the press advertisement, approximately one hundred written memoranda were received from various Stakeholders. These Memoranda were sent to the Ministry seeking written clarifications on each of the suggestions contained therein and the comments of the Ministry were received.

7. In an internal sitting held on 5th December, 2019, the Committee shortlisted certain Stakeholders including some State Governments to be called before them for tendering oral evidence and finalised the dates of such evidence to complete the examination of the Code in a time bound manner.

8. Accordingly, on 19th December, 2019, the Committee took oral evidence of the representatives of Bhartiya Mazdoor Sangh (BMS), Indian National Trade Union Congress (INTUC), All India Trade Union Congress (AITUC), Hind Mazdoor Sabha (HMS), Centre of Indian Trade Unions (CITU), All India United Trade Union Centre (AIUTUC), Trade Union Coordination Centre (TUCC), Self Employed Women's Association (SEWA), All India Central Council of Trade Union (AICCTU), Labour Progressive Federation (LPF), National Front of Indian Trade Unions (NFITU), National Union of Journalists (NUJ), Indian Journalists Union (IJU), All India Federation of PTI Employees Union, All India Newspaper Employees Federation, and Indian Federation of Working Journalists (IFWJ).

9. On 20th December, 2019 the Committee took oral evidence of the representatives of Confederation of Indian Industry (CII), Joint Forum of Plantation Workers Unions, Tea Association of India, Indian Film and TV Producers Council, Producers Guild of India, National Institute of Occupational Health (NIOH), Federation of Medical and Sales Representatives' Associations of India, Action Aid Association, National Labour Law Association, and Aide et Action.

10. Thus, on 19th and 20th December, 2019, the Committee heard the views of 26 Unions/Organisations/Associations. On 27th December, 2019, the Committee also took oral evidence of the representatives of the State Governments of Andhra Pradesh, Kerala, Odisha, Punjab and Rajasthan.

11. On 3rd January, 2020, the Committee took oral evidence of the Ministry of Labour & Employment and got clarifications on several issues and provisions contained in various Clauses of the Code. On 9th January, 2020, the Committee took final evidence of the Ministry subsequent to which the Committee obtained written reply/clarifications on a number of issues from the Ministry.

12. Based on the inputs gathered from the Stakeholders through their written and oral depositions as well as clarifications obtained from the Ministry both in writing and oral evidence, the Committee examined the OSHWC Code, 2019 in great detail and Clause by Clause and have given their opinions/suggestions/ recommendations as enumerated in the succeeding paragraphs.

II. CLAUSE 1

Short title, extent, commencement and application.

13. Clause 1(4) says "It shall not apply to the offices of the Central Government, Offices of the State Government and any ship of war of any nationality".

14. Concerns were raised at many quarters for not keeping the Offices of the Central Government and the State Governments under the purview of the Code. When the Committee sought clarifications on the matter, the Ministry stated as under:

> "The OSH Code cannot be applied on Central/State Government as their hours of work, leave, welfare facilities, duties of employer, etc. are governed by appropriate Governments' Rules. Further, section 2 (u) which defines establishment includes a place where any trade, industry, business, manufacture or occupation is carried on. Therefore, all establishments including IT establishments are covered under the OSH Code. Further, the contract workers engaged in Government establishments would be covered under the Code.."

15. The Committee pointed out that now a days the Government Departments are engaging Contract labours to a great extent for majority of peripheral activities like Housekeeping, Safety, Transportation, Repair and Maintenance, Basic Data Entry and even for construction activities, etc. In that

context, the Committee asked whether such contract workers engaged in the Government Offices would be covered under the Code. In reply, the Secretary, MOLE, submitted in evidence that all contract workers would be covered under the Code. Another representative of the Ministry elaborated as under:

> "In the definition of employer in Section 2 (t), we have mentioned that it means a person who employs, whether directly or through any person, or on his behalf, in his establishment and where the establishment is carried on by any department of the Central Government or the State Government. So, this Code includes the State Governments and the Central Government. We also have to comply with the provisions of safety and welfare even in the case of contract workers".

16. The Committee take note of the assurance of the Ministry that the Contract labours engaged by the Central Government and the State Governments either directly or through the Contractors would be covered under the Code as per Clause 2(1)(t). However, provision contained in Clause 1(4) tends to give an opposite interpretation. The Committee, therefore, desire that Clause 1(4) be suitably amended in sync with Clause 2(1)(t) so as to explicitly bring in the intent. The Committee also desire that the definition of Contract Labour as stipulated in Clause 2(1)(m) needs more clarity and further improvement so as to cover all types of contract workers.

17. As the Contract Labour (Regulation and Abolition) Act, 1970 is being subsumed in the OSHWC Code, the Committee call upon the Ministry to ensure that the grey areas in the interpretation and implementation of the said Act are duly addressed in the Code and a clear cut differentiation between the core and non-core activities in which contract labours can be engaged, as has been done by some State Governments like Andhra Pradesh, be considered.

III. CLAUSE - 2 - DEFINITIONS

(i) Clause 2(1)(d)

Appropriate Government

18. Clause 2(1)(d) reads as under:

Appropriate Government means -

"(i) in relation to an establishment carried on by or under the authority of the Central Government or the establishment of, railways, mines, oil field, major ports, air transport service, telecommunication, banking and insurance company or a corporation or other authority established by a Central Act or a central public sector undertaking or subsidiary companies set up by the central public sector undertakings or autonomous bodies owned or controlled by the Central Government, including establishment of contractors for the purposes of such establishment, corporation or other authority, central public sector undertakings, subsidiary companies or autonomous bodies, as the case may be, the Central Government; and

(*ii*) in relation to any factory, motor transport undertaking, plantation, newspaper establishment and establishment relating to beedi and cigar including the establishments not specified in clause (*i*), the State Government of a State in which it or, as the case may be, they are situated."

19. A number of Stakeholders, especially some State Governments were of the view that the above definitions of 'appropriate Government' lacked clarity. While deposing before the Committee, the representative of the Government of Kerala submitted in evidence:

"The Wage Code has specified role of the State Government and most of the times, the appropriate Government is the State Government. But in this Code we find that the appropriate Government in most of the places is the Central Government. The safety, health and working conditions as my colleague from Andhra Pradesh has mentioned is basically the State Government's responsibility."

20. Airing similar views, the representative of the Government of Odisha submitted:

"At present, even in institutions which are under the Central Government, like Rourkela Steel Plant, NALCO or IOCL, the Factories Act is being enforced by the Directorate of Factories of the State Government. As per the definition, however, it says, "Appropriate government will be Central Government in relation to an establishment carried on by or under the authority of the Central Government and railways, mines, oilfields, major ports, transports…". So, we feel that for the purpose of occupational safety in factories and minor ports, appropriate government could be State Government. The reason for saying this is that if there is suddenly an accident in Rourkela Steel Plant or anywhere else, then the

first call could be to the State Government, since it often gets into a law and order issue as well, and law and order is a State subject."

21. The Committee asked the Ministry for clarifications. In response, the Ministry submitted as under:

"It has been envisaged in the Section 2(1)(d) of the OSH Code that appropriate Government shall be the State Government in case of factories and minor ports. However, it will be further clarified."

22. In evidence, when the Committee desired the Ministry to throw more light on the matter, the representative of the MoLE submitted:

"Sir, our intention is that in case of factory and minor ports, the appropriate Government is the State Government. There may be some issue with the language but there is a clarity in our mind. You can say that this definition may be re-checked. We assure you that we are not taking away any of the power of the State Government which exists today."

23. The Chief Labour Commissioner, on the issue of defining the appropriate Government as the State Government in some cases, emphasised that the matter needed to be clarified.

24. The Committee find some ambiguities in the definition of 'Appropriate Government' under Clause 2(1)(d). The Ministry including the Chief Labour Commissioner have agreed that the matter needs further clarification, especially where the State Governments are to be considered as Appropriate Government. The Ministry's submission that 'there may be some issue with the language, but there is clarity in mind' does not hold good because clarity in mind ought to be translated into clarity in language for apt interpretation of the enactments. The Committee, therefore, impress upon the Ministry to modify Clause 2(1)(d) keeping in mind the fact that safety, health and working conditions are basically the responsibility of the State Governments and law and order is a State Subject. The Committee are of the considered opinion that prudent and

unambiguous demarcation of responsibility between the Central Government and the State Governments would remove confusion, avoid endless litigations and result in seamless implementation of the intended objectives.

(ii) Clause 2(1)(e), 2(1)(f), 2(1)(w) and 63 (1)

Audio-visual workers

25. Clause 2(1)(e) reads as under:

> ""audio-visual production" means audio-visual produced in wholly or partly in India including animation, cartoon depiction and audio-visual advertisement including digital production or any of the activities in respect of making thereof".

26. Clause 2(1)(f) reads as under:

> "audio-visual worker" means a person, who is employed, directly or through any contractor, in or in connection with the audio-visual production to work as an artiste including actor, musician, singer, anchor, news reader or dancer or to do any work, skilled, unskilled, manual, supervisory, technical, artistic or otherwise, and his remuneration with respect to such employment in or in connection with the production of audio-visual does not exceed, where remuneration is by way of monthly wages or where such remuneration is by way of lump sum, in each case, the amount notified in this regard by the Central Government."

27. Clause 63(1) and 63(2) says as under:

> "(*1*) No person shall be employed as an audio-visual worker in or in connection with production of any audio-visual programme unless,—
>
> (*a*) an agreement in writing is entered into—
>
> (*i*) with such person by the producer of such audio-visual programme; or
>
> (*ii*) by the producer of such audio-visual programme with the contractor where such person is employed through such contractor; and
>
> (*b*) such agreement is registered with the competent authority by the producer of such audio-visual programme.
>
> (*2*) Every agreement, referred to in sub-section (*1*) shall,—
>
> (*a*) be in the prescribed form;

(*b*) specify the name and such other particulars as may be prescribed by the Central Government with respect to, the audio-visual worker whose employment the agreement relates;

(*c*) include, where such audio-visual worker is employed through a contractor, a specific condition to the effect that in the event of the contractor failing to discharge his obligations under the agreement to the audio-visual worker with respect to payment of wages or any other matter, the producer of the audio-visual programme shall also be liable to discharge such obligations and shall be entitled to be reimbursed with respect thereto by the contractor."

28. As regards Clause 2(1)(e), the Producers Guild of India suggested the following modification:

" 'audio-visual production' means production of audio-visual content wholly or partly in India including, but not restricted to, Feature Films, Non-Feature Films, Television and Web based serials, Talk shows, Reality shows, Sports shows, animation, content, cartoon depiction, audio-visual advertisement, etc. including the digital production thereof and including all of the pre and post production activities in respect of the making or broadcasting of the same."

29. While deposing before the Committee, a representative of the Film & TV Producers Association submitted in evidence:

"...In the definition of audio-visual production, our recommended amendment says that it should also specify that it covers feature films, non-feature films, television, web-based serials, talk shows, reality shows and sport shows."

30. In response to the above amendment suggested by the Producers Guild, the Ministry submitted that the Committee might take a view in this regard.

31. Regarding Clause 2(1)(f) which deals with the definition of audio-visual workers, the Producers Guild suggested that the dubbing artists and stunt persons who possess specialised skills and play a key role in the production of films and serials should also be included alongwith actor, singer, etc.

32. In response to the above suggestion of the Producers Guild, the Ministry stated that they had no objection to modify the Clause accordingly.

33. The Committee then asked whether the Ministry would consider it appropriate to accord authority to the State Governments to fix their respective amount of remuneration according to the situation of the State concerned. In reply, the Ministry submitted as under:

"In order to have uniformity, the power to notify monthly wages or amount of lump sum remuneration in case of audio visual workers for applicability of OSH has been kept

with Central Government. An audio visual worker in a production unit may be required to work in more than one State."

34. Clause 2(1)(zw) reads as under:

"producer, in relation to audio-visual production means the person by whom the arrangements necessary for producing such audio-visual (including the raising of finances and engaging audio-visual workers for producing audio-visual) are undertaken."

35. The Producers Association suggested the following amendment:

" 'producer', in relation to audio-visual production means the company, firm or person, or persons, by whom the arrangements necessary for such audio-visual production (including the raising of finances and engaging audio-visual workers are undertaken"

36. When the Committee desired to hear the views of the Ministry on the above suggestion, they responded that the Committee might take a view on the matter.

37. Similar response was given by the Ministry to the following addition suggested by the Producers Guild to Clause 6 regarding the 'duties of the employer':

"6(f) issue a letter of appointment or, in case of audio visual production, enter into an agreement in the prescribed form with the audio visual worker or the contractor".

38. Regarding prohibition of employment of audio-visual worker without Agreement as extensively dealt with in Clause 63, the Producers Guild and Indian Film & TV Producers Council suggested that the Producer should not be deemed to be the employer and held responsible for thousands of fluctuating workers actually engaged by various entities like Art Director, Music Director, etc. They also suggested that in the Chapter 'Duties of Employer', it should be made clear that the audio-visual producer should enter into agreement alongwith the proposed provision that 'every audio-visual worker must sign a separate contract with the Producer or there should be a contract between the Producer and the Contractor.

39. In evidence, a representative of the Ministry apprised as under:

"This Agreement is related only to the audio-visual workers because there is no specific employer-employee relationship and they are not working for the whole year"

40. The Secretary, MoLE supplemented:

"There should be a formal agreement...we are saying that all the workers - whether they are engaged in pre-production, post-production, exhibition, etc. - should be included.

But there should be an agreement. It may be between a Director or between a contractor".

41. Asked to state whether the Agreement Clause could be further clarified so as to avoid putting all the responsibilities on the Producer, the Secretary, MoLE submitted:

"We can definitely change it and we can further clarify it...".

42. In a post-evidence information, the Ministry further stated as under:

"As per Clause 63(1)(a)(i), the agreement can be entered between an audio visual worker and the producer. Further, as per Clause 63(1)(a)(ii), in case the producer has engaged a contractor the agreement would be entered by contractor. It is understood that the contractor has engaged audio visual worker through an agreement. However, if the Committee desires,, in Clause 63(1)(a) (ii) it may be provided for an agreement between contactor and the audio visual worker."

43. Clause 63(4) says as under:

"Notwithstanding anything contained in Chapter V, VI and VII, the agreement referred to in sub-section (*1*) shall include,—

(*i*) nature of assignment;
(*ii*) wages and other benefits (including provident fund, if any);
(*iii*) health and working condition;
(*iv*) safety;
(*v*) hours of work; and
(*vi*) welfare facilities,

and it shall be responsibility of the producer to provide the facilities specified in the agreement to the audio-visual worker and the payment of wages shall be through electronic mode ".

44. The Producers Association suggested that alongwith the above provisions, 'dispute resolution process' should be added because maximum number of film and TV industry disputes would get resolved at the industry level itself.

45. The Association also pointed out that there has been no provision for payment of Provident Fund to the audio visual workers as they do not work for a single employer at a time and throughout the month/year. The Association, therefore, suggested that the Code must bring clarity on the matter.

46. In response to both the above suggestions of the Producers Guild/Council, the Ministry stated that the Committee might take a view on the issues.

47. Taking into account the submission of the Producers Associations as well as the response of the Ministry thereto, the Committee recommend that the definition of 'Audio visual production' under Clause 2(1)(e) should also include feature films, non-feature films, television, web base serials, talk shows, reality shows and sport shows so as to cover the whole gamut of audio-visual production.

48. In view of the fact that dubbing artists and stunt persons possess specialised skills and play a key role in the production of films and serials, the Committee desire that these two categories of artists be also included in the definition of 'audio-visual workers' under Clause 2(1)(f).

49. Since an audio-visual worker in a production unit may be required to work in more than one State, the Committee agree with the prescribed provision for keeping the power with the Central Government to notify monthly wages or amount of lump sum remuneration in case of such workers for applicability of OSH, in order to have uniformity.

50. Considering the suggestions of the Producers Associations and the response of the Ministry thereto, the Committee recommend that in the definition of 'producer' under Clause 2(1)(zw), the words 'company, firm or' be added before 'person' in line one of the said Clause.

51. The Committee note that Clause 63 (1)(a)(i) and 63 (1)(a)(ii) prohibits employment of audio-visual workers without formal Agreements between such workers and the Producer and by the Producer with the Contractor if

such workers are engaged by the Contractor. Taking into consideration the concerns expressed by the Producers Associations that the Producer should not be deemed to be the employer and held responsible for thousands of fluctuating workers actually engaged by various entities like Art Director, Music Director, etc. the Committee desire that Clause 63(1)(a)(ii) be amended so as to provide for an Agreement also between the contractor and the audio-visual workers.

51. The Committee further recommend that the list of the type of Agreements as provided under Clause 63(4) should also include 'dispute resolution process' as most of the disputes that occur in the film/TV industry are reportedly resolved at the industry level itself and few cases go for litigations.

53. The Committee were informed that there has been no provision for payment of Provident Fund to the audio-visual workers in the existing Act as they do not work for a single employer at a time and throughout the month/year. The Committee, therefore, desire that the audio-visual workers who are entitled to PF benefits should be specified in Clause 63(3) so as to avoid litigation.

(iii) Clause 2(1)(g)

Fixation of amount of Residential Property

54. Clause 2(1)(g) reads as under:

" 'building or other construction work' means the construction, alteration, repair, maintenance or demolition in relation to buildings, streets, roads, railways, tramways,

airfields, irrigation, drainage, embankment and navigation works, flood control works (including storm water drainage works), generation, transmission and distribution of power, water works (including channels for distribution of water), oil and gas installations, electric lines, internet towers, wireless, radio, television, telephone, telegraph and overseas communications, dams, canals, reservoirs, watercourses, tunnels, bridges, viaducts, aqua-ducts, pipelines, towers, cooling towers, transmission towers and such other work as may be specified in this behalf by the Central Government, by notification, but does not include any building or other construction work of any factory or mine or any building or other construction work employing less than ten workers or any building or other construction work related to residential property not employing the workers more than such number as may be notified by the Central Government from time to time."

55. Some petitioners suggested that State Government should be included alongwith Central Government to fix the value of residential property. In response, the Ministry submitted as under:

"In order to have uniformity, the power to notify 'such other work' for the purpose of 'building and other construction work' and number of workers has been kept with central Government. The Committee may take a view for inclusion of value of 'residential property for self-living' for bringing under the purview of 'building and other construction work'. This value may be decided by appropriate Government."

56. The representative of the Ministry submitted in evidence:

"We agree with this because the value of residential property in Mumbai and in some smaller State would be different. This can be given to the appropriate Government."

57. As the value of residential property for self-living in bigger cities would differ from that of the smaller ones and the State Governments concerned are better aware and equipped for proper assessment of the value of such property, the Committee desire that the notification responsibility should be accorded to the Appropriate Government instead of Central Government.

(iv) Clause 2(1)(h)

Building Worker

58. Clause 2(1)(h) stipulates as follows:

> " 'building worker' means a person who is employed to do any skilled, semi-skilled or unskilled, manual, technical or clerical work for hire or reward, whether the terms of such employment are express or implied, in connection with any building or other construction work, but does not include any such person who is employed mainly in a managerial or supervisory or administrative capacity ".

59. As the above definition of building worker does not include the term 'highly skilled', some Stakeholders suggested that before the word 'skilled', the term 'highly skilled' should be incorporated in the said Clause as the Code on Wages includes the category 'highly skilled'.

