

CONSTRUCTION WORKERS

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(REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) ACT, 1986

I. STATEMENT OF OBJECTS AND REASONS

1. Construction workers number nearly 2 crores in India

The construction industry employs, next only to agriculture, the largest number of workers in our state. This industry covers a variety of workers and operations ranging from construction of dams, power houses, defence projects and bridges, harbours, roads, railway tracks and runways, factories and offices, schools, hospitals, hotels, buildings and all other building activities. These activities extend over the entire length and breadth of Karnataka. *India*

2. Construction has been an age-old industry in our country. The superb monuments found all over the country are symbols of a civilization built by blood and sweat of these toiling people. Since independence, various developmental works like dams, roads, industries and bridges have been built and crores of rupees have been spent through budgetary provisions and five-year plans. However, quality of the life of the workers involved in all these developmental activities is appalling. They have no security of employment. They get very low wages. They have no educational, housing or other social welfare facilities. Accidents are very frequent while medical facilities are almost nil. Neither safety measures are enforced nor is any compensation paid to the victims of accidents.

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3. Unlike the organised industrial sector, there is no fixed employment relationship in construction industry. The peculiar nature of the construction industry is in its changing employer-employee relationship. In the construction industry, the product of labour is stationary, the contractors, sub contractors and workers move to different locations to work for different principal employers. In addition thereto in the construction industry, there is a hierarchy of relationships. The employment is contractual and most often on a sub contract basis and is unregulated by any existing law. Thus, to ensure security of employment and protection of workers, it is imperative to regulate employment in the industry.
4. Though labour laws enacted to protect sweated labour, such as Minimum Wages Act, Contract Labour (Regulation and Abolition) Act etc., are sought to be applied to construction labour, they are not capable of implementation due to changing employer-employee relation, inadequacy of labour law administration, lack of provisions to employer workers in the implementation and to protect them against victimisation.
5. Though Social Security law such as E.S.I. Act, EPF Act, Payment of Gratuity Act etc., have been sought to be extended to construction industry, the constraints in their application have been experienced due to lack of continuity of employment,

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changing employer-employee relationship and total lack of records pertaining to details of employment.

6. Thus, the major contributing cause to this state of affairs is the total inapplicability of the normal type of labour laws to the situation obtaining in the construction industry. The beneficiaries of the Labour of Labour of construction workers, have thus a collective of obligation to meet the human needs of those, whose fruits of labour, benefit the people at large. If the benefits of labour legislation will have to reach this large mass of workers, it is then necessary that the law should take note of the unique features of the industry and should provide not merely for welfare of the workman, but also for the regulation of employment itself in the industry. Such regulation could not be left to be taken care of by the employers or by the administrative heirarchy, but must be entrusted to an autonomous body statutorily set up and consisting of representatives of the workers, government and the employers. The Mathadi Labour Board and Dock Labour Board, which are analogous provide useful examples.
7. The proposed Law intends to incorporate the following features based on the above stated nature of employment in construction industry.
 - a) compulsory registration of the employers and of the workers;

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- b) restriction on employment in the industry to only those registered workers under the law;
- c) Prohibition of construction work by employers, without registration under the law;
- d) equitable sharing of the available employment, category-wise, on the basis of rotational booking of workers;
- e) Vesting of the responsibility for determining and disbursement of wages in the autonomous body; and
- f) provision for various other entitlements including Social Security and a minimum guarantee of wages by the autonomous body.

PREAMBLE:

Social and Economic justice are the promise of our Constitution. Justice to the construction workers who are long neglected victims of very exploitative affliction is therefore an urgent imperative of our Socialist Republic.

the experience of implementational failure and legal and litigation hurdles of existing Labour Legislations have made it necessary to make creative changes in the structure schemes and operation of any labour legislation designed to liberate the workers in this sector from the unjust practices prevalent in the field,

the participation of the workers as envisaged by the Constitution under Article 43 A of the Constitution in the

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working of the legislation and enforcement of remedies thereunder is essential if credibility and confidence were to be commanded by the law.

Now, therefore, be it enacted the Construction Workers (Regulation of employment and conditions of work) Act, 1986.

CHAPTER - I

PRELIMINARY

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1. Short title, extent, commencement and application

(1) The Act may be called the Construction Workers (Regulation of Employment and Conditions of Service) Act, 1986.

(2) It extends to the whole of India.

(3) This section and sections 3 to 5 clauses (1) and (2) of section 6, and sections 8 and 9 shall come into force at once in all the States and the remaining Provisions of this Act shall come into force in a State on such date not being later than six months from the passing of this Act as the appropriate government may by notification in the Official Gazette appoint.

2. Declaration as to Expediency of Regulation:

It is hereby declared that it is expedient in the public interest that the construction work as an industry, employing, as it does, a very large number of workers, both women and men and whose conditions of work and living need amelioration and to whom regularity of employment must be assured, so that the Directive Principles of the Constitution more particularly the relevant provisions in Article 39, 41, 42, 43 and 43-A of the Constitution are given effect to by a law made by Parliament with reference to entries 22, 23 and 24 of List III in the 7th Schedule in the Constitution.

3. Definitions:

1. In this Act, unless the context otherwise

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requires

- (a) 'adolescent' means a person who has completed his fifteenth year of age but has not completed his eighteenth year.
- (b) 'adult' means a person who has completed his 18 years of age.
- (c) 'board' means a Construction Labour Board established under section 7 Chapter 2 of this Act.
- (d) 'child' means a person who has not completed his 15 years of age.
- (e) 'Construction work' means and includes the construction, alteration, repair, maintenance or demolition of
 - (i) buildings (ii) any railway line or sidings
 - (iii) dock, harbour, canal, dams, reservoir, embankments including river valley projects and river works, water works, tanks, water course for inland navigation (iv) road, tunnel, bridge, viaduct, pipelines, aqueduct, sewage works, airfields, sea defence works, gas works
 - (v) any other structural engineering work of steel or reinforced concrete structure
 - (vi) construction operations connected with the installation of machinery wherever such installations takes place in factory establishments or any engineering construction or in a mine
 - (vii) any other civil or structural work similar to any of the aforesaid construction activities and (viii) any other operation such as stone breaking, earth brick-making, brick-kiln, limekiln.

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(f) 'construction worker' means a person who is directly involved in any construction work and includes, one who is indirectly involved in any activity ancillary of incidental to construction work. A construction worker does not include a contractor by whatever name called.

(g) 'establishment' means any establishment or industry engaged in construction work.

(h) 'employer' means any person who utilises Construction Labour for the purpose of Construction works and includes any promoter of building activities, agency or contractor by whatever name called who has undertaken the construction work on his own or on behalf of another employer.

4. The provisions of this Act shall have effect notwithstanding anything inconsistent therein contained in any other law for the time being in force or in any contract or instrument having effect by virtue of any law other than this Act or any other decree or order of any court, tribunal or authority.

5. Interpretations:

(1) For the purposes of the Act the following terms shall mean as stated under:-

(a) "May" means "shall" wherever it refers to some obligation to be discharged or power to be exercised.

6. Rules of evidence:

In this Act, notwithstanding anything contained

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in the Indian Evidence Act, 1872, the burden of proof that compliance with the provisions of the Act and the Scheme have been effected will be entirely on the employer and the units of the Board wherever applicable.

7. Values to be adopted in the application of the Act

The Construction Labour Board, its units, the Dispute resolution council and any other authority which may be constituted under the Act and the Scheme shall strive to apply as a situation may require, the principles contained in Articles 41, 42, 43, 43A and 46 of Part IV and clauses (h) and (j) of Article 51A of part IV A of the Constitution.

8. Construction Labour Boards:

- (1) The Central Government shall, by notification in official Gazette, establish a Central Construction Labour Board.
- (2) The Board shall consist of such number of members as may be appointed by the State Government and members representing employers and construction workers. The number of members representing construction workers shall not be less than the total strength of members representing employers and members as may be appointed by the State Government.
- (3) The Board shall have a President who shall be appointed from amongst its members. The appointment shall be in rotation for a period of two years.