60. In response to the above suggestion, the Ministry stated as under:

> "The definition of worker or building worker is same as far as inclusion of various skill categories are concerned in all the Codes. Further, the word 'skilled' does include highly skilled. Therefore, there does not seem to be any need to include 'highly skilled'."

61. In response to suggestions received from some Stakeholders to add the word 'highly skilled' in the definition of building workers, the Ministry's submission that the word 'skilled' does include 'highly skilled' is not convincing because the Code on Wages includes the category 'highly skilled'. In order to have uniformity, the Committee recommend that the word 'highly skilled' be added before the word 'skilled' in Clause 2(1)(h), more so when the wages for highly skilled workers might differ *vis-a-vis* skilled workers.

62. The Committee also desire that since the BOCW Act, 1996 is being amalgamated with the OSHWC Code, the Ministry have to take note of the *status quo* maintained in the definition of 'building or other construction

work' which has led to multiple conflicts between factory owners and enforcement authorities and finally settled by the judgment of the Supreme Court. Having said that the Committee emphasize that the Code must take into account the interest of the Construction labours in sync with some appropriate provisions made in the BOCW Act, in view of the emerging challenges being faced now-a-days in BOCW.

(v) Clause 2(1)(j) and Clause 34

Chief Inspector - cum - facilitator

63. Clause 2(1)(j) defines Chief Inspector-cum-Facilitator who is appointed under sub-section (3) of Section 34.

64. Clause 34(1) reads as under:

> "The appropriate Government may, by notification, appoint Inspector-cum-Facilitators for the purposes of this Code who shall exercise the powers conferred on them under this Code throughout the State or such geographical limits assigned in relation to one or more establishments situated in such State or geographical limits or in one or more establishments, irrespective of geographical limits, assigned to him by the appropriate Government, as the case may be."

65. A number of Stakeholders including some State Governments suggested that the word 'Inspector' has a negative connotation and the word 'Facilitator' is inappropriate in the extant provision and therefore the word 'Chief Inspector - cum - Facilitator' be changed to 'Director' and Inspector - cum- Facilitator be termed as 'Assistant Director' as has already been done by some State Governments.

66. When the Committee desired to hear the views of the Ministry on the above suggestion, they disagreed and submitted as under:

> "To meet requirements of ILO convention (No. 81), the inspections cannot be diluted. The name 'inspector' therefore necessarily should find place for carrying out inspection regime. However, it has also been desired that inspector should also facilitate to give guidance to the employers as to how to implement the provisions of the Code. Therefore, the designation 'inspector cum facilitator' is appropriate."

67. The Committee asked whether any other Country had changed the nomenclature 'Inspector' or introduced the term 'Facilitator'. In reply, the Ministry stated that in Europe it was 'Labour Inspector' whereas in USA and UK the term used were 'OSHA Inspector' and 'Health and Safety Inspector' respectively. The Ministry further submitted as under:

> "Currently many State Governments have declared Directors as inspectors. The powers and function of the inspector have not been either altered or diluted. The nomenclature i.e. Inspector cum Facilitator promotes safety and health by ensuring appropriate facilitation process."

68. The Committee asked whether any other term could be used for Inspector - cum- Facilitator. The Secretary, MoLE submitted in evidence that if they tried to change it, the whole thing would change. He elaborated:

> "Sir, they (ILO) recognise the word 'Inspector'. If we put Assistant Director, then they will say we have totally done away the inspections and we do not want any inspections to be done."

69. Asked to justify the term 'Facilitator', the Secretary, MoLE submitted that the Inspector should help the employees also and facilitate better working relationship between the employee and the employer.

70. While responding to some other suggestion that the Inspector - cum - Facilitator should facilitate the industry in filing of returns and maintenance of Registers and there should be joint inspections by the worker and the Inspector, the Ministry stated that the standardised forms etc. would be provided in the Rules for the purpose of maintenance of Registers and filing of returns etc., but it would be impracticable to have joint inspections.

71. The Committee note that the Ministry have introduced a new nomenclature 'Chief Inspector-cum-Facilitator' under Clause 2(1)(j) and 34(1) respectively. On a suggestion from some quarters that the nomenclature be changed to 'Director'/'Assistant Director' as has been done by some State Governments, the Ministry have reasoned that the designation 'Inspector-cum-Facilitator' is appropriate as the name Inspector is recognised by the ILO and any change in the designation would give a wrong impression. As regards introduction of the term

'Facilitator', the Ministry have justified that the Inspector should facilitate giving guidance to both the employer and the employee for better working relationship. Taking into account the usage of term 'Inspector' by the developed Countries like in Europe and also USA, UK, etc., the Committee are of the considered opinion that the term 'Inspector' is desirable as inspections should not be diluted. As regards the new term 'Facilitator', the Committee appreciate the intent of the Government upon whom onus lies to vindicate that Inspector-cum-Facilitator promotes safety and health of the employees/workers and ensures effective facilitation process.

(vi) Clause2(1)(o)

Controlled Industry

72. Clause (2)(1)(o) defines 'controlled industry' as any industry the control of which has been transferred to the Union by any Central Act in the public interest.

73. Some petitioners suggested removal of this definition as it is not valid in the present times and has no apparent application in the Act. Taking an opposite stand some other petitioners suggested that 'Controlled Industry' may be added in the list of Industries wherein the Central Government is the Appropriate Government as these are strategically critical industries whose regulation must be with the Central Government.

74. The Committee sought the opinion of the Ministry on these two diametrically opposite suggestions. In reply, the Ministry submitted that the Committee might take a view on the matter and they had no objections if Controlled Industry was retained in the Code.

75. Taking into consideration the two opposite suggestions i.e. to retain and to remove 'Controlled Industry' as defined in Clause 2(1)(o), the

Committee are of the considered view that though controlled industry is not entirely valid in the present scenario, it is equally desirable to keep the strategically critical industries under the regulation of the Central Government. The Committee, therefore, recommend that 'Controlled Industry' be retained in the Code with the rider that strategically critical industries especially those involved in the security of the nation like Atomic Power Generation, Defence Equipment Production, etc. would come under its purview.

(vii) Clause 2(w)

Family

76. Clause 2(1)(w) reads as under:

" "family", when used in relation to a worker, means—

(*i*) spouse,

(*ii*) children including adopted children of the worker who are dependent upon him and have not completed the age of eighteen years, and

(*iii*) parents, grand-parents and widow sister, dependent upon such worker.

Explanation.—For the purposes of this clause, such dependents shall not be included who are, for the time being, getting such income from such sources, as may be prescribed by appropriate Government".

77. Suggestions were received from some quarters that widow daughter should also be included in the Clause. In response to that the Joint Secretary, MoLE submitted in evidence:

"We leave it to the Committee's discretion".

78. Asked to specify the opinion of the Ministry, the Secretary, MoLE deposed:

"Sir, we feel that it should be included because particularly in India widow daughters come back to the parents and stay with them because they feel safe with the parents. So, we can include them."

79. <u>As most of the widow daughters prefer to stay with their parents for the sake of safety and security, the Committee feel that it would be appropriate to include the word 'widow daughter' alongwith the existing provision of widow sister, grandparents, etc. in the definition of 'family' under Clause 2(1)(w).</u>

(viii) <u>Clause - 2(1)(u) and 2(1)(v)</u>

<u>Establishment and Factory</u>

80. Clause 2(1)(u) reads as under:

" "establishment" means—

(*i*) a place where any industry, trade, business, manufacture or occupation is carried on in which ten or more workers are employed; or

(*ii*) a factory, motor transport undertaking, newspaper establishment, audio-video production, building and other construction work or plantation, in which ten or more workers are employed; or

(*iii*) a mine or dock work".

81. Clause 2(1)(v) stipulates as follows:

" "factory" means any premises including the precincts thereof—

(*i*) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on; or

(*ii*) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on, but does not include a mine, or a mobile unit belonging to the armed forces of the Union, railways running shed or a hotel, restaurant or eating place.

Explanation I.—For computing the number of workers for the purposes of this clause all the workers in (different groups and relays) a day shall be taken into account;

Explanation II.—For the purposes of this clause, the mere fact that an Electronic Data Processing Unit or a Computer Unit is installed in any premises or part thereof, shall not be construed as factory if no manufacturing process is being carried on in such premises or part thereof."

82. The Committee received a number of suggestions from various Stakeholders that there should be an increase in threshold/applicability from 10 workers to 20 workers to facilitate small and micro enterprises and ease of doing business; the threshold may be removed and all activities relating to agriculture and domestic work etc. may be covered; threshold for factory may also be removed etc.

83. The Committee desired to have the views of the Ministry on the above suggestions. In response, the Ministry submitted as under:

"The threshold of 10 creates a balance between the rights of the worker and for survival of the small business. Otherwise even a cycle puncture shop will fall under inspection regime."

84. Elaborating the issue, the representative of the Ministry deposed in evidence:

"The representatives of the small-scale industries say that the threshold may be increased from 10 to 20, whereas the workers say that there should not be any threshold. It should apply even on one worker. There is a comment of the employee that the threshold of factory may also be removed. What we have done is that we have rationalized the threshold. We have kept 10 for all the establishments, except mines and dock workers, where the existing threshold is even one today keeping in view the safety requirements. So, nothing has been changed. We are trying to create a balance between the rights of the workers as well as the employers."

85. The Committee pointed out that the stipulation of 10 workers actually impinged on their rights which needed to be factored into. In reply, the Secretary, MOLE stated:

"We are not taking unorganised sector. Factories mean any premises where it is more than ten."

86. The Committee asked about the mechanism put in place to safeguard the interests, especially safety of the building and construction workers and less than ten people working in the unorganised sectors.

87. In reply, the Ministry deposed as under:

"Even though, there is a threshold of 10 under the Code, the appropriate government may by notification declare all or any part of the provisions of Part VI (Factories) to any

place wherein a manufacturing process is carried on with or without the aid of power irrespective of the number of the workers working in the factory as under Section 76(1) of the Code. It is an enabling provision for ensuring safety for unorganized workers. Besides, establishments having less than 10 workers are presently covered under the safety provisions of the Shops and Establishments Act."

88. A representative of the Ministry elaborated in evidence:

"Sir, there is one Shop and Establishment Act which every State is having. It applies to below 10 workers. In this Act, there are safety provisions also. The shops which are having 2-3 people are presently being governed by those respective State Government Shop and Establishment Act. But this does not come under this Code. That will keep on existing simultaneously."

89. The Committee then pointed out that earlier when most of the labour laws were made, the unorganised sector was not getting recognised. In that respect, the Committee desired to know whether a provision could be made in the Code itself. In response, the Joint Secretary, MoLE submitted:

"Sir, we agree. There can be a provision where it can be notified. A group can be notified which seems to be vulnerable for the purpose of safety. We can work on that".

90. Supplementing his colleague, the Secretary, MoLE, deposed:

"Definitely, but that will come separately because if we put it in the factory's definition, then again our inspector and all other would come into picture."

91. The Committee asked whether threshold limit could be removed for the benefit of the unorganised sector. In response, the Secretary, MoLE stated:

"Sir, it is difficult to do it for every individual. Some threshold has to be there. If a threshold is there, then our inspector can go and inspect".

92. The Secretary, MoLE further stated that it would be very difficult to relax the threshold as it would become unwieldy. Asked to state specifically the measures contemplated by the Ministry to provide safety to each and every individual working in the unorganised sector, the Secretary, MoLE, agreeing that some provision have to be made, submitted:

"Sir, anyhow we have to think and see how can we incorporate it. If a chaiwala is there and small shop is there, how we shall provide safety to each and every worker. It is a big question mark but we will work out if anything can be done for them."

93. The Additional Secretary, State Government of Kerala apprised the Committee in evidence:

"...The ILO Convention also says that the unorganised sector has to be properly covered under our Code. So, this is one thing which this Code completely misses out..."

94. The Committee note that there is a provision for a threshold of ten or more workers in an establishment and factory with an exception to mine and dock under Clause 2(1)(u) and 2(1)(v) respectively to be covered under the Code. The Employers suggested an increase in the threshold whereas the workers demanded removal of any threshold. The Ministry on their part have endeavoured to create a balance between the rights of the workers as well as the employers by sticking to the threshold on the ground that relaxing the threshold limit would make the matter complicated and unwieldy and adversely impact the inspection criteria. Taking note of the fact that establishments having less than ten workers are presently covered under the Shops and Establishments Act which is not being amalgamated with the Code and which will continue to exist, the Committee feel that the threshold limit of ten or more workers is reasonable and desirable for effective implementation of the labour laws.

95. Having said that, the Committee are deeply concerned with the state of affairs relating to the safety of workers in the unorganised sector as successive labour laws have not recognised their plight. However, the Ministry's assurance that they would endeavour to work out modalities for providing safety to each and every worker in the Country and notify a vulnerable group in the Code itself is a matter of solace to the Committee. In view of the desirability for proper coverage of the unorganised sector in Indian labour laws, as pronounced by the ILO Convention, the Committee exhort the Ministry to make some explicit provisions in the OSHWC Code

to protect the overall interest of the workers working in the unorganised sector with special thrust on safety and health related aspects. In this context, requisite attention needs to be paid towards those labours who are working in Railway and Port properties on behalf of other individuals/ firms and are involved with loading/unloading work at Railway/Port Goods Sheds since decades.

(ix) Clause 2(1)(y) and 2(1)(z)

Hazardous Process and Hazardous Substance

96. Clause 2(1)(y) and 2(1)(z) read as follows:

> "(*y*) "hazardous process" means any process or activity in relation to an industry specified in the First Schedule where, unless special care is taken, raw materials used therein or the intermediate or finished products, bye-products, hazardous substances, wastes or effluents thereof would—
>
> (*i*) cause material impairment to the health of the persons engaged in or connected therewith, or
>
> (*ii*) result in the pollution of the general environment;
>
> (*z*) "hazardous substance" means any substance or such quantity of the substance as may be prescribed by appropriate Government or preparation of which by reason of its chemical or physio-chemical properties or handling is liable to cause physical or health hazards to human being or may cause harm to other living creatures, plants, micro-organisms, property or the environment."

97. Some Stakeholders, especially the Plantation Workers' Associations, suggested that there should be a separate Chapter in the Code for the Plantation Workers which is a very large sector. They further suggested that spraying of pesticides which has led to a number of untimely death of workers and has created a lot of health hazards for the women workers besides polluting the air and poisoning the earth should be considered hazardous.

98. In the above context, the Committee asked whether there could be a separate Chapter on Plantation Workers considering the size of the sector and whether spraying of insecticide could be included in hazardous process/ substance. In reply, the Joint Secretary, MoLE submitted in evidence:

"There is a Schedule attached to the Act. It is there in page no. 69 and entry 18. It has already been defined as hazardous activity. I am sorry that there is no separate Chapter on plantation."

99. He further stated:

"Sir, this chapter is about insecticide, fungicides, herbicides and pesticides industry. Basically, these are considered hazardous industries."

100. Asked to state categorically whether spraying of insecticides/pesticides would be incorporated in the list of hazardous substances, the Secretary, MoLE assured:

"Sir, it will be considered hazardous."

101. In a post-evidence information, the Ministry deposed as under:

"Rules can be framed by the Central Government under 18(2)(e) for providing safety standards for all aspects for plantation worker including while spraying insecticide. State Government is also empowered to frame rules under Section 127(1) in respect of spraying insecticide."

102. The Committee then asked whether the list of industries involving hazardous processes could be increased in view of the fact that the developed Countries have reportedly 119 such industries in their list. In reply, the Ministry submitted as under:

" First Schedule on list of Industries involving Hazardous processes can be amended by the Central Government by issuing a notification under Section 123 of the Code."

103. The Committee note that spraying of pesticide/insecticide has not found a place in the definition of 'hazardous substance' under Clause 2(1)(z). Acknowledging the fact that spraying of pesticides/insecticides has led to a number of untimely death of plantation workers and created numerous health hazards especially for the women workers besides polluting the environment, the Committee recommend that 'spraying pesticide/ insecticide' be included in the definition of hazardous substance.

104. <u>The Committee further desire that steps be taken to revise the list of hazardous industries as contained in the First Schedule, in line with the developed Countries. Keeping in view the large size of the Plantation Sector, the Committee also urge the Ministry to incorporate an exclusive Chapter in the Code on the Plantation Sector so as to encompass all the workers in that Sector and extend the requisite facilities as prescribed under law.</u>

(x) <u>Clause 2(1)(zb)</u>

<u>Industry</u>

105. Clause 2(1)(zb) defines industry as follows:

> "industry" means any systematic activity carried on by co-operation between an employer and worker (whether such worker is employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature), whether or not,—
>
> (i) any capital has been invested for the purpose of carrying on such activity; or
>
> (ii) activity is carried on with a motive to make any gain or profit;
>
> but does not include—
>
> (a) any activity of the Government relatable to the sovereign functions of the Government including all the activities carried on by the departments of the Central Government dealing with defence research, atomic energy and space; and
>
> (b) any domestic service.

106. A number of petitioners proposed that the definition of 'industry' should be appropriately aligned with the Industrial Relations Code.

107. In response, the Ministry stated that the suggestion might be accepted.

108. <u>As suggested by some Stakeholders and as agreed to by the Ministry, the Committee recommend that the definition of 'Industry' as</u>

stipulated under Clause 2(1)(zb) be appropriately aligned with the Industrial Relations Code so as to maintain uniformity and facilitate seamless application of the enactments.

(xi) Clause 2(1)(zd)

Inter-State Migrant Workers

109. Clause 2(1)(zd) defines 'Inter-State Migrant Workers' as under:

> " "inter-State migrant worker" means any person who is recruited by—
>
> (*i*) an employer in one State for employment in his establishment situated in another State; or
>
> (*ii*) through a contractor in one State for employment in an establishment in another State, under an agreement or other arrangement for such employment and draws wages not exceeding the amount notified by the Central Government from time to time."

110. The State Government of Kerala suggested that the word 'Appropriate Government' should be included after the word 'Central Government'. Further after the word 'time to time', the word 'whichever is higher' should be inserted because provision of fixing wages by the appropriate Government would be more desirable as the wages might vary from State to State.

111. The representative of the State Government of Kerala, while deposing before the Committee, referred to Clause 2(1)(zze) and stated as under:

> "In Line 15, after "Contract Labour", the term "inter-State migrant labour" should be inserted. It is because now, the inter-State migrant workers are more visible invariably in all the factories and establishments. So, as far as the safety, health and working conditions are concerned, they should be treated as worker. Hence, this amendment is being proposed."

112. When the Committee desired to know whether there should be a separate chapter on Migrant Workers in the Code, the representatives of the State Government of Kerala and other State Governments present in the meeting replied in the affirmative. Highlighting the special arrangements made for the Migrant Workers in Kerala, the representative of the State Government submitted:

> "I would like to inform the hon. Chairperson and also the hon. Members of this Committee that Kerala has health insurance scheme for the migrant workers. We also

have accommodation in certain areas where we make arrangements for them to stay, and they are being treated as a part of the Kerala society because we feel that they are doing a very useful work for Kerala."

113. Regarding the desirability of fixation of wages by the Appropriate Government alongwith the Central Government the Ministry replied that the provision has been kept for the purpose of uniformity.

114. As regards insertion of 'inter-state migrant labour' after 'Contract Labour', the Ministry deposed as under:

"This Ministry has no objection. The Committee will take a view, it would have implication in amending section 53, 55 and 2(1)(zv)."