- (4) The representatives of workers shall include at least one representative from each Construction Labour Board of States and of the Union Territories wherever such Boards have been set up.
- (5) The Central Government shall, similarly by notification in the official Gazette, establish a Construction Labour Board for each State.
- (6) Every such Board shall consist of a President to be appointed from amongst its members by rotation annually.
- (7) The Central Government shall appoint Construction Labour Boards on the same line as indicated sub-section (1) to (3) of this section, for each of the Union Territories of Delhi, Chandigarh, Pondicherry and Goa for such other Union Territories as the Central Government may decide.
- (8) Every such Board shall be a body corporate with the name aforesaid having perpetual succession and a common seal with a power to acquire, hold and dispose of property and to contract and may be that name sue and be sued.
- (9) The State Government shall after consulting the Labour State Construction Board, by notification in the official Gazette and subject to the condition of prior approval set up tripartite bodies at the district level and below on the same pattern as of the State Construction Law Board.
- (10) The representatives of workers on the Board shall be elected by registered construction workers

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every 2 years. Rules shall be framed for
conduct of elections, subsequent to the
completion of registration process. Until that
time, representatives of the workers shall be,
the representatives of Trade Unions of Construction
Workers with substantial membership.

- (11) Women construction workers shall have proportionate representation among representatives of workers.
- (12) The term of the members of the Board and the District and local area bodies shall be a period of three years.

CHAPTER - II

Constitution of Boards, framing of schemes -

9. Scheme for ensuring regular employment of workers:

- (1) The State Government may, in consultation with and after consulting the Central Construction Labour Board, frame a scheme to be called the "Construction Workers (Regulation of Employment and Conditions of Service) Scheme, 1988 for ensuring greater regularity of employment for regulating the employment of construction workers and for prescribing conditions of service for the Construction Workers in the State.
- (2) In particular, the Scheme may provide -
 - (a) for the application of the scheme to such classes of construction workers and employers as may be specified therein;

- (b) for regulating employment in construction industry and providing benefits to workers;
- (c) for laying down norms for the discharge of statutory obligation of employers and construction workers;
- (d) for regulating the recruitment and entry into the Construction Labour Board, by way of registration of Construction Workers and employers including the maintenance of Registers, temporary or permanent; removal of names of workers or employers from the registers and the imposition of fees for registration;
- (e) for regulating the employment of construction workers, and the terms and conditions of such employment, including rates of remuneration, hours of work and conditions as to holidays and pay in respect thereof;
- (f) for providing for a minimum pay for workers who are available for work in respect of periods during which full employment, or even part employment, is not available;
- (g) for prohibiting, restricting or otherwise regulating the employment of construction workers who are not registered workers and the employment of construction workers by employers who are not registered employers;
- (h) for creating such fund or funds as may be necessary or expedient for the purposes of the Social Security and other welfare benefits and for the administration of such fund or funds;

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- (i) for the training, imparting of skills and welfare of construction workers;
- (j) for the welfare of the officers and other staff of the Board;
- (k) for health and safety measures in places where construction workers are employed;
- (l) for formulating the manner in which, and the persons by whom, the cost of operating the functions of Board is to be defrayed;
- (m) for constituting, the authority to be responsible for the administration of the Board;
- (n) for setting up units of the Board at various levels, state to be responsible for the administration of the Board at these levels;
- (o) for constituting, primary and appellate forums to adjudicate disputes that may arise between construction workers and the contractors or between construction workers and the Board, or between construction workers and construction workers;
- (3) The Scheme may further provide for constituting appropriate dispute resolution bodies for speedy resolution of disputes that may arise between workers the contractors and the Board, any two of the Construction Workers, the contractors and the Board.
- (4) The Scheme may further provide for the consequences and penalties for Contravention of any provisions of the Scheme a contravention of any provision.

(5) In framing the scheme, the State Governments shall keep in view the provisions of the model scheme as in Schedule I and ensure that the provisions of the scheme framed are not in material particulars inconsistent with or less beneficial to the construction workers than the provisions of the model scheme; and the Central Government shall in according its prior approval likewise ensure that the provisions of the Scheme are not in material particulars inconsistent with or less beneficial than the provisions of the model scheme.

10. Variation and revocation of Scheme:

- (1) The State Government by notification in the official gazette amend alter or vary the scheme made by it for the purpose of more effective implementation of the Scheme having regard to any special condition obtaining in the State and for conferring additional benefits to the Construction Workers.
- (2) Such amendments, alterations or variations of the Scheme may be effected in consultation with the Central Construction Labour Board and the State Construction Labour Board.
- (3) Pending the formulation and final publication of the scheme by the State Government, the provisions of the model scheme in Schedule I shall be applicable in that State.

11. Functions of the Boards:

- (1) The Central Construction Labour Board shall be a co-ordinating the advisory body without executive functions and the entire expenditure of the running of the Central Board shall be borne by the Central Government.
- (2) The Construction Labour Boards set up in a State and or a Union Territory shall be responsible for administering the scheme and shall exercise such powers and perform such functions as may be conferred on it by the Scheme.
- (3) The tripartite bodies set up under sub-section 8 shall likewise be responsible for administering the Scheme in their respective areas.
- (4) No decision of the Boards which is adverse to the interests of construction workers generally shall be implemented except with the concurrence of the representatives of the workers on the concerned Board.

CHAPTER - III

RESOLUTION BODIES AND THEIR CONSTITUTION

12. All disputes arising out of the enforcement of the provisions of the Act and scheme shall be resolved only by Dispute Resolution Councils and other authorities duly constituted under this Act.

13. Constitution of Dispute resolution Councils and Appellate Authority:

- (1) The Dispute resolution council in every District Unit or local area unit shall be comprised of

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three members representing the Government, the Construction Workers and the employer.

(2) The term of office of the members of the council shall be three years and the members may be nominated by the Board for such term.

(3) The Appellate authority shall likewise be representative and be constituted in the same manner by the Board.

14. (1) Where the appropriate Unit of the Board is of opinion that any dispute exists or is apprehended it may at any time, by order in writing --

(a) refer the dispute to the Board for promoting a settlement thereof; or

(b) refer any matter appearing to be connected with or relevant to the dispute to a Council for inquiry; or for resolution of the dispute as provided in the Scheme.

(2) No proceedings pending before a Dispute resolution Council or the appellate authority in relation to an industrial dispute shall lapse merely by reason of the death of any of the parties to the dispute being a workman, and such council or appellate authority shall complete such proceedings and submit its award to the appropriate Unit of the Board.

CHAPTER - IV

PROCEDURE, POWERS AND DUTIES OF AUTHORITIES

15. Procedures and powers of Boards, councils and appellate authorities:
- (1) Subject to any rules that may be made in this behalf the dispute resolution council or appellate authority shall follow such procedure as may be deemed fit, and conforming to principles of natural justice.
 - (2) Every unit of the Board, Dispute Resolution Council or the appellate authority shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a dispute in respect of the following matters, namely -
 - a) enforcing the attendance of any person and examining him on oath;
 - b) compelling the production of documents and material objects;
 - c) issuing commissions for the examination of witnesses;
 - d) in respect of such other matters as may be prescribed; and every enquiry or investigation by a Board or dispute resolution council shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code (45 of 1860).
 - (3) Every document in relation to a dispute as abovesaid, will be a public document within the meaning of

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Section 76 of the Indian Evidence Act, 1972. Any person interested in the dispute or his authorised representative shall have a right to obtain copies of such documents.

(4) The council may enforce the attendance of any person for the purpose of examination of such person or call for the inspect any document which it has ground for considering to be relevant to the implementation of any Award or carrying out any other duty imposed on it under this Act, and for the aforesaid purposes, the council have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) (in respect of enforcing the attendance of any person and examining him or of compelling the production of documents).

(5) All members of the council and the presiding officers of a Council or Appellate Authority shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code. Subject to any rules made under this Act, costs of, and incidental to, any proceedings before a Council shall be in the discretion of that Council, as the case may be, shall have full power to determine by and to whom and to what extent and subject to what conditions, if any, such costs are to be paid, and to give all necessary directions for the purposes aforesaid and such costs may on application made to the appropriate Board, the person entitled, be recovered by that government in such manner as it deems appropriate.

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(6) Every Council shall be deemed to be Civil Court for the purposes of (Sections 345, 346 and 348 of the Code of Criminal Procedure, 1973 (2 of 1974)).