115. The Joint Secretary, MoLE assured in evidence:

"...we agree for that. We have no objection. It is because inter-state migrant worker should be treated as contract labour because...all those benefits will come to the inter-state migrant workers."

116. Regarding the need of a separate Chapter on Migrant Workers to have clarity on the health and safety aspects of such workers, the Ministry clarified as under:

"The migrant workers have been brought under the Chapter -XI (Part-I) of the Code. Now migrant workers can be employed directly besides through contractors. A contract worker is a worker as defined under Section 2(zze). Therefore all the provisions relating to safety and health, working conditions, leave, etc. are applicable to them. However, the Committee may take a view."

117. Regarding displacement and journey allowances to inter-state migrant workers, a representative of the Ministry submitted in evidence:

"This is regarding inter-State migrant workers. They have been given displacement and journey allowance under Section 60 and 61. The issue is that we have broadened the definition of inter-State migrants. Earlier inter-State migrant was only considered only when he has been brought through a contractor."

118. The Secretary, MoLE supplemented:

"Now, employer is included and he should also give displacement allowance. It is in favour of the worker. It is worker-friendly."

119. <u>As regards drawing of wages not exceeding the amount notified by the Central Government from time to time relating to the inter-State migrant workers, some Stakeholders, particularly the State Government</u>

of Kerala suggested that after the word 'Central Government', the word 'Appropriate Government' and after the word 'time to time' the word 'whichever is higher' may be inserted. The Ministry's response that "the provision has been kept for the purpose of uniformity" does not convince the Committee because if the suggestion is incorporated it would imply that higher wages, as may be notified either by the Central Government or by the State Government, would be paid to the inter-State migrant workers. As the proposed suggestion is in the interest of such workers, the Committee desire that 'Appropriate Government' be incorporated after 'Central Government' and 'whichever is higher' be included after 'from time to time'.

120. In view of the fact that inter-State migrant workers are now-a-days more visible invariably in all the factories and establishments, the Committee recommend that the term 'inter-State migrant worker' be incorporated after 'Contract Labour' in line 15 of Clause 2(1)(zze) so that all the benefits applicable to the contract labours are extended to the inter-State migrant workers/labours too.

121. Taking into account the unanimous views of the Stakeholders including the State Governments and the positive response of the Ministry thereto, the Committee are of the firm view that a separate and exclusive Chapter on Migrant Workers be introduced in the Code, notwithstanding the special provisions referred to for such workers in

Chapter XI, so that the safety, health and working conditions of the Migrant Workers be clearly spelt out for implementation besides making special provisions for them, as has been done by the State Government of Kerala.

122. In this context, the Committee are of the considered opinion that the novel initiatives adopted by the Government of Odisha both inside and outside the State for the benefit of the inter-State migrant workers are quite appreciable. Such initiatives *inter-alia* include Toll free Shramik Sahayata Helpline, Migrant Labour Help Desk in five States, Seasonal Hostels for the Children of Migrant Workers, strengthening Anti-Human Trafficking Units, Study on reducing distress migration, Migration Support Centres, etc. These initiatives desire Ministry's attention for a provision in the Code to that effect so as to ensure safety, health and overall welfare of the migrant workers.

123. The Committee appreciate the worker-friendly initiative taken by the Ministry to broaden the definition of 'inter-State migrant workers' by including 'Employer' alongwith 'Contractor' for the purpose of payment of displacement and journey allowance to such workers under Clause 60 and 61. However, the Committee feel that more clarity is needed in the applicability of the provision to certain class of employers like TV/Film Producers who, while moving from one State to another, usually bear the

charges for board and lodging besides daily allowances for their crew members/artistes.

(xii) Water Transport Undertaking and Water Transport Worker

124. A suggestion was received from the State Government of Kerala that a new provision relating to Water Transport Undertaking and Water Transport Worker should be added to Clause 2(1)(zh) and Clause 2(1)(zk) which define 'Motor Transport Undertaking' and 'Motor Transport Worker' respectively. The State Government reasoned that Water Transport Undertaking is a sector having lot of workers and including them will protect more workers under this Code.

125. In response to a specific query regarding the definition of Water Transport Worker, the representative of the State Government of Kerala submitted in evidence:

> "...water transport worker means a person who is employed in a water transport undertaking directly or through an agency, whether for wages or not, to work in a professional capacity on a boat (including motorised or not) or to attend duties in connection with the arrival, departure, loading or unloading of goods, accommodation or tourists and include all other works in connection with the water transport undertaking, but does not include any such person who is employed in a factory or to whom the provision of any law for the time being in force regulating the conditions of service of persons employed in shops or commercial establishments apply."

126. The Committee then asked about the number of such workers in Kerala. In reply, the representative apprised that there were definitely more than 10,000 workers and 4,000 boats, mostly backwater and river boats, all over Kerala.

127. The Committee enquired, by saying Water Transport Undertaking whether all the boats would be covered under the Code. The representative of the State Government responded that the single boat owners, having less than 10 workers would not be covered, but companies having more than five/six boats would get covered.

128. When the Committee desired to have the views of the Ministry on the above suggestions of the State Government of Kerala, the Ministry submitted as under:

> "The Act which is being merged in the OSH has no provisions relating to water transport. The water transport is managed by Ministry of Shipping."

129. The Committee asked whether the suggestion could be examined and considered by the Ministry. In reply, the Joint Secretary, MoLE submitted in evidence:

> "The next thing is to include the definition of water transport. This Water Transport Act is with the Ministry of Shipping. We can examine it. Till now, in our Ministry for all these codifications, we have not included water transport."

130. The Committee take note of the suggestion of the State Government of Kerala to include a new provision for Water Transport Undertaking and Water Transport Worker alongwith Motor Transport Undertaking and Motor Transport Worker as defined under Clause 2(1)(zh) and Clause 2(1)(zk), on the justification of more than 10,000 such workers working in 4000 boats all over Kerala. The Committee also take into cognisance the Ministry's submission that the Act which is being merged with the OSHWC Code has no provisions relating to water transport and the Water Transport Act is under the purview of the Ministry of Shipping. However, as the Code envisages provisions for safety, health and working conditions for different types of workers, the Committee would like the Ministry to examine in right earnest the feasibility of bringing in the large number of Water Transport Workers under the ambit of the OSHWC Code as has been done in the case of Motor Transport Workers so as to enhance the coverage of workers.

(xiii) Clause 2(1)(zo)

Occupier

131. Clause 2(1)(zo) defines 'Occupier' as:

> "occupier" of a factory means the person who has ultimate control over the affairs of the factory:
>
> Provided that—

(*i*) in the case of a firm or other association of individuals, any one of the individual partners or members thereof;

(*ii*) in the case of a company, any one of the directors, except any independent director within the meaning of sub-section (*6*) of section 149 of the Companies Act, 2013;

(*iii*) in the case of a factory owned or controlled by the Central Government or any State Government, or any local authority, the person or persons appointed to manage the affairs of the factory by the Central Government, the State Government or the local authority or such other authority as may be prescribed by the Central Government,

shall be deemed to be the occupier:

Provided further that in the case of a ship which is being repaired, or on which maintenance work is being carried out, in a dry dock which is available for hire, the owner of the dock shall be deemed to be the occupier for all purposes except the matters as may be prescribed by the Central Government which are directly related to the condition of ship for which the owner of ship shall be deemed to be the occupier.

132. A number of Stakeholders suggested that the person who has ultimate control over the affairs of the factory should not be held responsible for any mishap/accident as Foreign Direct Investment (FDI) would be adversely affected.

133. In response to the above suggestion, the Ministry submitted that the definition of 'Occupier' was changed subsequent to the 1987 Bhopal Gas tragedy as it was felt essential to fix liability on the top management with a view to promoting safety.

134. Deposing before the Committee, the Joint Secretary, MoLE submitted in evidence:

> "...After 1987 Bhopal Gas Tragedy, the issue was of the ultimate control. Mr. Anderson who fled from the country, could not be booked properly because the concept of ultimate control was not there. We have retained the concept of ultimate control in order to fasten the liability on the top management, and also to ensure that they take care of safety requirement personally. Although we have received a lot of representations saying that 'there is a multinational, whose headquarters is in the USA and the top man is sitting there. How will he ensure safety conditions in India?' But, Sir, we have not budged; we have not changed anything."

135. Elaborating further, the Joint Secretary, MoLE apprised:

> "The definition of 'occupier' was changed after 1987 Bhopal Gas Tragedy because at that time, it was realised that Mr. Anderson could not be properly tried in India and he could not have been trialed in India also because we did

not have this 'ultimate control' concept. So, we have retained this concept. We have not changed it. What has been changed is the change in the Board of Directors. There are Official Directors; there are Executive Directors; and there are Independent Directors. Independent Directors are only for the purpose of advice. There are Government Directors. Their liability has been reduced. Otherwise, anybody who is a Director on the Board of Directors of a company, is liable for the safety and all these things as also violation and punishment. Except Independent Directors and the Government Directors, they have exempted the rest. The entire liability happens to be with the Board of Directors."

136. The Committee asked whether it was appropriate to hold the proprietor of a company responsible even if he was not directly involved in the management and deploying people in a factory/establishment. In reply, the Secretary, MoLE stated:

"He has to be made responsible; otherwise, he will not own the responsibility if anything goes wrong in the factory. He will make somebody as a scapegoat and he will run away from that."

137. The Committee then asked about the person held responsible in the case of Public Sector Undertaking *vis-a-vis* the Private Sector. In reply, a representative of the Ministry submitted that the concerned Director only would be held responsible in the case of a PSU whereas any one of the Directors would be responsible in case of the Private Sector.

138. Not convinced, the Committee asked whether there was inconsistency in the application of law. In reply, the Secretary, MoLE submitted:

"For public sector again like CPSUs, the ultimate owner is the President because we work on behalf of the President. The same thing is there in the States. Even the Government Orders we issue in the State in the name of Governor. That is why, the director, the local director or the local MD is made responsible who looks after that."

139. Another representative of the Ministry further clarified:

"Sir, just now the discussion which is going on, I will quote an example, let us say, Coal India Ltd. We deal with mines. The Chairman is the occupier, if you say that. But, for individual unit, say WCL or ECL, BCCL, their director is held responsible for any offence. It is not that the Chairman is held responsible. Law is clear as far as the Mines Act is concerned."

140. For private sector, the representative submitted:

"Even in case of private sector also, we have the same thing. If he is a proprietor, then proprietor is held responsible if he is running the mine."

141. Asked to state whether the provision for Mines and the Factories were in sync for uniform application in the instant case, a representative of the Ministry apprised:

> "Sir, regarding this particular provision with respect to directors, I have worked as a Factory Inspector in my earlier job. The director or any one of the directors is acting as an occupier. Wherever the factory is located, the director who is running the particular factory, in charge of the factory is declared as an occupier. It is not necessary that the managing director alone should be the occupier for all the factories. So, that is already taken care of. They are also putting additional directors and they are managing the industries."

142. Clarifying the position further, the representative submitted:

> "With respect to private factories, having multiple factories in different regions, the Board decides themselves. They nominate anyone of the Director to be an occupier. They distribute the work among themselves."

143. The Committee note that subsequent to the 1987 Bhopal Gas tragedy, the concept of 'ultimate control' was brought in and accordingly the definition of 'Occupier' was changed as stipulated under Clause 2(1)(zo) as it was felt essential to fix liability on the top management with a view to promoting safety. In this context, the Committee find that the Director concerned is held responsible in the case of a PSU whereas any one of the Directors, so nominated by the Board of Directors, is made responsible in the Private Sector. While appreciating the intent of the Government to hold the proprietor who runs a factory or mine responsible for safety aspects in the Private Sector, the Committee would, however, like the Ministry to evolve a fool proof mechanism to ensure that the concept of 'ultimate control' is not misused by the person(s) authorised by the proprietor to run and manage the factory/mine/establishment on his behalf. In other words, the authorised person actually involved in the day

to day management of the Factory/Mine should also be held equally responsible alongwith the Proprietor/owner for all purposes.

(xiv) Clause 2(1)(zt)

Plantation

144. Clause 2(1)(zt) defines 'Plantation' as follows:

" "plantation" means—

(*a*) any land used or intended to be used for—

(*i*) growing tea, coffee, rubber, cinchona or cardamom which admeasures five hectares or more;

(*ii*) growing any other plant, which admeasures five hectares or more and in which persons are employed or were employed on any day of the preceding twelve months, if, after obtaining the approval of the Central Government, the State Government, by notification, so directs.

Explanation.—Where any piece of land used for growing any plant referred to in this sub-clause admeasures less than five hectares and is contiguous to any other piece of land not being so used, but capable of being so used, and both such pieces of land are under the management of the same employer, then, for the purposes of this sub-clause, the piece of land first mentioned shall be deemed to be a plantation, if the total area of both such pieces of land admeasures five hectares or more; and

(*b*) any land which the State Government may, by notification, declares and which is used or intended to be used for growing any plant referred to in sub-clause (*a*), notwithstanding that it admeasures less than five hectares:

Provided that no such declaration shall be made in respect of such land which admeasures less than five hectares immediately before the commencement of this Code; and

(*c*) offices, hospitals, dispensaries, schools and any other premises used for any purpose connected with any plantation within the meaning of sub-clause (*a*) and sub-clause (*b*); but does not include factory on the premises"

145. A number of Plantation Workers Associations suggested that the threshold limit for plantation area which admeasures 5 Hectare or more should be removed and the criterion of ten workers or more for applicability of OSHWC Code be reduced.

146. In response to the above suggestions, the Ministry clarified that the definition is as per the existing Act and doing away with the threshold limit of 5 hectare would increase cost of small plantation owner.

147. The Joint Secretary, MoLE elaborated in evidence:

> "At present the definition of plantation has two components – one is that it should have minimum 15 workers and the other is that it should have a plot size measuring 5 hectares. What we have done is that we have reduced applicability of OSH from 15 to 10 but in case of a plot at measuring 5 hectares, we have not changed. My humble submission in this regard is that a sort of balance has to be created between the cost and the visit of an inspector and unnecessary harassment and also the production of the worker."

148. Asked to clarify the reasons for increase in the cost, the Joint Secretary, MoLE further submitted:

> "What happens is that when an industry falls under an Act, they have to maintain documents. They have to maintain a register; they have to file income tax returns. Secondly, in case of non-compliance, an inspector will visit. To that extent, they have to maintain certain facilities also. In this case, four facilities will have to be maintained, like hospital, drinking water, electricity and educational institution. That will increase the cost."

149. Keeping in mind the large number of small grower plantation workers, not coming under the threshold limit admeasuring 5 hectare or more, the Committee desired to know the measures taken by the Ministry to include them under the ESIC Scheme so as to extend all the social security benefits to them. In response, the Secretary, MOLE stated that the interest of such workers would be taken care of in the Code on Social Security and they would be brought under the purview of ESIC.

150. The Committee observe that at present the definition of Plantation has two components *viz.* the minimum requirement of 15 workers and plantation area admeasuring 5 Hectares. While the Ministry have reduced the number of minimum workers from 15 to 10, they have expressed reservation in reducing the minimum requirement of 5 Hectares of plantation plot on the ground of cost escalation. According to the Ministry, if the size of the land is reduced, it would be very costly for the small plantation owners in terms of maintaining various documents, filing Income Tax Returns, carrying out inspection, extending facilities like

drinking water, electricity, hospitals, educational institutions, etc. The Committee find merit in the justifications adduced by the Ministry and hence feel that the extant provisions be maintained and simultaneously due care be taken to ensure that the proposals in the Code are in sync with the Plantation Labour Act.

151. The Committee draw consolation from the assurance of the Ministry that the interest of the large number of plantation workers, not coming under the threshold limit admeasuring 5 Hectare of plantation area, would be duly taken care of in the Code on Social Security and they would be brought under the purview of ESIC. The Committee feel that this is well intended and appropriate steps by the Ministry to safeguard the interest of all plantation workers viz. Tea, Coffee, Rubber, etc. by contemplating to extend them all the social security benefits.

(xv) Clause 2(1)(zx)

Qualified Medical Practitioner

152. Clause 2(1)(zx) defines Qualified Medical Practitioner as under:

> " "qualified medical practitioner" means a medical practitioner who possesses any recognised medical qualification as defined in clause (*i*) of section 2 of the Indian Medical Council Act, 1956 and who is enrolled on a Indian Medical register as defined in clause (*e*) and on a State Medical register as defined in clause (*k*) of the said section."

153. Some suggestions were received that since the Indian Medical Commission has come into existence in June, 2016, appropriate amendments be made to the Clause.

154. In response, the Ministry agreed with the suggestion.

155. <u>As suggested by some petitioners and also agreed to by the Ministry, the Committee recommend that the definition of 'Qualified Medical Practitioner' under Clause 2(1)(zx) be amended appropriately keeping in view the setting up of Indian Medical Commission w.e.f June, 2016.</u>

(xvi) <u>Clause 2(1)(zzf)</u>

<u>Working Journalists</u>

156. Clause 2(1)(zzf) defines 'Working Journalist' as under:

> " "Working Journalist" means a person whose principal avocation is that of a journalist and who is employed as such, either whole-time or part-time, in, or in relation to, one or more newspaper establishment, or other establishment relating to any electronic media such as newspaper or radio or like other media and includes an editor, a leader-writer, news editor, sub-editor, feature-writer, copy-tester, reporter, correspondent, cartoonist, news-photographer and proofreader, but does not include any such person who is employed mainly in a managerial, supervisory or administrative capacity"

157. A number of Journalists Association *inter-alia* suggested (i) non-repealing of Acts relating to Working Journalists; (ii) constitution of Wage Board for the Journalists; (iii) coverage of Electronic/Digital Media under the Acts; (iv) Payment of Gratuity after three year instead of five years; and (v) payment of three months' salary before termination.

158. The Committee desired to have the views of the Ministry on all the above suggestions of the Journalists Associations. Regarding non-repealing of the Act relating to working journalists, the Joint Secretary, MOLE submitted in evidence that repealing of the Working Journalists Act has been a part of the codification process. He further deposed:

> "...Basically, Working Journalists Act, most rightfully, should be the part of the Code on Wages because it envisages all the benefits in terms of constitution of wage board. While making the rules under the Code on Wages we have already provided that a wage board for the working journalists will be constituted. Also, working journalists in electronic media have been included.
>
> For gratuity, in social security Code, we have made a provision that for a separate category, the requirement of number of years i.e. minimum five years can be relaxed."

159. The Secretary, MOLE supplemented as under:

> "...In gratuity also, we are putting a provision of less than five years. So, that is taken care of. Notice period of three months has also been put in IR Code because notice has to be given. Regarding electronic media, we are also seeing it. We are taking care of all of their demands."

160. The Ministry further submitted that they had no objection for inclusion of the word 'Digital' in the definition of Working Journalists. In response to another specific query regarding safeguarding the safety of the Working Journalists, the Ministry submitted that the standards could be framed under Section 18(1) by the Central Government for the safety aspects of working journalists.

161. The Committee take note of the assurances made by the Ministry in response to the major demands/suggestions of the Working Journalists. Such assurances include Wage Board for the Working Journalists would be constituted; the definition would be enlarged so as to cover all the journalists working in traditional as well as modern and digital media; the period of five years for payment of gratuity would be relaxed and taken care of in the Social Security Code; notice period of three months for termination of service would be included in the Industrial Relations Code, etc. The Secretary, MoLE's assurance that all the demands of Working Journalists are being taken care of is a matter of great consolation to the Committee so that the apprehensions of the Journalists on repealing of the Working Journalists Acts are duly taken care of and appropriately addressed.

162. In view of the arduous, onerous and challenging nature of duties performed by the Journalists, the Committee trust that the Government would endeavour to safeguard the matters pertaining to the Journalists

employed on contracts, their overall working condition and most importantly their safety so as to ensure that the interests of the Journalists working on contract basis are adequately protected.

(xvii) Clause 2(1)(s) and 2(1)(zze)

Employee and Worker

163. clause 2(1)(s) defines 'Employee' as under:

" 'employee' means,—

(*i*) in respect of an establishment, a person (other than an apprentice engaged under the Apprentices Act, 1961) employed on wages by an establishment to do any skilled, semi-skilled, unskilled, manual, operational, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied; and

(*ii*) a person declared to be an employee by the appropriate Government,

but does not include any member of the Armed Forces of the Union:

Provided that notwithstanding anything contained in this clause, in case of a mine a person is said to be "employed" in a mine who works as the manager or who works under appointment by the owner, agent or manager of the mine or with the knowledge of the manager, whether for wages or not—

(*a*) in any mining operation (including the concomitant operations of handling and transport of minerals up to the point of dispatch and of gathering sand and transport thereof to the mine);

(*b*) in operations or services relating to the development of the mine including construction of plant therein but excluding construction of buildings, roads, wells and any building work not directly connected with any existing or future mining operations;

(*c*) in operating, servicing, maintaining or repairing any part of any machinery used in or about the mine;

(*d*) in operations, within the premises of the mine, of loading for dispatch of minerals;

(*e*) in any office of mine;

(*f*) in any welfare, health, sanitary or conservancy services required to be provided under this Code relating to mine, or watch and ward, within the premises of the mine excluding residential area; or

(*g*) in any kind of work whatsoever which is preparatory or incidental to, or connected with, mining operations."

164. Clause 2(1)(zze) defines 'worker' as follows:

" 'worker' means any person employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether

the terms of employment be express or implied, and includes working journalists and sales promotion employees, but does not include any such person—

(*i*) who is subject to the Air Force Act, 1950, or the Army Act, 1950, or the Navy Act, 1957; or

(*ii*) who is employed in the police service or as an officer or other employee of a prison; or

(*iii*) who is employed mainly in a managerial or administrative capacity; or

(*iv*) who is employed in a supervisory capacity drawing wage of exceeding fifteen thousand rupees per month or an amount as may be notified by the Central Government from time to time;

165. The Committee desired to know the reasons for the provision of the term 'worker' only in the definitions of Establishment, Industry and Factory when definitions of 'Worker' and 'Employee' are different. The Committee further asked whether from Chapter II onwards Employee and Worker should be mentioned together in the entire Code. In reply, the Ministry stated that workers were subset of employees and they did not include persons engagd in administrative, supervisory and managerial capacity. The Ministry further submitted as under:

"The purpose of 13 legislations being subsumed in OSH Code is to provide safety and welfare for workers which does not include persons working in administrative and managerial capacity. Therefore, the basis applicability of these 13 legislations is the threshold of worker only. This has been maintained in the OSH Code. Further, the workers are subset of employees. The sections relating to the health and working conditions, duties and rights of employees (sections 13, 14, 23) are applicable on all persons working in an establishment. The provisions relating to welfare facilities (section 24), hours of work, annual leave, over time (sections 25-32) etc., are applicable to workers in line with existing provisions under Factories, Mines Act. The statutory provisions for workers are essential to protect and enforce their rights."

166. The Committee then pointed out that the definitions of 'Worker' and 'Employee' appeared to be similar and therefore desired to know the reasons for using the terms at different places. In reply, a representative of the Ministry in evidence stated that the definition of employee which has been provided in the code was basically for the purpose of bonus, applicable not only to the workers but also to some employees drawing wages upto Rs. 21,000/- p.m.

167. The Ministry further submitted as under:

"Different definitions of workers have been provided as there are some specific provisions applicable to these sectoral workers only. However, the suggestion has been noted and would be examined as it may have implication on implementation."

168. A representative of the Ministry apprised as under;

> "...In the Industrial Disputes Act, only workers are covered. If we cover employees, it will become anti-worker."

169. The Committee asked whether a uniform definition could be provided in all the four Codes so as to foster clarity and avoid confusion. In response, the Secretary, MoLE deposed:

> "Sir, I will examine because as our intention is that in all four Codes it should be a uniform definition. So, there is no question of having different definitions. This is the basic thing. We will go by that only."

170. As regards the monetary limit of Rs. 15,000/- p.m., the Committee received suggestions from many quarters that the limit should be suitably enhanced to cover everybody working in a set up including the Supervisor, especially in the matters of safety. In response, the Ministry submitted that any change in the threshold limit would have implications on the Code on Wages, already passed by Parliament. However, flexibility exists for changing this wage limit by the Central Government.

171. The Committee are deeply concerned to observe the utter confusion created in the definitions of 'Employee' and 'Worker', the explanations and clarifications put forward by the Ministry notwithstanding. For example, Chapter V which talks about health and working conditions refers to 'employees' whereas Chapter VI and VII which deal with welfare and working hours etc. refer to 'Workers'. Needless to say, it implies that Chapter V is meant for 'employees' and not for 'workers' while Chapters VI and VII are meant for 'workers' and not for 'employees'. Though the Ministry have submitted that the provisions have been made for the workers in line with Factories Act and Mines Act which are being amalgamated with the Code, the Committee find that the Sales Promotion Employees Act and the Working Journalists Act which are also being made a part of the Code talk about 'employees'. The Committee agree that

statutory provisions for workers are essential to protect and enforce their rights. They simultaneously feel that it is equally desirable to safeguard the interests of employees too. The Committee are of the considered opinion that unwarranted differentiation made between the terms 'employees' and 'workers' in various Labour Laws has led to perplexity and befuddlement in their interpretation. The Committee, therefore, urge the Ministry to come out with a uniform definition so that all the ambiguities in various Clauses/Sections of the Code are removed and the rights of the employees/workers are genuinely enforced.

172. The Committee note that the definition of worker does not include those working in managerial or administrative or supervisory capacity and drawing wages exceeding Rs. 15,000/- p.m. Though the Ministry have clarified that there is a flexibility for enhancing the wage limit through notifications, the Committee are of the view that the threshold of Rs. 15,000/- p.m. appears to be on a very lower side in the present context and therefore a provision be made in the Code itself increasing the wage limit so that a large number of workers are covered.

(xviii) Definitions of 'Wage', 'Workplace' and 'Supervisor' and 'Manager'

173. During the course of examination of the OSHWC Code, the Committee's attention was drawn to the fact that certain important and relevant terms like Wage, Workplace, Supervisor and Manager have not been defined in the Code.

174. When the Committee asked the Ministry whether it was desirable to define these terms in the Code, they replied in the affirmative.

175. As agreed to by the Ministry, the Committee recommend that the term 'Wage' be defined in the Code as has been done in all the 13 extant Acts so as to properly calculate overtime wage, leave wage and holiday wage. Similarly, the term 'Workplace' needs to be defined appropriately so as to ensure apt application of labour laws there.

176. The Committee find that in the name of Supervisor, Manager and in similar nomenclature a large number of workers are being kept out of the definition of 'worker' and thereby denied the welfare measures. It, therefore, becomes imperative on the part of the Ministry to define the term 'Supervisor' and 'Manager' at the appropriate places in the Code.

IV. CLAUSE - 3

Registration

177. Clause 3(1) to 3(7) extensively deal with Registration of certain establishments and other related aspects like application to be made by the Employer, issue of the certification by the Registration Officer, revocation of registration in case of non-compliance with the provisions, etc.

178. Some Stakeholders suggested that the application for registering an Establishment and issue of certification should be made electronically. Some other suggestions were received that revocation of registration is a harsh punishment which might lead to the closure of the establishment and result in unemployment. It was therefore suggested that instead a pecuniary fine as deemed appropriate be imposed.

179. In response to the above suggestions, the Ministry, while agreeing with the proposal to make both application process and issue of certification electronic, left it to the Committee's discretion to take a view on the issue of revocation of licence.

180. The Committee then asked whether mere intimation of changes in the particulars of registration as prescribed under Clause 3(4) would be adequate

without insisting amendment of the Registration Certificate. In reply, the Ministry submitted as under:

> "This Ministry agrees with the suggestion. Suitable changes in section 3(4) (relating to change in ownership or management or any other particular), may be made, incorporating therein that on presentation of registration certificate, the registering officer shall make required changes in the prescribed manner."

181. The Committee further enquired whether the Electronic Receipt should be issued by the Authority to whom the notice of commencement is to be sent instead of by Appropriate Government. In reply, the Ministry stated as under:

> "This Ministry agrees with the observation that in Section 5(2) for expression "The appropriate Government" the expression "such authority" may be substituted because in section 5 (1), the notice is being sent to the authority."

182. As agreed to by the Ministry, the Committee suggest the application to be made to the Registering Officer for registration of an establishment as well as the issue of certification of registration have to be made electronically.

183. As regards revocation of registration which has been reported as a deterrent to employment because of the closure of the establishment, the Committee desire that more clarity be infused in Clause 3(6) to arrive at a conclusion regarding the cases where revocation of registration is absolutely desirable and where pecuniary fine will do the purpose so that on the plea of unemployment, the employers do not continue to blatantly violate the provisions of the Code.

184. The Committee further recommend that suitable amendments be made in Clause 3(4) incorporating therein that required changes in the prescribed manner shall be made by the Registering Officer on

presentation of the registration certificate relating to change in ownership or management or any other particulars.

185. The Committee also desire that in place of 'the Appropriate Government', the expression 'such authority' be incorporated in Clause 5(2) because notice is being sent to the authority as per the provisions under Clause 5(1).

V. CLAUSE 6(1)(f)

Issue of Appointment Letter

186. Clause 6(1)(f) deals with issue of Appointment Letter to the employees. Some Stakeholders suggested that the Clause may provide for the essential elements/requirements that an Appointment Letter must contain and leave the format to the employers.

187. In response the Ministry stated that the content of the Appointment Letter would be provided through Rules as in Section 125(2)(g).

188. The Committee desire that alongwith the contents of the Appointment Letter, a prescribed format should also be provided under the Rules, as assured, for better compliance.

VI. CLAUSE 6(1)(h)

Safety and Health Provisions in the work-premises

189. Clause 6(1)(h) reads as under:

> "ensure and be responsible for the safety and health of persons who are in the work premises of the factory, mine, dock work, building or other construction work or plantation, with or without the knowledge of such employer, as the case may be."

190. The Committee asked whether the mention of 'person' instead of 'employees' or 'workers' would lead to legal complications. In reply, the Ministry submitted as under:

"The Section 6(1)(h) applies not only on employees but also on any "person" so as to ensure safety and health provisions to all who are in the work-premises, i.e., factory, mines, dock work, etc. It implies that a person visiting a factory would be provided with adequate safety gears/equipment before permitting his visit."

191. The Committee are not convinced with the reply of the Ministry that Clause 6(1)(h) applies not only to the employees but also to any person visiting any workplace as nowhere the word 'employees' or 'workers' has been mentioned in the said Clause. Appreciating the intent of the Ministry to ensure health safety provisions for any person visiting any factory/establishment, the Committee however desire that employees/workers be included with 'persons' in Clause 6(1)(h) so that the purpose is well served and litigations are avoided.

VII. CLAUSE 8(2)

Consultation with the National Occupational Safety and Health Advisory Board

192. Clause 8(2) reads as under:

"The designer, manufacturer, importer or supplier shall also comply with such duties as the Central Government may, in consultation with the National Occupational Safety and Health Advisory Board, by regulations specify."

193. Some State Governments suggested that there should also be a State Board for consultation purposes.

194. The Committee desired to have the views of the Ministry on the above suggestion. A representative of the Ministry submitted in evidence:

"No, Sir, because the formulation of standards is only enjoined upon the National Board. The State has only been mandated to implement it. So, if there is a national standard, it will be done only by the National Board. The Odisha Government has given comments that when you formulate the duties of this, then the State Government should be consulted. So, our first argument is that the National Board has four representatives of the States and the second point is, whatsoever rules and standards are published, they will be subject to pre-publication. The State Government is there. From the Central Government, nine members are there. Then there are five

representatives of the employer; and five representatives of the employees are also there. So, it is a tripartite setup. If whatever they will be doing, there will be a pre-publication."

195. In a post-evidence information, the Ministry stated as under:

"The National Board has representatives from four State Governments. These duties will be specified through regulations which are subject to pre-publication under section 129. Therefore, consultation with State Boards may not be necessary."

196. The Committee then asked inclusion of four representatives from the State Governments on a rotation basis has been prescribed in the Code. But whether consultation process with the State Governments could be included in the said Clause. In response, the Secretary, MoLE submitted:

"Agreed. Anyhow, the States are on the Board. In addition, there is a pre-publication. So, they will put it on the website. They will ask for the comments of all the stakeholders and then they will take a decision. The only concern is that since four States are there, it will take more time to take a decision. So, we can think of reducing the number."

197. The Committee asked whether on specific issues viz. Plantation, Mines, etc. The State Governments concerned could be invited as special invitees. In response, the Secretary, MoLE submitted:

"That will be alright."

198. The Committee feel that instead of just giving a notification and pre-publication asking for the comments of all the Stakeholders including the State Governments, it would be prudent to make a provision for consultation process with the four State Governments nominated to the National Board on rotation basis as consultation will have a wider and positive implication.

199. The Committee further desire that on State specific issues like plantation, mining, etc., the State Governments concerned be included in the National Board as special invitees for valuable inputs on important matters relating to their respective States.

VIII. CLAUSE 13 & 14

Duties and Rights of Employees

200. Clause 13 deals with the Duties of the Employees whereas Clause 14 stipulates the Rights of the Employees.

201. Almost all the Trade Union suggested that Clause 13 be deleted from the Code. In response, the Ministry submitted as under:

> "It has been enjoined upon that a worker will take reasonable care for health and safety for himself and others, comply with the safety and health requirement, cooperate with employer, etc. The existing Factory Act has the provision of duties of workers too."

202. The Joint Secretary, MoLE deposed in evidence:

> "...Every employee at workplace shall take reasonable care for the health and safety of himself and of other persons who may be affected by his acts or omission at workplace, comply with the safety and health requirements specified in the standards, cooperate with the employer and so on. I think that first, these are existing provisions. We feel that there should be some onus on the part of the employees also to take care of themselves and work in an environment where they promote the common cause of safety."

203. The Secretary, MoLE supplemented that Code of Conduct should be there for everybody. The Committee pointed out that the Code of Conduct and misconduct has been there in the Industrial Employment (Standing Orders) Act. In response, the Joint Secretary, MoLE apprised that it applies to the personal conduct and has nothing to do with safety.

204. The Committee then asked whether Duties of Employees as provided for in the Code could be synchronized with the provisions already existing in the Industrial Employment (Standing Orders) Act. In reply, the Secretary, MoLE, assured:

> "Yes Sir. We will synchronize with that."

205. The Committee concur with the views of the Ministry that it is desirable to put some onus on the employees to take care of the health and safety of themselves as well as of their co-workers and other persons who may be affected by the acts of commission or omission at the workplace. The Committee are of the considered view that Rights of

Employees must be preceded by the Duties of Employees, as has been stipulated in the Code. However, the Committee desire that the Duties of the Employees as provided for in the Code should be appropriately synchronized with the existing provisions of the Industrial Employment (Standing Orders) Act so as to promote synergy and application.

IX. CLAUSE 16 & 17

National and State Occupational Safety and Health Advisory Board

206. Clause 16 & 17 deal with the constitution of National and State Occupational Safety and Health Advisory Board and Technical Committees or Advisory Committees. Some State Governments like Rajasthan pointed out that the Clause does not provide for ex-officio representation of Professional Bodies.

207. The Committee sought the views of the Ministry which submitted as under:

> "Under the present provisions, i.e., section 16(2)(1), flexibility has been provided to associate eminent persons connected with the field of OSH or representatives from reputed research institutions or similar other discipline. Besides, chief executives of expert bodies/organizations, like DG,FASLI, DG (Mines Safety), Chief Controller of Explosives, Central Pollution Control Board have been made ex-officio members of the National Board."

208. The Committee take note of the Ministry's submission that flexibility has been provided to associate eminent persons/reputed research institutions for the purpose. However, the Committee desire that a provision in the Clause itself be made for ex-officio representation of professional bodies which can render expert advice on important issues relating to occupational safety and health matters in the industries.

X. CLAUSE 19

Research Related Activities

209. Clause 19 provides for research related activities as may be notified by the Central Government. Some State Governments proposed that as they do not have the power for research and experiment in the extant provisions the word 'State Government' be added after the word 'Central Government' in Clause 19.

210. In response, the Ministry submitted as under:

> "The Ministry has no objection. However, it is proposed that consultation with the "National Board" may be mandated before Central Government entrusts conduct of research, experiments, etc. to an institution under Section 19."

211. The Committee agree with the proposal of the Ministry and desire that the State Governments be also empowered to notify to conduct research, experiments and demonstrations, after consultation with the National Board, relating to occupational safety and health.

XI. CLAUSE 22(1) and 22(2)

Safety Committee and Safety Officer

212. Clause 22(1) and 22(2) deal with constitution of Safety Committee and appointment of Safety Officer. Some Stakeholders suggested that a Safety Committee should be constituted in each establishment having 50 workers or more and a Safety Officer be appointed in every factory and establishment having 100/150 or more employees.

213. In response, the Ministry stated that the number of employees for Safety Committee under Section 22(1) would be decided through rules.

214. As has been stressed by the Committee elsewhere in this Report, safety has to be accorded top most priority for each and every individual worker, including those working in the unorganised sector. The Committee, therefore, desire that instead of leaving safety matters to be

taken care of through rules, an explicit provision be made under Clause 22 of the Code to notify appointment of a Safety Officer in all establishments, especially dealing with hazardous processes including Building and Construction activities, even with less than the stipulated 500 workers.

XII. CLAUSE 24

Welfare Provisions

215. Clause 24 extensively deals with the Welfare Provisions for Employees and Workers. A perusal of this Clause, however, revealed that the term either 'Employees' or 'Workers' has been used for different types of welfare facilities. In that context, the Committee asked whether both the terms could be utilised uniformly for all the welfare provisions. In reply, the Ministry submitted as under:

> "Workers are subset of employees. Workers do not include persons engaged in administrative, managerial and supervisory capacity earning more than Rs. 15000/- per month. The welfare facilities under Section 24 such as bathing places, locker rooms and crèches are required by all persons working in an establishment and thus the word "employees" has been mentioned in respect of these facilities. Rest of other welfare facilities mentioned in under this Section are specific to workers only."

216. As regards provision for crèche facility under Clause 24(3), the Committee pointed out that in MSME Sector it has become more costly for the small scale industries to provide for crèche facility, hence an enabling provision be made to pool in their resources for the purpose. In response, the Ministry stated as under:

> "The committee may take a view. A proviso to Section 24(3) can be added that an establishment avail common crèche facility established by a state or central government or a near-by located private facility. Further, a cluster of small scale industries can pool their resources and can set up a common crèches."