16. Bar of Jurisdiction of Civil and Labour Courts:

No Civil or Labour Court shall entertain any **suit** or applications in respect of any matters arising under this Act or the Scheme.

17. Obstructions:

(1) Whoever obstructs a Labour Officer or a person appointed under this Act (hereinafter referred to as the authorised person) in the discharge of his duties under this Act or refuses or wilfully neglects to afford the Labour Officer or authorised person any reasonable facility for making any inspection, examination, inquiry or investigation authorised by or under this Act in relation to an establishment to which, or a contractor to whom, this Act applies, shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees, or with both.

(2) Whoever wilfully refuses to produce on the demand of any Labour Officer or authorised person any register or other document kept in pursuance of this Act or prevents or attempts to prevent or does anything which he has reason to believe is likely to prevent any person from appearing before or being examined by any Labour Officer

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or authorised person acting in pursuance of his duties under this Act, shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees or with both.

- (3) Such obstruction or wilful refusal shall at once be reported to the respective unit of the Board within whose jurisdiction such obstruction/ wilful refusal takes place as well as the Board which may also take appropriate action in accordance with the Scheme.

18. Contravention of Provisions regarding employment of inter-state transferred workmen:

Whoever contravenes any provisions of this Act or of any rules made thereunder regarding the employment of Construction Labour, or contravenes any other provision under this Act or the Scheme, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both, and in the case of continuing contravention, with an additional fine which may extend to any hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

19. Other Offences:

If any person contravenes any of the provisions of this Act or of any rules made thereunder for which no other penalty is elsewhere provided, he shall be punishable with imprisonment for a term which may

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extend to two years, or with fine which may extend to thousand rupees, or with both.

20. Offences by Companies:

- (1) Where an offence under this Act or the Scheme has been committed or the provisions thereof have been violated by a company, it shall be presumed that appropriate instruction have not been issued by the Company for wholesome compliance with the Act and the Scheme unless it is otherwise proved.
- (2) Where it is not so proved every person who, at the time the offence was committed, was in charge of and was responsible, to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.
- (3) Where it is so proved the person who is responsible for such violation shall be proceeded against and punished accordingly.
- (4) Notwithstanding anything contained in sub-section (1), the commission of any offence under this Act is attributable to ^{any} omission or negligence on the part of, any director, manager, secretary, or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

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Explanation:

For the purposes of this section -

- (a) "company" means any body corporate and includes a Partnership firm or other association of individuals; and
- (b) "director", in relation to a firm, means a partner in the firm.

21. (1) Every offence punishable under this Act and the Scheme, shall be cognisable only by Chief Judicial Magistrate of the area concerned.

(2) Whenever any contravention authority to offence occurs, the Labour Officer shall or any person aggrieved may, in writing, complain to the Magistrate for trying the offences.

(3) Whenever the Labour Officer for reasons not excusable or for any other extraneous considerations, refuses or fails to complain such offences, the Board on a report from the aggrieved person shall also proceed against the Labour Officer in accordance with the Scheme.

22. Power to make Rules:

The Central Government shall have the power to make rules for the purposes of carrying out the objects of the Act.

23. Power to make regulations:

The State Government and the State Construction Labour Board together shall have the power to make regulations for the purposes of effective functioning of Scheme and the objects of the Scheme.

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- (2) In particular the State Government and the State Construction Labour Board shall have the Power to make Regulations in respect of the following:
- (a) The election of representatives of construction workers in the Construction Labour Boards.
 - (b) Health, safety and Medical facilities, Social Security and maternity benefits, and Construction Workers Welfare Funds.
 - (c) Enforcement of the Provisions of the Act and the Scheme, including machinery for such enforcement.
 - (d) Provisions in regard to welfare ereches, education and such other social welfare benefits for the children of Construction Workers.
 - (e) The conditions of Service including recruitment Pay, allowances, tenure, retirement and retirement benefits of various categories of employees of the Boards.
 - (f) The remuneration or honororum payable to the Presidents and other Office bearers of the Boards.
 - (g) Provisions for the leisure time activities, recreation, library and literacy measures including legal literacy among construction workers.