217. When asked the reasons for not mentioning plantation workers in the provision of crèches, the Ministry deposed that they had no objection if provision of crèches was made for plantation also.

218. The Committee are not convinced with the reasonings adduced by the Ministry for prescribing different welfare facilities for Employees and Workers on the plea of the workers being a subset of Employees. To illustrate, employees may also need Canteen, Ambulance, Rest Room etc. facilities which are exclusively earmarked for the workers as per the extant provisions. Prudence therefore demands that such anomalies have to be removed so as to dispel any impression of misgivings. The Committee are of the firm opinion that such an incongruity has arisen because of the two different definitions given to 'Employee' and 'Worker', as discussed extensively in the preceeding paragraphs of this Report. While emphasizing the fact that discrimination should not be made in the provision of Welfare facilities, the Committee impress upon the Ministry to take requisite and urgent corrective action to do the needful.

219. As regards crèche facility, the Committee desire that provision be made in Clause 24(3) so that an establishment can avail common crèche facility set up by the Central Government or State Government or any private party and a cluster of small scale industries can pool their resources for setting up of a common crèche. The Committee further recommend that a provision for crèche facility be also made in favour of the Plantation Workers.

XIII. CLAUSE 25 TO CLAUSE 32

Hours of Work and Annual Leave with wages

220. Clause 25 to Clause 32 extensively deal with hours of work, annual leave with wages, etc. A number of Stakeholders suggested that there should be flexibility in the prescription of maximum eight hours of work for some particular industries/establishment like working journalists, Audio-visual workers, Textile industry, etc. Some other petitioners suggested that status quo be maintained.

221. In the above context, the Committee desired to know the intent of saying 'as prescribed by the Central Government' and whether anywhere the Central Government has prescribed maximum eight hours work per day and 48 hours per week. In response, the Secretary, MoLE submitted in evidence:

> "There are dynamic situations. The industry has been undergoing changes. That is why we have thought like this.:

222. Emphasizing that at no point it would go beyond eight hours a day, the Secretary further stated:

> "It is only eight hours. If it is more than eight hours, it should be with the consent of the employee and over time payment has to be done. So, there is no question of more than eight hours. But my concern is not only for workers who are doing more than eight hours job."

223. In a post-evidence information, the Ministry further apprised as under:

> "The Ministry agrees that in the Code, there may be a provision for providing maximum eight hours of work in a day. However, the limit on overtime hours can be prescribed under Rules for different type of establishments. The Committee may take a view."

224. Asked to state the reasons for a provision of leave encashment and commutation in favour of Sales Promotion Employees and no other workers, the Ministry clarified as under:

> " Clause 25 (3), “working journalists” may also be added. The Committee may take a view. As regards, workers, Clause 32 (ix) provides for encashment of leave."

225. Referring to Clause 26, the Committee asked the reasons for a provision of not more than 10 consecutive days for Motor Transport Workers whereas it has been six days for other workers. The Committee further desired to know the provision of compensatory leaves for such extra days of work. In reply, the Ministry submitted as under:

" per proviso to Clause 26 (1) of the Code, in any motor transport undertaking, an employer may, in order to prevent any dislocation of a motor transport service, require a worker to work on any day of rest which is not a holiday so arranged that the worker does not work for more than ten days consecutively without a holiday for a whole day intervening.

Further, the period within which the compensatory holiday is provided under Clause 26 (3)."

226. In response to a further query, the representative of the Ministry agreed that further clarification were needed in Clause 26.

227. As agreed to by the Ministry, the Committee desire that a provision for providing maximum eight hours of work per day be incorporated as per the ILO convention. It should be kept in mind that the 19th Century Industrial Revolution was intended not to over-employ the workers to safeguard their health and safety for which maximum eight hours of work per day was specified.

228. In the 21st Century scenario, there are certain industries like the Textile Industry where the workers want to work more than eight hours to earn more wages. Similarly, there are certain class of workers like the Journalists, Audio Visual workers and people working in Software Industry, Hospitality Industry, Motor Transport Undertaking, etc. who do not work for eight hours at a stretch and whose working hours are spread over. The Committee, therefore, desire that these factors have to be looked into and taken due care of while prescribing maximum eight hours of work per day so as to not confine such industries/workers to eight hours of work mandatorily.

229. Taking into consideration the different needs and requirements of different industries/ establishments, the Committee desire that the limit on overtime hours be prescribed appropriately under the rules. The Committee further desire that more clarity be brought in clause 26 regarding the provision of different and more working hours for the motor transport workers and the compensatory leave and other benefits accrued to them in lieu of that.

XIV. CLAUSE 43 & 44

Special Provisions Relating to Employment of Women

230. Clause 43 & 44 relate to employment of women at night and prohibition of employment of women in dangerous operation.

231. Referring to the above Clauses which intend to safeguard the interest of women employees/ workers, the Committee asked whether the provisions would cater to the needs of new industry that has flourished in the last one/ two decades *i.e* the Ship Wrecking Industry where a large number of women workers are being employed. In reply, a representative of the Ministry stated that if the number of workers exceeded 10, then the provisions of section 43 & 44 would apply to them.

232. Asked to state the safeguards envisaged for women workers doing shift jobs as in Textile Industry, Software Industry etc., the Secretary Ministry of Labour & Employment responded that they would protect the interests of the women workers in every industry/ establishments and provide safety for them.

233. The Committee then asked whether there is a need to modify the Clauses 43 & 44, the Secretary submitted:

> "May be we can modify that section slightly"

234. The Committee appreciate the assurance of the Ministry and desire that requisite modification be carried out in Clause 43 & 44 so as to cater to the specific needs of women workers employed in Ship Wrecking

Industry, Software Industry, Textile Industry and other similar nature of industries.

XV. CLAUSE 48

Grant of Licence

235. Clause 48 deals with grant of licence to the Contractors for deployment of contract workers. The Committee asked whether there is a desirability to mention/ explain the responsibility/ accountability of the Contractor.

236. In response, the Ministry submitted as under:

> " Under Section 48 (1) a provision has been made for prescribing particulars of licence by the appropriate Government. Provisions regarding responsibility/accountability of contractor may be prescribed threrein."

237. As regards the action taken and provision for penalty against the Principal Employer for engaging unlicensed contractors, the Ministry submitted as under:

> "The provision is required to be revisited. A provision for penalty for principal employer who engages an unlicensed contractor may be included. The Committee may take a view.
>
> Further, a clarification may also be inserted that the responsibility regarding wages of contract employees, etc. will be on the principal employer, however, they will not be regular employees of the principal employer."

238. As assured by the Ministry, the Committee recommend that specific provisions clearly spelling out the responsibility/ accountability of the Contractors towards the Contract labours deployed by them be incorporated in Clause 48.

239. The Committee recommend that a provision for penalty on the Principal Employer who engages an unlicensed contractor be incorporated in the relevant section. The Committee further desire that in case of failure of the contractor to pay the prescribed wages as per the

stipulations to the contract employees, responsibility be fixed on the Principal Employer and requisite provisions be made in the Code itself.

XVI. CLAUSE 56

Experience Certificate

240. Clause 56 stipulates issue of experience certificate to the contract labour by the contractor concerned or the Principal Employer.

241. The Committee asked about the rationale for issue of experience certificate to the contract labours by the Principal Employer. In reply, the Ministry submitted as follows:

> "This provision needs to be revisited. The experience certificate is usually required by the Contractor worker for future employment. The issue is, should the responsibility of issuing experience certificate be assigned to the principal employer or to the contractor in a prescribed format. The Committee may take a view."

242. The Committee feel that issue of experience certificate to the contract labour by the Principal Employer may lead to unforeseen complications and litigations. Therefore, the responsibility of issue of experience certificate in a prescribed format to the contract labours be assigned to the contractor concerned who deploy such labours and Clause 56 be modified accordingly. However, the Committee desire that wherever Contract Labours are directly employed by the Principal Employer, experience certificate in a prescribed format be issued by the Principle Employer.

XVII. CLAUSE 69 TO CLAUSE 72

Beedi and Cigar Workers

243. Clause 69 to 72 deals with various provisions relating to the Beedi and Cigar workers.

244. The Committee asked whether the said relevant Clauses need further improvement pertaining to the redressal of grievances/appeal for the beedi/cigar workers, wages during leave period, mechanism to resolve disputes between the worker and his employer etc. In reply, the Ministry clarified as under:

> "The dispute between an employer and employee or worker regarding employment/non-employment/conditions of services, etc. is part of Industrial Relations Code. Further, the dispute regarding wages is part of Code on Wages, 2019. As regards, leave of worker, the standing orders are formulated under the Industrial Employees (Standing Orders) Act. This Act is being subsumed in the IR Code."

245. The Committee take note of the assurance of the Ministry and trust that the matters pertaining to the grievance redressal, wages, etc. of the beedi and cigar workers would be duly addressed through the Code on Wages and the Industrial Relations Code.

XVIII. CLAUSE 88 TO 92 AND 94 TO 99

Offences and Penalties

246. Clauses 88 to 107 extensively deal with the Provisions of Offences and Penalties. A scrutiny of these Clauses revealed that from Clause 88 to 92 and Clause 94 to 99 contain the words 'whoever' and 'any person' instead of 'Employer'.

247. In the above context when the Committee sought clarifications, the Ministry submitted as under:

> "The expression “whoever” and “any person” have a wider connotation with the intention to include any offender, such as, employer, manager, director, agent, supervisor and employee. In case these expressions are replaced by the word “employer”, only employer will be punished and other offenders will escape."

248. The Committee are not convinced with the reply of the Ministry because even a Security Guard or a Visitor can be covered under the term 'whoever' or 'any person'. Therefore, in order to ensure better enforcement, the Committee exhort the Ministry to revisit the said

Clauses and modify the terms in accordance with Clause 87 where the word 'the employer' has been specified.

XIX. CLAUSE 103(2)

Limitation of Prosecution and Cognizance of Offences

249. Clause 103(2) stipulates that "No Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the First Class shall try any offense punishable under this Code."

250. In the above context, the Committee desired to know whether the First Class Judicial Magistrates have the powers to impose penalty above Rs. 10,000/- as the minimum penalty prescribed is Rs. 50,000/- under Clause 89(2). In reply, the Ministry submitted as under:

> "It may be examined in consultation with Law Ministry if the designation "Judicial Magistrate" may be substituted by "Chief Judicial Magistrate". The Committee may take a view."

251. The Committee recommend that the issue be urgently consulted with the Law Ministry so that requisite corrections are carried out under the judicial requirements for effective enforcement of the intended enactment.

252. To sum up the findings and suggestions, the Committee feel that it becomes imperative on the part of the Ministry to ensure that there are uniform definitions and clarity in interpretation of the provisions contained in the OSHWC Code, 2019, more so when as many as 13 extant Labour Legislation are being subsumed in it with the intent to provide basic broad legislative framework with enabling provisions for framing rules, regulations, standards and bye-laws. While endeavouring to create a balance between safeguarding the interests of both Employers and

Employees, it is vital in consonance with the objectives of the OSHWC Code, 2019 to enhance the effective coverage of the safety, health and working conditions manifold in favour of the workers in all sectors viz. Contract Labours including those deployed in Central Government/State Government Establishments/Properties; all types of Plantation Workers (Tea, Coffee, Rubbed, etc.); Working Journalists including those deployed on contract basis; Audio-Visual Workers including Electronic/Digital media; Sales Promotion Employees; Medical Representatives; Motor Transport and Water Transport Workers; Women Workers in all Establishments; Building and Other Construction Workers; Inter-State Migrant Workers; Beedi and Cigar Workers; Dock and Mine Workers; and most importantly a large number of workers in the Unorganised Sector.

New Delhi; **BHARTRUHARI MAHTAB**
10th February, 2020 ***CHAIRPERSON,***
21st Magha, 1941 (Saka) ***STANDING COMMITTEE ON LABOUR***

APPENDIX-I

07.02.2020

To
The Chairman,
Committee on Labour and Employment
Lok Sabha,
New Delhi.

Sir,

Sub: Examination of The Occupational Safety, Health and Working Conditions Code, 2019 – Recording of Minute of Dissent on the Report of the Committee.

The Occupational Safety, Health and Working Conditions Code, 2019 is a very important legislation with far reaching consequences impacting the welfare of Labour class.

We would like to state that many of our points which were emphasized during the course of examination were not reflected in the Report. We would therefore like to record the Minute of Dissent on the Report of the Committee under rule 274 of Procedure and Conduct the Business in Rajya Sabha. & Lok Sabha

Thanking you with Regards,

Yours sincerely,

(M. S. HAMMUD SAHIB)
Div 205

(Hussain Dalwai)
Div. 205

ELAMARAM KAREEM
DN: 150

D. RAVIKUMAR (L.S)
IC 358 DIV NO 544

STANDING COMMITTEE ON LABOUR

Examination of

THE OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS CODE, 2019

(As Introduced in Lok Sabha)

NOTE OF DISSENT

To The Report

By

1. Shri Husain Dalwai
2. Shri Elamaram Kareem
3. Shri D. Ravikumar
4. Shri M. Shanmugam
5. Sri DEAN KURIAKOSE

The Occupational Safety, Health and Working Conditions Code, 2019 seeks to replace and subsume 13 laws relating to Factories, Mines, Dock Workers, Building and other construction workers, Plantation Labour, Contract Labour, Inter-state Migrant Worken, Working Journalist and Other Newspaper Employees, Motor Transport Workers, Sales Promotion Employees, Beedi and Cigar Workers, Cine and Cinema Theatre Workers. While 10% of the workers are included in the Code, 90% of the workforce which is from the unorganized sector which is otherwise called "informal sector" outsourced on contract and home-based sector would be out of the purview of the Code. By repealing all the above 13 laws and selectively picking up the provisions advantageous to the employers for incorporation in the Code grossly dilutes and tampers all the provisions pertaining to rights and protection of workers in general.

Even on health and safety related matters, the Code has so articulated the provisions, the workers and the unions cannot assert their opinions and rights for proper enforcement or establish accountability of the employers for violation of even basic health and safety provisions. The codification is not going to solve the existing issues that some of the laws are facing and it may even cause worse outcomes. The Code has not dealt with adequately issues concerning occupation safety and health.

The Factories Act lists the maximum permissible threshold limit of exposure of chemical and toxic substances in manufacturing process in second schedule which could be expanded as per the advice of the experts while the Code omits the second schedule and in fact, leaves the enumeration of these to be decided by the concerned State Government. The Factories Act stipulates the compulsory constitution of a bi-partite Safety committee in every factory in which hazardous process or substances are used. But the Code leaves the constitution of the Safety committee to the notification process of the State Government. The hazardous work needs wider coverage to include those units being performed in the unorganized sector also.

The Code though makes provisions for various welfare facilities, health and safety standards and work hours, it does not specify the standards but empowers the appropriate government to notify them.

The Code requires, for the first time in labour laws, every employer to issue an appointment letter, but does not stipulate a remedy in case of non-compliance of it, except the general monetary penalties provided for violation for any clause of the Code.

While the Factories Act precisely stipulates the hours of work, spread time and overtime, the Code leaves these provisions

to the discretion of the appropriate Government, and the employers using the threat of relocation or export obligation, can coerce the appropriate government to stipulate low standards which will lead to a race to the bottom of labour standards and putting the labour class in jeopardy.

Clause 47 (2) allows labour supply contractors by allowing them to secure "renewable work specific license" to execute a specific work mentioned in it, even if they do not fulfill the requisite qualifications or criteria. This would go against the working class because despite the Hon'ble Supreme Court's endorsing the ruling on 'equal work equal pay', this Code does not provide for it, though the norms are provided under the rules framed under the Contract Labour Act.

Under clause 2 (a), a new word "adolescent" is included in the definition which will pave the way to the employer to engage adolescent on work which would affect the studies of children and it is an attempt to bring back the outdated social evil, i.e. "profession based on the communities", which shall be construed against the ILO Convention.

Clause 2 (f) of the Code should be replaced with the meaning of section 2(s) of Industrial Disputes Act, 1947 such as definition of workman (including apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work, for hire or reward, terms of employment be expressed or implied and includes any such person who has been

dismissed, discharged or retrenched in connection with, or as a consequence of dispute.

The definition in clause 2 of the Code should include audio visual workman, building and other construction workman, contract workman, migrant workman, motor transport workman, mines workman, journalists, newspaper and media workman, tunnel bridges workman, plantation workman, all workforce in the unorganized sector, Sales and Promotion workman, leaving out any room for misinterpretations.

Clause 2 (1) (w), under the definition of the term "family", it should also include "unmarried daughter" or divorced daughter who is also fully depending upon the worker, in addition to "widow daughter"

Under clause 2(1)(j) and 34 (1) respectively, the designation "Chief Inspector-cum-Facilitator" itself degrades the status of Chief Inspector and it conflicts with the term "Facilitator".

In the new nomenclature, the incumbent cannot perform inspection duty which was assigned so far and he would only facilitate the employer. If the Government feels a facilitator should be there, it can include another separate designation by the term "facilitator". As per the ILO Convention, the function of "inspection" cannot be diluted.

In Chapter II - 2 (v) hazardous process, the IT sector should also be included because the operations emit the hazardous rays and radiation which affect the life of technicians.

Clause 2 (z), hazardous substance, the IT sector should also be included because the process emits hazardous substance.

Clause 2 (zb), IT premises and parks should also be brought under Industrial premises.

Clause 2(zf), Manufacturing process, IT sector should be brought under this clause because it emits hazardous rays and radiation which is very harmful to human body. Therefore, the person who inspects the premises should be qualified suitably for the IT sector and IT enable sector. The person who is inspecting the non-hazardous manufacturing sector not technically qualified to find out the deficiencies in the health and safety norms in various industries like Engineering sector, Chemical industry etc.

Clauses 25 to 32 – Hours of Work and Annual Leave with wages:

Sections 51 to 59 of the Factories Act elaborately define the hours of work and related matters. Weekly Hours, Weekly Holiday, Compensatory Holiday, Daily Hours, Intervals of Rest, Spreadover, Night Shifts, Prohibition of Overlapping Shift and Extra wages for overtime are to be comprehensively defined in the Code itself.

Clause 2 (1)(s) and 2 (1)(zze) – Employee and Worker:

This clause should be replaced with the wording of section 2(s) of the Industrial Disputes Act 1947 such as Definition of Workman (including apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work, for hire or reward, terms of employment be

expressed or implied and includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of dispute.

The categories of workers, namely Audio Visual workman, building and other construction workman, contract workman, cargo workman, Port and dock workman, Shop & Establishment workman, Migrant workman, Motor Transport workman, Mines workman, Journalists, Newspaper and Media workman, Tunnel Bridges workman, Plantation workman, all workforce in the unorganized sector, Medical practitioners and Sales and Promotion Workman.

Clause 17 – State Occupational Safety and Health Advisory (and Working Conditions) Board:

The term "Working Conditions" should be included in the name of the Board, as the title of the Code itself says: "The Occupational Safety, Health and **Working Conditions** Code" It is suggested that all the Central trade union organizations should be given representation in the State Advisory Board.

This note may be appended to the report

Dean Kuriakose LS. 453

Elamaram Kareem

(R.S) DN 5.150

DN 219

DN 274

ELAMARAM KAREEM
MEMBER OF PARLIAMENT
(RAJYA SABHA)

Member :
- Standing Committee on Labour
- Consultative Committee for the Ministry of Heavy Industries & Public Enterprises

10-02-2020

To

Shri. Bhartruhari Mahtab,
Chairman,
Standing Committee on Labour.

Dear Shri. Bhartruhari Mahtab ji,

Sub:- Dissent Note on Standing Committee Report on 'The Occupational Safety, Health and Working Conditions Code Bill, 2019'

I am attaching a detailed note on the recommendations in the Report on 'The Occupational Safety, Health and Working Conditions Code, 2019' by the Department Related Parliamentary Standing Committee on Labour. There are certain recommendations in the Bill as well as in the Committee Report which will cause adverse effect on the working class of this country. Many of the protections and rights enjoyed by the workers and labourers are curtailed through this. Amalgamation of existing Labour Laws are made in such a way that it will benefit the employers; not the employees. I would request you to kindly include these points in the report; if not, this note should be recorded as my note of dissent on the Final Report of the Committee.

Thank You.

Yours Sincerely,

(Elamaram Kareem)

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ELAMARAM KAREEM
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सत्यमेव जयते

Member :
- Standing Committee on Labour
- Consultative Committee for the Ministry of Heavy Industries & Public Enterprises

Dissent Note on the Observations/ Recommendations in the Report of Parliament Standing Committee on Labour on 'The Occupational Safety, Health and Working Conditions Code Bill, 2019', Submitted by Elamaram Kareem, MP (Rajya Sabha)

1. Clause 1. Para-16. As far as Government offices are concerned, it is not only a matter of syncing the Clause 1(4) with Clause 2(1)(t) rather it pertains to bring the government offices within the definition of "establishment", defined under Clause 2(1)(u) so as to synchronize the same with the definition of "establishment" defined in the Building and Other Construction (Regulation of Employment and Conditions of Service) Act,1996 and the Contract (Regulation and Abolition) Act,1970 where all governments offices have been included the definitions of "establishment" in the respective Acts. That means where building and other construction workers and contract labour, if any, are engaged in any governments' offices, these Acts would apply there. As this section 1(4) debars governments office from the applicability, thereby deprives the existing rights of construction and contract workers, it should be deleted. Accordingly, the para-16 be reconstructed.

2. Clause 2(1) (d)- On Appropriate Government- Para-23.

The so-called ambiguities in the definition of "appropriate government" are, in my opinion, not related to the language used in the Code as claimed by our Labour Ministry rather it is a deliberate attempt to curtail State governments' rights against federal structure of Constitution. It is the fact that workers' safety, health and working conditions are basically the responsibility of the State governments. Accordingly, our Factory Act, 1948 which is considered as holy book on workers' safety, health and working conditions, exclusively empowered our State Governments alone on these questions. Among the extant 13 Acts the OSHWC Code, 2019 supposed to subsume except Mines Act and Dock Act dealing with major ports, all 11 Acts have vested power only with the State Governments. So, these dilutions have to be stopped. The original position given to the State Governments in the extant Acts be restored for seamless implementation of the Code.

3. Clause 2(1)(u), Para-92.
As far as the recommendation regarding the threshold limits are concerned, I strongly disagree and would like to record my dissents.
a) As the Building and Other Construction (Regulation of Employment and Conditions of Service) Act,1996 and the Contract (Regulation and Abolition) Act,1970 have not stipulated any threshold limits, so the Code should not prescribe the threshold limit. In both cases the existing universal application ought to be retained. Accordingly, I may recommend to

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Parliament to add a new sub-Clause in Clause 2(1)(u), as 2(1)(u) (iv) as follows, immediately after 2(1)(u) (iii);

"iv) any office or department of the government or a local authority-for the purpose of contract labour and building and other construction worker"

b) The OSHWC Code should have universal coverage of all economic activities and all types of workers including domestic workers, home-based workers, trainees, volunteers etc. So, agreeing to the threshold limits of 10/20 is not acceptable.

The Code excludes many branches of economic activities. In particular, the agriculture sector which employs more than 50% of total working population, with increased use of machines; and use of pesticides and insecticides, poses serious hazards to the health and safety of workers. The hazardous manufacturing units employing less than 10 employees are also posing various risks to their employees. Further, the employees in other un-organized sectors such as small mines, hotels & eating places, machinery repairs, construction, brick kilns, power looms, fire-works, carpet manufacturing, and also those employed as informal workers in organized sectors are also not accorded coverage under the Code. Accordingly Standing Committee shall make its recommendations.

The Committee should not be silent to recommend on the coverage of such new and emerging economic sectors such as IT and ITES, digital platforms, e-commerce, and home-based work.

The Standing Committee should not satisfy itself with Shop and Establishment Act which has already proved its inadequacy. So, Standing Committee has to frame its recommendations for universal coverage, instead of accepting the threshold limits.

4. Para-171.

The Committee should recommend along with para-171 the following be inserted as a new Clause as

2(zzg) "wages", for the purpose of this Code, shall be as defined under the Payment of Wages Act,1936.

Because to calculate overtime wage, leave wage and holiday wage etc. this definition was extensively used in all the 13 extant laws. As present Code does not define anything at all, it is all the more necessary.

5. Clause 2 (1) (zt). Para- 147.

I am not agreeing for the proposal to keep away the workers working in the plantation which admeasures of less than five hectares from the ambit law-OSHWC Code itself. Again, I am

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(RAJYA SABHA)

Member :
• Standing Committee on Labour
• Consultative Committee for the Ministry of Heavy Industries & Public Enterprises

constrained to remind the Hon'ble Committee to keep in mind the Constitutional directives that mandate us to ensure the humane working conditions to all our working people.

6. Para-172 read with para-168.

Along with this para-172 the Committee may suggest the following definition for "Supervisors/Manager" not in the terms of salary ceiling but in terms of power and authority. "Supervisor/Manager means a person who is employed in supervisory capacity with one or more workmen appointed under him, having the powers to grant any of the service benefits to them and to initiate any of the disciplinary proceedings against them".

7. Clause 16& 17. Para-201.

Our considered opinion is that Committee should not concur with views to put some onus connected with safety and health on the workers as stipulated in the Clause 16.Since employees are under total control of the employer directly or through system of supervisory control, it is not prudent to fix any responsibility on the employees in respect of safety and health.

8. Clauses 16 & 17 on National Occupational Safety & Health Advisory Board. Para-204.

The said para be deleted instead the following recommendations may be submitted

These Clauses which are expected basically to deal with the integral part of this Code, have nothing specific on safety and health of workers except one i.e. the National Occupational Safety and Health Advisory Board substituting six statutory bodies like the Tripartite Central Advisory Committee for Dock Workers, Tripartite Committee in Mines and Construction Workers Central Advisory Board, etc., under different extant enactments.

Every industry has got its own vulnerability and risks. Accordingly, Industry-wise OSH tripartite committees were constituted and functioning well. For instance, tripartite committee in Mines is not only an advisory committee, given its specificity, it has got the power for direct Inspections. To quote Mines Act, section 14 which defines the Powers, etc., of the committees. — (1) A Committee constituted under section 12 **may exercise such of the powers of an Inspector** under this Act as it thinks necessary or expedient to exercise for the purposes of discharging its functions under this Act. (2) A Committee constituted under section 12 shall, for the purposes of discharging its functions, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908) when trying a suit in respect of the following matters, namely:— (a) discovery and inspection; (b) enforcing the attendance of any person and examining him on oath; (c) compelling the production of documents; and (d) such other matters as may be prescribed .

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The National Board, though Ministry claims as tripartite body, it has been proposed as most uneven- in structure and amorphous- in content where there is an insidious provision of Sec. 16(1) to include five 'eminent' persons, eventually, opening the gate for outsiders. **As it is basically meant for the exclusive safety, health and welfare of worker, their representative should be given prominence. All experts could assist the board as and when called for and not necessary to sit in the board.**

-The National Safety Council is, as a tripartite body, related to International OSH organizations, must continue.

-The industry-wise tripartite OSH boards / Advisory Committees are required and should continue as in the coal industry.

-The National Board's advice on occupational diseases and health hazard should have some legal sanctity/legitimacy, instead of leaving everything to discretions of the Central Government as through Sections 16 to 23, all matters relating to the safety and health aspects of workers have been left to the governments to decide. Similarly, Sections 125 and 126 also giving extensive power to the governments to make rules for implementing the Code, including those related to health and safety. As in the extant Act, all matters relating to the safety and health aspects of workers must be incorporated in body of Act- Code itself.

In addition, I suggest the following: -

The ILO Convention No 155 requires member state to consult representatives of employers and employees in formulation, implementation and review of national policy; framing of laws, regulations and standards.

The composition of the National Board should be in line with the ILO structure with representation from Government, Employers and each of the Central Trade Unions in the ratio of 2:1:1. The National safety Council should also be included as the member of the Board. The National Tripartite Board should have the power to visit any establishment to check the compliance with the provisions of the Code.

Further, in order to address the safety and health issues specific to various sectors such as steel, coal, cement, petroleum, chemicals, textiles, automobiles, engineering, pharmaceutical, agriculture, IT and IT enabled services, and other services; Sector Specific Tripartite Committees should also be constituted with similar composition as the National Board.

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9. Clause 22(1) & 22(2) on Safety committee and Safety Officer. Para-210.

Along with my recommendation for providing explicit provision for the mandatory appointment of Safety Officers, I should include the Safety Committee in the same line.

10. Clauses 25 to 32- On Hours of Work and Annual Leave with Wage. Para-223 & 224.

In Para-223, "As agreed by the Ministry, the Committee desires that a provision for providing eight hours of work per day be incorporated as per the ILO Convention. **"I am agreeing upto that alone. The rest be deleted as it is unnecessarily brothering more about some exemptions than arguing for the core issue of ensuring eight hours work for our working population as matter of right. Even in the above sentence the word "desire" be replaced with the word "recommends".**

Moreover, the Committee shall make the recommendations in the following manner so as to add teeth to the relevant provision as it was well defined in all extant 13 Acts including Factory Act,1948.

"Section 25, sub-section (1) – Clause (a), (b) and (c), lines 5 to 13 be deleted and substituted by the following:

(a) Weekly Working Hours; No worker shall be required or allowed to work in a factory or establishment for more than forty-eight hours in any week. The total number of hours of work in any week including overtime shall not exceed sixty hours.

(b) Daily Working Hours; No worker shall be required or allowed to work in a factory or establishment more than eight hours in any day subject to the above-mentioned Clause (a)

(c) Interval of rest: The periods of work of workers in any factory or establishment or class of establishments shall be so fixed that no period shall exceed four hours and that no worker shall work for more than four hours before he has an interval for rest at least half an hour.

(d) Spread-over: the period of work of a worker in a factory or establishment shall be so arranged that, inclusive of his intervals for rest they shall not spread over more than ten hours in any day".

If it is so then Para 224 will become infructuous. Overtime should not be left to the rules. It must be in the body of Act itself as suggested above.

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All employees in all types of establishments should be given all types of leave as accorded to the Central Government employees.

Reasons:

The Code does not regulate the daily and weekly working hours and leaves it to the government to fix it by notification. (section 25). As per the Hours of Work (Industry) Convention, 1919 (No.1) ratified by India, the working hours of any person should not exceed eight hours a day and forty-eight hours a week. Leaving the possibility of extending the working hours beyond forty-eight hours a week open is clearly in violation of Convention No.1.

Unlike the Factories Act, the Code does not contain any prescription in respect of the permissible hours of overtime work in a day, week or quarter. As per section 64 of the Factories Act, inclusive of the hours of overtime work, the total number of hours of work in a week should not exceed 60 hours. The permissible number of hours of overtime work in a quarter under the Factories Act is 50 hours. Section 27 of the Code only provides that no worker shall be required to work overtime without his consent.

The prescription in respect of the daily and weekly hours of work, intervals of rest and spread over of the work day under section 51 to 54 of the Factories Act should continue. The restrictions presently imposed by the Factories Act on overtime work should continue.

The working hours should be limited to maximum 8 hours daily and 48 hours weekly. In fact, possibility of reduction of working hours to daily 6 hours and weekly 36 hours should be explored in light of recent Japanese research. This will also create more employment opportunities.

The provisions under the existing Factories Act should be followed in respect of all establishments covered under this Code. Accordingly, the Clauses 24, 25, 27, 28, 29, 30, 31 should be modified. Further, no exemption in respect of overlapping under Clause 29 should be permitted.

11. Clause 43 & 44. Para-229.

Clause 43 and 44 relate to employment of women in night shift and in dangerous operations. I could not agree with the Committee Report as it has satisfied itself with Labour Ministry assurance on this matter.

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The Code permits night work for women with the women worker's consent subject to such conditions relating to safety, holidays and working hours as may be prescribed by the appropriate government. (section 43) The Code however does not contain any provisions to ensure that women who are engaged in night work are safe at the place of work.

The Committee has to recommend that the Code ought to provide for the consultation with representative organizations in the establishment/industry before engaging women for night work. The conditions for employment of women in night with regards to their safety & security, holiday, working hours and other facilities such as transport, hours of rest, protection against sexual abuse and written consent should be prescribed in the Code itself, rather than by the appropriate Government. It should also provide that women should not be engaged for night work during pregnancy.

We would like to submit the following additional recommendations/ observations on some important issues that was missed in the Report- be incorporated in the Final Report of the Standing Committee.

Clause 18. On OSH Standards.

The Code empowers Central Government to declare standards on OSH in relation to factories, mines, dock work, building and other construction work and other establishments. The Standards would relate to various types of hazards; norms and procedures for assessment of those hazards; measurement and monitoring of exposures; medical examination; preventive and control measures etc.

Though the Second Schedule to the Code lists something, it does not specify even minimum standards on OSH and everything is delegated to the Central Government. The requirement of compliance with OSH standard is covered under general duties of employers, thus diluting the responsibility for basic and minimum standards of safety and health. For example, the existing Factories Act requires providing of positive protection in the form of fencing, use of safe and sound equipment; specifies minimum space to avoid overcrowding; protection of eyes; prohibits certain activities etc. If such types of provisions are not included in the Code and left to the Rules to be framed by Governments, then the absence of rules will result in noncompliance with even minimum requirements of safety and health protection. Further, the closer examination of the Second Schedule reveals that the standards listed are mostly related to factories, mines, dock work, and construction work only. The standards relating to safety and health protection in other sectors such as ergonomics relating to IT sector; exposure to

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noise and vibrations in transport sector; exposure to harmful substances in plantation and agriculture sector are not covered.

Therefore, I should recommend that certain basic and minimum OSH standards should be specified in the body of the Act- Code itself; and the Rules should contain the further requirements relating to sector or activity or situation specific standards; methods and procedure for compliance etc. Further, the OSH standards should also be framed considering the provisions and requirements in other Safety Laws enacted by various other Ministries or Departments of Government of India. The relevant IS standards should be specified wherever applicable.

Clause 23. On Health and Working Conditions.

The Code specifies the general responsibility of employer to maintain the working conditions **as prescribed** by the Central Government. It empowers the Central Government to prescribe Rules relating to certain working conditions.

The Code does not specify the requirement in relation to the working conditions such as the levels, quantum, methods etc. For example the existing Factories Act itself specifies the measures such as material of construction of walls/roofs, protection against high temperature, dust control measures, minimum space in each work-room, use of natural light, prevention of glare and shadow, location of supply of drinking water, supply of cool drinking water in hot weather, separate latrines for male and female employees etc.

Therefore, the Committee should recommend that all basic and minimum requirements relating to working conditions should be prescribed in the Code itself (on the lines of the existing Factories Act, Mines Act etc.).

Clause 26. Weekly holiday and Compensatory holidays.

The Code prohibits more than six days working in a week in any establishment (except in case of motor transport workers, maximum 10 days consecutively) subject to the exemptions as notified by appropriate Government.

No exemption from maximum six days working should be allowed. Further, compensatory holiday may be allowed within 2 months instead of within the same month in which the holiday is due.

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Clause 33. on Maintenance of Registers, records etc.

The register should also contain name, age, address and other personal information in respect of each employee. It should necessarily be in printed form and additionally in any other form including electronic form. The wage slips should also be issued in printed form to all employees

Clause 37. Third-party certification

The Committee has to recommend that the third-party certification should not be allowed to substitute for regular inspection. Therefore, the Clause 37 should be deleted. Similarly, self-certification by employers in any form should not be allowed.

Chapter. XI. Part-I. On Contract Labour.

It is unfortunate that Committee fails to address the plight of contract labour- in the sense that it should have tried to arrest the total dilution of Contract Labour (Regulation & Abolition) Act,1970 through this Code.

The provisions relating to contract labour contained in Chapter XI Part I apply only to establishments where 20 or more contract labour are employed and contractors who employ 20 or more contract labourers. Thus, establishments where less than 20 contract labour are employed stand excluded from its provisions. Moreover, section 45 of Code allows for a higher threshold number by providing that when a higher threshold is provided under state law that shall prevail.

While there is a provision akin to section 10 of the Contract Labour (Regulation and Abolition) Act providing for the abolition of contract labour in any process, operation or work or a permanent nature, the Code does not per se prohibit the engagement of contract labour for work of a permanent and perennial nature. It does not prohibit the issue of licence for engaging contract labour for work of a permanent and perennial nature.

The Code also does not contain any provisions for equal treatment for contract labour who perform the same or similar kind of work as that of permanent workers in the same establishment.

It does not provide for absorption of contract labour in the service of the principal employer when contract labour is abolished in any process, operation or work. Thus, the Code literally

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seeks to legitimize the killing of the very spirit of Contract Labour (Regulation & Abolition) Act,1970.

So, following recommendation vis-a-vis contract labour may be incorporated in the Report of Committee.

- There should be no threshold limit for the application of Chapter XI Part I of the Code. The Code should prohibit the engagement of contract labour for work of a permanent and perennial nature.
- When contract labour is engaged for doing the same or similar kind of work as that of permanent workers in the same establishment, the Code should provide for that they are treated on par with the permanent workers in the matter of wages and other conditions of employment.
- It should provide for the absorption of contract labour consequent upon abolition of contract labour in any process, operation or work.
- The contractor not fulfilling the requisite qualifications or prescribed criteria should not be issued a 'work specific licence' for supply or engagement of contract labour; or for execution of work through contract labour. Therefore, the Clause 47(2) should be deleted
- The validity of licence issued to the contractor should be 2 years instead of 5 years. The Clause 48(2) should be modified accordingly. Further, system of sub-contracting and multi-layer contract should be prohibited.
- The contractor employing or supplying contract labour to the establishment, fails to continue the contract for reasons whatsoever, the contract labour engaged in the establishment should be continued as regular employees. Accordingly, a new Clause 57(e) should be inserted after Clause 57(d).
- The Tripartite Contract Labour Advisory Committee must continue- both at national and State level.

Clause 58. On Exemptions from application of provisions of the Code, Rules etc.

No exemption from application of the provisions of this Code or the Rules framed there-under should be given in respect of any establishment or the contractors. Therefore, the Clause 58 should be deleted.

Finally, I earnestly appeal to the Committee to take note of very important issues connected with the sanctity of the Parliament and its legislative exercise.

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Usurping of power to alter/change various provision of the Act passed by Parliament, by the Executive through notifications/orders by-passing the Parliamentary process;

In the OSHWC Bill 2019, a dangerous experiment is being sought to be made. Clauses 125 (pertaining to safety and hazards and action thereon), 126 (definition of occupiers in the case of dock workers, welfare facilities, health and working conditions, all kinds of leave, conditions for entitlement for cash compensation etc-altogether 28 matters), 127 (details of inspection procedure etc) and 128 (safety and inspection process in mines and dock, matters pertaining to exposure to chemicals gaseous, dust and other hazards etc) of the Code provide for empowering the executive on such substantive issues relating to health, safety and welfare of workers through making of rules/regulations and also enabling changes in those rules/regulation through executive orders/exercise only. Most of these issues had been well defined and detailed in the main body of the original Acts which are being proposed to be subsumed in the Code followed by their repeal. Further, the power of Parliament to decide the Working hours and leaves/holidys (Clauses-25,26&27), all safety and health standards(sec.18), even safety committee (Clause-22) and enforcement and inspection etc., are all usurped by the executive in this Code.

Accordingly, Code empowers the Governments for making Rules/ declaring standards in respect of various matters including those relating to safety and health as follows:

Rulemaking power of Appropriate Govt.	- 50 items.
Rulemaking power of Central Govt.	- 26 items
Rulemaking power of State Govt.	- 21 items
Regulation making power to Central Govt.	- 2 items
Power Central Govt. to declare Standards	- 73 items

So, I would like bring to the attention of the Committee-Two basic issues of very serious nature that has come to fore questioning the justifiability of the entire exercise. Number one, transfer of the substantive provisions which were in the main body of the original Acts under subsumption in the Code to rule-making by the executive severely weakens the enforceability and justiciability of the entire legislation much to the detriment of the interests of the workers, defeating the very purpose of legislation itself, making it a toothless object. Number two, even after enactment by parliament, provisions stipulated for further changes in the substantive provisions of the Act through executive order open an open-ended passage to alter the entire protective measures for workers and also the regulatory measures in phases and render the Parliamentary exercise for legislation finally meaningless.

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Rules are considered to be the subordinate legislations to facilitate the administration and implementation of the main enactments. Therefore, transferring substantive matters of legislation from the main body of the Act to the rule-making by executive turns the entire legislative process into a fiasco.

We urge the Committee to recommend that all these sections mentioned herein above should be deleted, all the related issues should be defined, detailed with concrete enforceable measures and should be incorporated in the main body of the proposed enactment with a clear direction that any future change of any provision of the enactment cannot be done through backdoor through executive order, it must have the concurrence of the Parliament.

Yours Sincerely,

(Elamaram Kareem)

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APPENDIX-II

STANDING COMMITTEE ON LABOUR

(2019-20)

Minutes of the Eighth Sitting of the Committee

The Committee sat on Friday, the 25th October, 2019 from 1100 hrs. to 1230 hrs. in Committee Room No. '3', Parliament House Annexe - Extension Building, New Delhi.

PRESENT

Shri Bhartruhari Mahtab – CHAIRPERSON

MEMBERS

LOK SABHA

2. Shri Raju Bista
3. Shri Satish Kumar Gautam
4. Dr. Umesh G. Jadhav
5. Shri Dharmendra Kumar Kashyap
6. Shri K. Navaskani
7. Shri Nayab Singh Saini
8. Shri Bhola Singh
9. Shri K. Subbarayan

RAJYA SABHA

10. Shri Ram Narayan Dudi
11. Shri Elamaram Kareem
12. Dr. Banda Prakash
13. Shri Rajaram
14. Ms. Dola Sen
15. Shri M. Shanmugan

SECRETARIAT

1.	Shri T.G. Chandrasekhar	-	Joint Secretary
2.	Shri P.C. Choulda	-	Director
3.	Shri D.R. Mohanty	-	Additional Director
4.	Shri Kulvinder Singh	-	Deputy Secretary

Witnesses

Representatives of the Ministry of Labour & Employment

Sl. No.	Name	Designation
1.	Shri Heeralal Samariya	Secretary
2.	Ms. Anuradha Prasad	Addl. Secretary
3.	Shri Rajan Verma	Chief Labour Commissioner
4.	Shri R.K. Gupta	Joint Secretary
5.	Ms. Vibha Bhalla	Joint Secretary
6.	R. Subramanian	Director General
7.	Shri C.R. Kumar	Deputy Director General
8.	Dr. R.K. Elangovan	Deputy Director General
9.	R.G. Meena	Deputy Chief Labour Commissioner

2. At the outset, the Chairperson welcomed the Members of the Committee and the representatives of the Ministry of Labour & Employment to the sitting of the Committee, convened to have a briefing on 'The Occupational Safety, Health and Working Conditions Code, 2019'. Drawing the attention of the representatives to Direction 58 of the 'Directions by the Speaker' regarding confidentiality of the proceedings during deposition before the Parliamentary Committees, the Chairperson asked the Secretary, Labour & Employment to give an overview of various provisions contained in 'The Occupational Safety, Health and Working Conditions Code, 2019'.

3. The Secretary, accordingly, gave a PowerPoint Presentation *inter-alia* highlighting the number of Acts and Sectors to be subsumed with the Code, Salient features of the Code both for Workers and the Employers, Rationalisation, Change in Applicability Threshold etc. The Secretary also

assured the Code would be a dynamic and flexible legislation with broad legislative framework and would safeguard the overall interest of the workers.

4. The Members then raised certain specific queries which inter-alia included reasons for not incorporating the 'e-filing by the employer' in the Code; Non-coverage of welfare measures for workers; Reasons for not covering the unorganised sector; Emphasis on focusing on agricultural labourers; Reasons for not consulting various Trade Unions; Reasons for exclusion of contract workers under clause 45; Non- inclusion of the Textile sector including Jute and Cotton; Non-implementation of minimum wages in North Eastern States; Obtaining of labour license by employer in stipulated time frame etc;

5. The representatives of the Ministry responded to the above queries. As some points required detailed and statistical reply, the Chairperson asked the Secretary, Ministry of Labour & Employment to furnish written replies thereon within ten to fifteen days. The Secretary assured to comply.

6. The Chairperson, thanked the Secretary and other representatives of the Ministry for furnishing available information on the subject matter and responding to the queries of the Members.

(The witnesses then withdrew)

[A copy of the verbatim proceedings was kept on record]

The Committee then adjourned.

APPENDIX-III

STANDING COMMITTEE ON LABOUR

(2019-20)

Minutes of the Eleventh Sitting of the Committee

The Committee sat on Thursday, the 5th December, 2019 from 1500 hrs. to 1545 hrs. in Committee Room 'B', Parliament House Annexe, New Delhi.

PRESENT

Shri Bhartruhari Mahtab – CHAIRPERSON

MEMBERS

LOK SABHA

2. Shri Subhash Chandra Baheria
3. Shri John Barla
4. Shri Raju Bista
5. Shri Pallab Lochan Das
6. Shri Satish Kumar Gautam
7. Shri Dharmendra Kumar Kashyap
8. Shri Sanjay Sadashivrao Mandlik
9. Shri Khalilur Rahaman
10. Shri Nayab Singh Saini
11. Shri Bhola Singh

RAJYA SABHA

12. Shri Hussain Dalwai
13. Shri Ram Narayan Dudi
14. Shri Elamaram Kareem
15. Dr. Raghunath Mohapatra
16. Dr. Banda Prakash
17. Ms. Dola Sen
18. Shri M. Shanmugan

SECRETARIAT

1.	Shri T.G. Chandrasekhar	-	Joint Secretary
2.	Shri D.R. Mohanty	-	Additional Director
3.	Shri Kulvinder Singh	-	Deputy Secretary

2. At the outset, the Chairperson welcomed the Members to the sitting of the Committee convened to chalk out and finalise the future programme for

completing the examination of 'The Occupational Safety, Health and Working Conditions Code, 2019'. Thereafter, the Chairperson apprised that 81 Memoranda from various Stakeholders/ Organisations/ Unions had been received as on 2nd December, 2019 and were also forwarded to the Ministry for their comments. Further, a Gist of those Memoranda, as prepared by the Secretariat, was also circulated to the Members. The Chairperson solicited the suggestions of the Members to short list the Organisations/ Individuals/ Associations etc. for having their oral evidence on 19th & 20th December, 2019. Accordingly, the Members suggested names of few Organisations/ Individuals/ Associations etc.

3. After some discussions, the Committee decided to call 12 Trade Unions, three Plantation Workers Unions, one/ two Organisations/ Associations each from other sectors *viz.* Film/TV Industry, Print Media, Medical/ Sales Representatives, Migrant Workers, other Unorganised Sectors etc.

4. The Committee also decided to call of three/ four State Governments should they evince interest to appear before the Committee.

5. XX XX XX XX.

6. The Chairperson thanked the Members for their valuable inputs and active participation in the deliberations.

The Committee then adjourned.

XX Does not pertain to this Report.

APPENDIX-IV

STANDING COMMITTEE ON LABOUR (2019-20)

Minutes of the Twelfth Sitting of the Committee

The Committee sat on Thursday, the 19th December, 2019 from 1100 hrs. to 1330 hrs. in Committee Room 'B', Parliament House Annexe, New Delhi.

PRESENT

Shri Bhartruhari Mahtab – CHAIRPERSON

MEMBERS

LOK SABHA

2. Shri John Barla
3. Shri Raju Bista
4. Shri Pallab Lochan Das
5. Shri Satish Kumar Gautam
6. Shri B.N. Bache Gowda
7. Dr. Umesh G. Jadhav
8. Shri Dharmendra Kumar Kashyap
9. Dr. Virendra Kumar
10. Adv. Dean Kuriakose
11. Shri Nayab Singh Saini
12. Shri Ganesh Singh
13. Shri Bhola Singh
14. Shri K. Subbarayan

RAJYA SABHA

15. Shri Ram Narayan Dudi
16. Dr. Banda Prakash
17. Shri Rajaram
18. Shri M. Shanmugan

SECRETARIAT

1.	Shri T.G. Chandrasekhar	-	Joint Secretary
2.	Shri P.C. Choulda		Director
3.	Shri D.R. Mohanty	-	Additional Director
4.	Shri Kulvinder Singh	-	Deputy Secretary

NON-OFFICIAL WITNESSES

Representatives of Bhartiya Mazoor Sangh

Sl. No	Name of Witness	Designation
1.	Shri C.K. Sajinarayan	All India President
2.	Shri Jagadish Joshi	Finance Secretary

Representatives of Indian National Trade Union Congress (INTUC)

Sl. No	Name of Witness	Designation
1.	Dr. R.C. Khuntia	Vice President
2.	Shri Rishipal Singh	Oranising Secretary

Representative of All India Trade Union Congress (AITUC)

Sl. No	Name of Witness	Designation
1.	Shri Vidya Sagar Giri	National Secretary

Representatives of Hind Mazdoor Sabha (HMS)

Sl. No	Name of Witness	Designation
1.	Shri Harbhajan Singh Sidhu	General Secretary
2.	Shri Anand Swaroop	Director Education

Representatives of Centre of Indian Trade Unions (CITU)

Sl. No	Name of Witness	Designation
1.	Shri R. Karumalaiyan	National Working Member
2.	National Working Member	National Working Member

Representative of All India United Trade Union Centre (AIUTUC)

Sl. No	Name of Witness	Designation
1.	Shri Ramesh Kumar Parasher	Member, All India Secretariat

Representatives of Trade Union Coordination Centre (TUCC)

Sl. No	Name of Witness	Designation
1.	Sh. Sheo Prasad Tiwari	General Secretary, Central Committee
2.	Sh. Rakesh Mishra	Member, Central Committee

Representative of Self Employed Women's Association (SEWA)

Sl. No	Name of Witness	Designation
1.	Ms. Sonia George	--

Representative of All India Central Council of Trade Union (AICCTU)

Sl. No	Name of Witness	Designation
1.	Sh. Rajiv Dimri	General Secretary

Representative of Labour Progressive Federation (LPF)

Sl. No	Name of Witness	Designation
1.	Shri V. Veluswamy,	National Organising Secretary

Representatives of National Front of Indian Trade Unions (NFITU)

Sl. No	Name of Witness	Designation
1.	Dr. Deepak Jaiswal	National President
2.	Shri Amiya Sarkar	State President NFITU

2. At the outset, the Chairperson welcomed the Members of the Committee and the representatives of various Unions/ Associations/Organisations to the sitting of the Committee, convened to hear their views on 'The Occupational Safety, Health and Working Conditions Code, 2019'. Impressing upon the witnesses to keep the proceedings of the Committee 'Confidential', the Chairperson asked them to present their views/suggestions on 'The Occupational Safety, Health and Working Conditions Code, 2019'

3. The representatives of the Unions/Associations accordingly submitted their views one by one covering various aspects and Clauses/Sections of the Code. The representatives also responded to the queries of the Members.

4. The Chairperson thanked the witnesses for appearing before the Committee and furnishing their comments/suggestions on the Code.

The witnesses then withdrew.

[A copy of the verbatim proceedings was kept on record]

The Committee then adjourned.

APPENDIX-V

STANDING COMMITTEE ON LABOUR (2019-20)

Minutes of the Thirteenth Sitting of the Committee

The Committee sat on Thursday, the 19th December, 2019 from 1430 hrs. to 1630 hrs. in Committee Room 'B', Parliament House Annexe, New Delhi.

PRESENT

Shri Bhartruhari Mahtab – CHAIRPERSON

MEMBERS

LOK SABHA

2. Shri John Barla
3. Shri Raju Bista
4. Shri Pallab Lochan Das
5. Shri Satish Kumar Gautam
6. Shri B.N. Bache Gowda
7. Dr. Umesh G. Jadhav
8. Shri Dharmendra Kumar Kashyap
9. Dr. Virendra Kumar
10. Adv. Dean Kuriakose
11. Shri Nayab Singh Saini
12. Shri Ganesh Singh
13. Shri Bhola Singh
14. Shri K. Subbarayan

RAJYA SABHA

15. Shri Ram Narayan Dudi
16. Dr. Banda Prakash
17. Shri Rajaram
18. Shri M. Shanmugan

SECRETARIAT

1.	Shri T.G. Chandrasekhar	-	Joint Secretary
2.	Shri P.C. Choulda	-	Director
3.	Shri D.R. Mohanty	-	Additional Director
4.	Shri Kulvinder Singh	-	Deputy Secretary

NON-OFFICIAL WITNESSES

Representatives of National Union of Journalists (NUJ)

Sl. No	Name of Witness	Designation
1.	Shri Ashok Malik	--
2.	Shri Manoj Mishra	--
3.	Shri Manohar singh	--

Representatives of Indian Journalists Union

Sl. No	Name of Witness	Designation
1.	Ms. Sabina Inderjit	Secretary General
2.	Shri K. Srinivas Reddy	--
3.	Shri S.N. Sinha	--

Representatives of The All India Federation of PTI Employees' Unions, Delhi

Sl. No	Name of Witness	Designation
1.	Mr. Bhuwan Chaubey	President, The All India Federation of PTI Employees Union
2.	Ms. Sunila Soneja	President, PTI Employees Union Delhi
3.	Shri M.S. Yadav	--

Representatives of All India Newspaper Employees Federation, Delhi

Sl. No	Name of Witness	Designation
1.	Mr. Anil Kumar Gupta	--
2.	Mr. N.K. Pathak	--
3.	Shri C.S. Naidu	--

Representatives of Indian Federation of Working Journalists (IFWJ).

Sl. No	Name of Witness	Designation
1.	Dr. K. Vikram Rao	President
2.	Shri Vipin Dhuliya	Secretary General
3.	Shri Parmanand Pandey	Secretary General
4.	Shri Rinku Yadav	Treasurer

2. At the outset, the Chairperson welcomed the Members of the Committee and the representatives of various Unions/ Associations/Organisations to the sitting of the Committee, convened to hear their views on 'The Occupational Safety, Health and Working Conditions Code, 2019'. Impressing upon the witnesses to keep the proceedings of the Committee 'Confidential', the Chairperson asked them to present their views/suggestions on 'The Occupational Safety, Health and Working Conditions Code, 2019'

3. The representatives of the Unions/Associations accordingly submitted their views one by one covering various aspects and Clauses/Sections of the Code. The representatives also responded to the queries of the Members.

5. The Chairperson thanked the witnesses for appearing before the Committee and furnishing their comments/suggestions on the Code.

The witnesses then withdrew.

[A copy of the verbatim proceedings was kept on record]

The Committee then adjourned.

APPENDIX-VI

STANDING COMMITTEE ON LABOUR (2019-20)

Minutes of the Fourteenth Sitting of the Committee

The Committee sat on Friday, the 20th December, 2019 from 1100 hrs. to 1330 hrs. in Committee Room 'B', Parliament House Annexe, New Delhi.

PRESENT

Shri Bhartruhari Mahtab – CHAIRPERSON

MEMBERS

LOK SABHA

2. Shri Subhash Chandra Baheria
3. Shri John Barla
4. Shri Raju Bista
5. Shri Pallab Lochan Das
6. Shri Dayakar Pasunoori
7. Shri B.N. Bache Gowda
8. Dr. Umesh G. Jadhav
9. Shri Dharmendra Kumar Kashyap
10. Dr. Virendra Kumar
11. Shri Nayab Singh Saini
12. Shri Ganesh Singh
13. Shri Bhola Singh

RAJYA SABHA

14. Shri Oscar Fernandes
15. Dr. Banda Prakash
16. Shri Rajaram

SECRETARIAT

1.	Shri T.G. Chandrasekhar	-	Joint Secretary
2.	Shri P.C. Choulda	-	Director
3.	Shri D.R. Mohanty	-	Additional Director
4.	Shri Kulvinder Singh	-	Deputy Secretary

NON-OFFICIAL WITNESSES

Representatives of Confederation of Indian Industry (CII)

Sl. No	Name of Witness	Designation
1.	Mr. Anil G Verma	Chairman, CII National Task Force on Safety, President & Executive Director GODREJ & BOYCE MFG CO LTD
2.	Mr. Sougata Roy Choudhury	Executive Director, Skill Development, Affirmative Action, ASD & Industrial Relations
3.	Ms Harsh	Executive Officer - Industrial Relations

Representatives of Joint Forum of Plantation Workers Unions

Sl. No	Name of Witness	Designation
1.	Shri S.K. Lama	General Secretary, Himalayan Plantation Workers Union
2.	Shri D.K. Gurung	President, Himalayan Plantation Workers Union
3	Shri Dhiraj Rai	Joint Secretary, Himalayan Plantation Workers Union
4	Shri Raju Subba	JAP DZCCJSS
5	Shri Sunil Rai	Secretary, CPRM DTDCKMU
6	Shri Mani Kumar Darnal	General Secretary, National Union of Plantation Workers, West Bengal
7.	Shri Ziaulalam	--
8.	Shri Saman Pathak	--

Representatives of Tea Association of India

Sl. No	Name of Witness	Designation
1.	Mr. Arijit Raha	Secretary General
2.	Mr. Debasish Chakravarti	Addl. Secretary

2. At the outset, the Chairperson welcomed the Members of the Committee and the representatives of various Unions/ Associations/Organisations to the sitting of the Committee, convened to hear their views on 'The Occupational Safety, Health and Working Conditions Code, 2019'. Impressing upon the witnesses to keep the proceedings of the Committee 'Confidential'. The Chairperson asked them to present their views/suggestions on 'The Occupational Safety, Health and Working Conditions Code, 2019'

3. The representatives of the Unions/Associations accordingly submitted their views one by one covering various aspects and Clauses/Sections of the Code. The representatives also responded to the queries of the Members.

4. The Chairperson thanked the witnesses for appearing before the Committee and furnishing their comments/suggestions on the Code.

The witnesses then withdrew.

[A copy of the verbatim proceedings was kept on record]

The Committee then adjourned.

APPENDIX-VII

STANDING COMMITTEE ON LABOUR (2019-20)

Minutes of the Fifteenth Sitting of the Committee

The Committee sat on Friday, the 20th December, 2019 from 1430 hrs. to 1630 hrs. in Committee Room 'B', Parliament House Annexe, New Delhi.

PRESENT

Shri Bhartruhari Mahtab – CHAIRPERSON

MEMBERS

LOK SABHA

2. Shri Subhash Chandra Baheria
3. Shri John Barla
4. Shri Raju Bista
5. Shri Pallab Lochan Das
6. Shri Dayakar Pasunoori
7. Shri B.N. Bache Gowda
8. Dr. Umesh G. Jadhav
9. Shri Dharmendra Kumar Kashyap
10. Dr. Virendra Kumar
11. Shri Nayab Singh Saini
12. Shri Ganesh Singh
13. Shri Bhola Singh

RAJYA SABHA

14. Shri Oscar Fernandes
15. Dr. Banda Prakash
16. Shri Rajaram

SECRETARIAT

1.	Shri T.G. Chandrasekhar	-	Joint Secretary
2.	Shri P.C. Choulda	-	Director
3.	Shri D.R. Mohanty	-	Additional Director
4.	Shri Kulvinder Singh	-	Deputy Secretary

NON-OFFICIAL WITNESSES

Representatives of Indian Film and TV Producers Council, Mumbai

Sl. No	Name of Witness	Designation
1.	Mr. JD Majethia	Chairman, TV & Web
2.	Mr. Nitin Vaidya	Core Group Member

Representatives of Producers Guild of India, Mumbai

Sl. No	Name of Witness	Designation
1.	Ms. Avisha Gherwada	Head (Legal Department), M/s Sphereorigins Multivision Pvt. Ltd.
2.	Ms. Ayesha Damania	Consultant
3.	Mr. Kulmeet Makkar	CEO

Representatives of ICMR National Institute of Occupational Health (NIOH), Ahmedabad

Sl. No	Name of Witness	Designation
1.	Dr. Kamalesh Sarkar	Director
2.	Dr. Asim Saha	Scientist 'F'

Representatives of Federation of Medical and Sales Representatives' Associations of India,

Sl. No	Name of Witness	Designation
1.	Shri Shantanu Chatterjee	General Secretary
2.	Shri Partha Rakshit	Treasurer

Representatives of Action Aid Association

Sl. No	Name of Witness	Designation
1.	Shri Tanveer Kazi	Regional Manager, Delhi Regional Office
2.	Ms. Divita Shandilya	Programme Manager, Policy and Research

Representatives of National Labour Law Association

Sl. No	Name of Witness	Designation
1.	Prof. (Dr.) S.C. Srivastava	Secretary General
2.	Dr. Praveen Sinha	President

Representative of Aide et Action

Sl. No	Name of Witness	Designation
1.	Shri Umi Daniel	Director - Migration & Education

2. At the outset, the Chairperson welcomed the Members of the Committee and the representatives of various Unions/ Associations/Organisations to the sitting of the Committee, convened to hear their views on 'The Occupational Safety, Health and Working Conditions Code, 2019'. Impressing upon the witnesses to keep the proceedings of the Committee 'Confidential', the Chairperson asked them to present their views/suggestions on 'The Occupational Safety, Health and Working Conditions Code, 2019'

3. The representatives of the Unions/Associations accordingly submitted their views one by one covering various aspects and Clauses/Sections of the Code. The representatives also responded to the queries of the Members.

4. The Chairperson thanked the witnesses for appearing before the Committee and furnishing their comments/suggestions on the Code.

The witnesses then withdrew.

[A copy of the verbatim proceedings was kept on record]

The Committee then adjourned.

APPENDIX-VIII

STANDING COMMITTEE ON LABOUR (2019-20)

Minutes of the Sixteenth Sitting of the Committee

The Committee sat on Friday, the 27th December, 2019 from 1100 hrs. to 1330 hrs. in Committee Room 'B', Parliament House Annexe, New Delhi.

PRESENT

Shri Bhartruhari Mahtab – CHAIRPERSON

MEMBERS

LOK SABHA

2. Shri Subhash Chandra Baheria
3. Shri Raju Bista
4. Shri Satish Kumar Gautam
5. Dr. Umesh G. Jadhav
6. Shri Dharmendra Kumar Kashyap
7. Dr. Virendra Kumar
8. Shri Nayab Singh Saini
9. Shri Bhola Singh

RAJYA SABHA

10. Shri Rajaram

SECRETARIAT

1.	Shri T.G. Chandrasekhar	-	Joint Secretary
2.	Shri P.C. Choulda	-	Director
3.	Shri D.R. Mohanty	-	Additional Director
4.	Shri Kulvinder Singh	-	Deputy Secretary

WITNESSES

REPRESENTATIVES OF THE STATE GOVERNMENT OF ANDHRA PRADESH

Sl. No.	Name	Designation
1.	Smt. B. Udaya Lakshmi, IAS,	Principal Secretary
2.	Shri D. Chandra Sekhar Varma	Director of Factories

REPRESENTATIVES OF THE STATE GOVERNMENT OF KERALA

Sl. No.	Name	Designation
1.	Shri Satyajeet Rajan	Additional Secretary,
2.	Shri Pramod	Director, Factories and Boilers

REPRESENTATIVES OF THE STATE GOVERNMENT OF ODISHA

Sl. No.	Name	Designation
1.	Smt. Anu Garg, IAS	Principal Secretary
2.	Shri Niranjan Sahu, IAS	Director of Factories & Boilers

REPRESENTATIVES OF THE STATE GOVERNMENT OF PUNJAB

Sl. No.	Name	Designation
1.	Shri Vijay Kumar Janjua, IAS	Principal Secretary

REPRESENTATIVES OF THE STATE GOVERNMENT OF RAJASTHAN

Sl. No.	Name	Designation
1.	Shri Naveen Jain, IAS	Secretary
2.	Shri Mukesh Jain	Chief Inspector, Factory & Boilers

2. At the outset, the Chairperson welcomed the Members of the Committee and the representatives of State Governments to the sitting of the Committee, convened to hear their views on 'The Occupational Safety, Health and Working Conditions Code, 2019'. Impressing upon the witness to keep the proceedings of the Committee 'Confidential', the Chairperson asked them to present their views/suggestions on 'The Occupational Safety, Health and Working Conditions Code, 2019'

3. The representatives of the State Governments accordingly submitted their views one by one covering various aspects and Clauses/Sections of the Code. The representatives also responded to the queries of the Members.

4. The Chairperson thanked the witnesses for appearing before the Committee and furnishing their comments/suggestions on the Code.

The witnesses then withdrew.

[A copy of the verbatim proceedings was kept on record]

The Committee then adjourned.

APPENDIX-IX

STANDING COMMITTEE ON LABOUR

(2019-20)

Minutes of the Seventeenth Sitting of the Committee

The Committee sat on Friday, the 3rd January, 2020 from 1100 hrs. to 1500 hrs. in Committee Room No. '139', Parliament House Annexe-, New Delhi.

PRESENT

Shri Bhartruhari Mahtab – CHAIRPERSON

MEMBERS

LOK SABHA

2. Shri Raju Bista
3. Shri Satish Kumar Gautam
4. Dr. Umesh G. Jadhav
5. Shri Dharmendra Kumar Kashyap
6. Shri Nayab Singh Saini

RAJYA SABHA

7. Shri Husain Dalwai
8. Dr. Banda Prakash
9. Ms. Dola Sen
10. Shri M. Shanmugan

SECRETARIAT

1.	Shri T.G. Chandrasekhar	-	Joint Secretary
2.	Shri P.C. Choulda	-	Director
3.	Shri D.R. Mohanty	-	Additional Director
4.	Shri Kulvinder Singh	-	Deputy Secretary

Witnesses

Representatives of the Ministry of Labour & Employment

Sl. No.	Name	Designation
1.	**Shri Heeralal Samariya,**	**Secretary**
2.	**Ms. Anuradha Prasad,**	**Additional Secretary**
3.	**Shri R.K. Gupta,**	**Joint Secretary**
4.	**Ms. Kalpna Rajsinghot,**	**Joint Secretary**
5.	**Ms. Vibha Bhalla,**	**Joint Secretary**
6.	**Shri Ajay Tiwari,**	**Joint Secretary**
7.	**Shri Devender Singh,**	**Economic Adviser (DGFASLI)**
9.	**Shri R. Subramanian,**	**DG, DGMS**
10.	**Dr. R.K. Elangovan,**	**Deputy Director General**
11.	**Shri C. Ramesh Kumar,**	**Deputy Director General**
12.	**Shri Rajan Verma,**	**Chief Labour Commissioner (C)**

2. At the outset, the Chairperson welcomed the Members of the Committee and the representatives of the Ministry of Labour & Employment to the sitting of the Committee, convened to take their oral evidence on 'The Occupational Safety, Health and Working Conditions Code, 2019'. Drawing the attention of the representatives to Direction 58 of the 'Directions by the Speaker' regarding confidentiality of the proceedings during deposition before the Parliamentary Committees, the Chairperson asked the Secretary, Labour & Employment to clarify the Ministry's stand on the views/suggestions of the various stakeholders.

3. The Secretary, accordingly, gave an overview of the various Clauses contained in the Code and sought permission from the Chair to give a power point presentation. The Joint Secretary, Ministry of Labour and Employment gave a PowerPoint Presentation *inter-alia* highlighting the clause by clause suggestions of the Stakeholders and the Ministry's acceptance or otherwise of such suggestions, with justifications.

4. The Members then raised certain specific queries which inter-alia included issues pertaining to plantation workers, electronic media, overtime allowance, registration of various establishments, duties and rights of employees, safety committee and safety officers, welfare measures, issues relating to women workers working at night, lucid elaboration and interpretation of various definitions given in the Code etc. The representatives of the Ministry responded to the above queries.

5. As some points required specific reply, the Chairperson apprised the Secretary, Ministry of Labour & Employment that a detailed Questionnaire would be sent to the Ministry and asked him to furnish written replies thereon within three to four days. The Secretary assured to comply.

6. The Chairperson, thanked the Secretary and other representatives of the Ministry for furnishing available information on the subject matter and responding to the queries of the Members.

(The witnesses then withdrew)

[A copy of the verbatim proceedings was kept on record]

The Committee then adjourned.

APPENDIX-X

STANDING COMMITTEE ON LABOUR

(2019-20)

Minutes of the Eighteenth Sitting of the Committee

The Committee sat on Thursday, the 9th January, 2020 from 1100 hrs. to 1445 hrs. in Committee Room 'D', Parliament House Annexe-, New Delhi.

PRESENT

Shri Bhartruhari Mahtab – CHAIRPERSON

MEMBERS

LOK SABHA

2. Shri John Barla
3. Shri Dayakar Pasunoori
4. Shri Satish Kumar Gautam
5. Dr. Umesh G. Jadhav
6. Shri K. Navaskani
7. Shri Nayab Singh Saini

RAJYA SABHA

8. Shri Husain Dalwai
9. Shri Elamaram Kareem
10. Shri Rajaram
11. Ms. Dola Sen
12. Shri M. Shanmugan

SECRETARIAT

1.	Shri T.G. Chandrasekhar	-	Joint Secretary
2.	Shri P.C. Choulda	-	Director
3.	Shri D.R. Mohanty	-	Additional Director
4	Ms. Miranda Ingudam	-	Deputy Secretary
5.	Shri Kulvinder Singh	-	Deputy Secretary

Representatives of the Ministry of Labour& Employment

Sl. No.	Name	Designation
1.	Shri HeeralalSamariya	Secretary
2.	Ms. Anuradha Prasad	Additional Secretary
3.	Shri Rajan Verma	Chief Labour Commissioner
4.	Shri Sunil Barthwal	Chief PF Commissioner
5.	Shri Raj Kumar	Director General (ESIC)
6.	Shri R.K. Gupta	Joint Secretary
7.	Ms. KalpnaRajsinghot	Joint Secretary
8.	Ms. Vibha Bhalla	Joint Secretary
9.	Shri Ajay Tewari	Joint Secretary
10.	Shri Devender Singh	Economic Adviser (DGFASLI)
11.	Shri R. Subramanian	DG, DGMS
12.	Dr. R.K. Elangovan	Deputy Director General

2. At the outset, the Chairperson welcomed the Members of the Committee and the representatives of the Ministry of Labour & Employment to the Sitting of the Committee, convened to take their further evidence on 'The Occupational Safety, Health and Working Conditions Code, 2019' followed by briefing on 'The Industrial Relations Code, 2019' and 'The Code on Social Security, 2019'. Drawing the attention of the representatives to Direction 58 of the 'Directions by the Speaker' regarding the evidence tendered before the Committee liable to be published, the Chairperson asked the Secretary, Labour& Employment to clarify the Ministry's stand on the points and issues pertaining to the various provisions of the 'The Occupational Safety, Health and Working Conditions Code, 2019', raised by the Members at the Sitting of the Committee held earlier on 03January, 2020 etc.

3. The Secretary, accordingly, gave an overview of the stance of the Ministry on the issues/points raised by the Members at the Sitting of the Committee held earlier.The Joint Secretary, Ministry of Labour and Employment gave a PowerPoint Presentation *inter-alia* highlighting thespecific views and

suggestions made on various provisions and the Ministry's acceptance or otherwise of such suggestions.

4. The Members then raised certain specific queries, mainly emanating from the written replies furnished by the Ministry and the stance taken on the points/suggestions pertaining to the provisions that were raised. These*inter-alia* included, issues pertaining to protection of the rights of contract workers engaged/employed with the Government, need expressed for recasting the definition of the term 'controlled industry'to specify the jurisdiction of the Central and State Governments, definition of 'worker' and 'employee' as proposed, agreements relating to audio-visual workers, inclusion of the word 'digital' in the definition of working journalists, hours of work and other standards applicable for working journalists, need expressed for having a separate chapter pertaining to migrant workers in the Code,inclusion of inter-state migrant workers in the definition of 'principle employer', need to define the term 'wages' in the Code, nomenclature of 'inspector cum facilitator' as proposed etc.

5. The representatives of the Ministry responded to the queries raised by the Members. As some points required detailed reply/further elaboration, the Chairperson asked the Secretary, Ministry of Labour& Employment to ensure that written replies to the points raised at the Sitting as well as other pending matters may be furnished at the earliest so as to enable the Committee to prepare and finalise their Report on the 'The Occupational Safety, Health and Working Conditions Code, 2019'.The Secretary assured to comply.

6. Thereafter, the Secretary with the permission of the Chairperson give an overview of 'The Industrial Relations Code, 2019' and 'The Code on Social Security, 2019'. The Joint Secretary, Ministry of Labour& Employment gave a Power Point presentation on the salient features of the two Codes which have been referred to the Committee by the Speaker for examination and Report thereon. As highlighted during the presentation the Industrial Relations Code, 2019', that proposes to amalgamate 03 Central Labour Acts*inter-alia* seeks to modify the definition of 'industry', 'strike' etc., introduces a new feature of 'recognition of negotiating union' and proposes to set up 02 Members Industrial Tribunal. 'The Code on Social Security, 2019'that seeks to amalgamate relevant provisions of 09 Central Labour Acts *inter-alia* seeks to extend the coverage of ESICpan-India to all establishments, extend the applicability of Employees Provident Fund and Employees' Pension Scheme and Employees Deposit Linked Insurance Scheme to all industries and establishments employing 20 or more persons, includes new definitions to cater to emerging forms of employment like Aggregator, Gig Worker, Platform Worker etc.

7. The Members then raised certain queries on the provisions of both the Codes. The queries raised in regard to 'The Industrial Relations Code, 2019'*inter-alia* included, issues relating to means for ensuring uniformity in labour standards, protection of interest of labour, regulation for fixed term employment, contract labour, inclusion of 'mass casual leave' under the definition of 'strike', definitions of the terms industry, worker etc. as proposed, provisions pertaining to closure of establishments, retrenchment of labour etc.

8. The queries raised in regard to 'The Code on Social Security, 2019'*inter-alia*included issues pertaining to collection of construction cess amounts, Pradhan Mantri Shram Yogi Man-dhan Yojana, Social Security Board, corpus of social security fund etc.

9. The representatives of the Ministry responded to some of the queries raised by Members. The Chairperson asked the Secretary, Ministry of Labour& Employment to ensure that written replies to the queries raised by Members were furnished at the earliest.

10. The Chairperson thanked the Secretary and other representatives for furnishing valuable information on the'The Occupational Safety, Health and Working Conditions Code, 2019', 'The Industrial Relations Code, 2019' and 'The Code on Social Security, 2019' and responding to the queries of the Members.

(The witnesses then withdrew)

[A copy of the verbatim record of proceedings has been kept on record]

The Committee then adjourned.

APPENDIX-XI

STANDING COMMITTEE ON LABOUR (2020-21)

Minutes of the Nineteenth Sitting of the Committee

The Committee sat on Friday, the 7th February, 2020 from 1500 hrs. to 1600 hrs. in Committee Room 'C', Parliament House Annexe, New Delhi.

PRESENT

Shri Bhartruhari Mahtab, Chairperson

Lok Sabha

2. Shri Pallab Lochan Das
3. Shri Satish Kumar Gautam
4. Dr. Umesh G. Jadhav
5. Shri Dharmendra Kumar Kashyap
6. Adv. Dean Kuriakose
7. Shri K. Navaskani
8. Shri D. Ravikumar
9. Shri Nayab Singh Saini.
10. Shri Bhola Singh

Rajya Sabha

11. Shri Hussain Dalwai
12. Shri Ram Narain Dudi
13. Shri Elamaram Kareem
14. Shri M. Shanmugam

SECRETARIAT

1.	Shri T.G. Chandrasekhar	-	Joint Secretary
2.	Shri D.R. Mohanty	-	Additional Director
3.	Ms. Miranda Ingudam	-	Deputy Secretary
4.	Shri Kulvinder Singh	-	Deputy Secretary

2. At the outset, the Chairperson welcomed the Members to the Sitting of the Committee, convened for considering and adopting the draft Report on 'The Occupational Safety, Health and Working Conditions Code, 2019'.

3. Apprising Members that all the major and significant points as raised by the stakeholders from diverse fields, State Governments and the inputs of the Members have been duly considered in framing the Report, the Chairperson solicited further suggestions from the Members.

4. The Committee thereafter took up for consideration the draft Report. Upon deliberating on the observations/recommendations proposed on the various provisions contained in the Code, the Committee decided to carry out some modifications in the Draft Report pertaining to issues like Plantation Workers, Inter-State Migrant Workers, Contract Labours engaged in Government Departments/Properties, Building and other construction workers, Journalists working on contract basis etc. The Draft Report was then adopted by the Committee and few Members gave their dissent note combinedly.

5. The Committee then authorized the Chairperson to finalise the Report in light of the factual verifications received from the Ministry as well as on the basis of the suggestions made during the Sitting and present the same to both the Houses of Parliament.

The Committee then adjourned.