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RAJYA SABHA

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BILL

to regulate the employment and conditions of service of building and other construction workers and to provide for their safety, health and welfare measures and for other matters connected therewith.

(Shri Bimleshwari Dubey, Minister of Labour)

AS INTRODUCED IN THE RAJYA SABHA ON
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Bill No. LIV of 1988

THE BUILDING AND OTHER CONSTRUCTION WORKERS (REGU-
LATION OF EMPLOYMENT AND CONDITIONS OF SERVICE)
BILL, 1988

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(REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE)
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to regulate the employment and conditions of service of building and other construction workers and to provide for their safety, health and welfare measures and for other matters connected therewith.

Enacted by Parliament in the Thirty-ninth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

5 1. (1) This Act may be called the Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1988.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government
10 may, by notification in the Official Gazette, appoint and different dates may be appointed for different States and any reference in this Act to the commencement of this Act shall, in relation to a State, be construed as a reference to the coming into force of this Act in that State.

Short
title,
extent,
commence-
ment
and
appli-
cation.

(4) It applies to every establishment which employs, or had employed on any day of the preceding twelve months, fifty or more building workers in any building or other construction work.

Explanation.—For the purposes of this sub-section, the building workers employed in different relays in a day either by the employer or the contractor shall be taken into account in computing the number of building workers employed in the establishment.

Defini-
tions.

2. (1) In this Act, unless the context otherwise requires,—

(a) "appropriate Government" means,—

(i) in relation to an establishment (which employs building workers either directly or through a contractor) in respect of which the appropriate Government under the Industrial Disputes Act, 1947, is the Central Government, the Central Government;

14 of 1947.

(ii) in relation to any such establishment, being a public sector undertaking as the Central Government may by notification specify which employs building workers either directly or through a contractor, the Central Government.

Explanation.—For the purposes of sub-clause (ii), "public sector undertaking" means any corporation established by or under any Central, State or Provincial Act or a Government company as defined in section 617 of the Companies Act, 1956, which is owned, controlled or managed by the Central Government;

1 of 1956.

(iii) in relation to any other establishment which employs building workers either directly or through a contractor, the Government of the State in which that other establishment is situate;

(b) "building or other construction work" means the construction, alteration, repairs, maintenance or demolition, of or, 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, wireless, radio, television, telephone, telegraph and overseas communications, dams, canals, reservoirs, watercourses, tunnels, bridges, viaducts, aqueducts, pipelines, towers, cooling towers, transmission towers and such other work as may be specified in this behalf by the appropriate Government by notification, but does not include any building or other construction work to which the provisions of the Factories Act, 1948, or the Mines Act, 1952, apply;

63 of 1948.

35 of 1952.

(c) "building worker" means a person who is employed to do any skilled, semi-skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied, in connection with any building or other construction work, but does not include any such person—

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

15. (1) The employer shall make in every place where building or wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature;

(d) "Chief Inspector" means the Chief Inspector of Inspection of Building and Construction appointed under sub-section (2) of section 24;

(e) "contractor" means a person who undertakes to produce a given result for any establishment, other than a mere supply of goods or articles of manufacture, by the employment of building workers or who supplies building workers for any work of the establishment, and includes a sub-contractor;

(f) "Director General" means the Director General of Inspection appointed under sub-section (1) of section 24;

(g) "employer" in relation to an establishment, means the owner thereof, and includes,—

(i) in relation to a building or other construction work carried on by or under the authority of any department of the Government, directly without any contractor, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;

(ii) in relation to a building or other construction work carried on by or on behalf of a local authority or other establishment, directly without any contractor, the chief executive officer of that authority or establishment;

(iii) in relation to a building or other construction work carried on by or through a contractor, or by the employment of building workers supplied by a contractor, the contractor;

(h) "establishment" means any establishment belonging to, or under the control of, Government, any body corporate or firm, an individual or association or other body of individuals which or who employs building workers in any building or other construction work, and includes an establishment belonging to a contractor, but does not include an individual who employs such workers in any building or construction work in relation to his own residence;

(i) "notification" means a notification published in the Official Gazette;

(j) "prescribed" means prescribed by rules made under this Act;

(k) "wages" shall have the same meaning as assigned to it in clause (vi) of section 2 of the Payment of Wages Act, 1936.

(2) Any reference in this Act to any law which is not in force in any area shall, in relation to that area, be construed as a reference to the corresponding law, if any, in force in that area.

CHAPTER II

THE ADVISORY BOARDS AND EXPERT COMMITTEES

Central
Advisory
Board.

3. (1) The Central Government shall, as soon as may be, constitute a board to be called the Central Advisory Building and other Construction Workers Board (hereinafter referred to as the Central Board) to advise the Central Government on such matters arising out of the administration of this Act as may be referred to it. 5

(2) The Central Board shall consist of—

(a) a Chairman to be appointed by the Central Government;

(b) the Director General, *ex officio*; 10

(c) such number of other members, not exceeding thirteen but not less than nine, as the Central Government may nominate to represent the employers, building workers, associations of architects, engineers, accident insurance institutions and any other interests which, in the opinion of the Central Government, ought to be represented on the Central Board. 15

(3) The number of persons to be appointed as members from each of the categories specified in sub-section (2), the term of office and other conditions of service of, the procedure to be followed in the discharge of their functions by, and the manner of filling vacancies among, the members of the Central Board shall be such as may be prescribed; 20

Provided that the number of members nominated to represent the building workers shall not be less than the number of members nominated to represent the employers.

State Ad-
visory
Boards.

4. (1) The State Government may constitute a board to be called the State Advisory Building and other Construction Workers Board (hereinafter referred to as the State Board) to advise the State Government on such matters arising out of the administration of this Act as may be referred to it. 25

(2) The State Board shall consist of— 30

(a) a Chairman to be appointed by the State Government;

(b) the Chief Inspector, *ex officio*;

(c) such number of other members, not exceeding eleven but not less than seven, as the State Government may nominate to represent the employers, building workers, associations of architects, engineers, accident insurance institutions and any other interests which, in the opinion of the State Government, ought to be represented on the State Board. 35

(3) The number of persons to be appointed as members from each of the categories specified in sub-section (2), the term of office and other conditions of service of, the procedure to be followed in the discharge of their functions by, and the manner of filling vacancies among, the members of the State Board shall be such as may be prescribed; 40

Provided that the number of members nominated to represent the building workers shall not be less than the number of members nominated to represent the employers.

5 (1) The appropriate Government may constitute one or more expert committees consisting of persons specially qualified in building or other construction work for advising that Government for making rules under this Act.

Expert committees.

(2) The members of the expert committee shall be paid such fees and allowances for attending the meetings of the committee as may be prescribed:

Provided that no fee or allowances shall be payable to a member who is an officer of Government or of any body corporate established by or under any law for the time being in force.

CHAPTER III

REGISTRATION OF ESTABLISHMENTS

15 6. The appropriate Government may, by order notified in the Official Gazette,—

Appointment of registering officers.

(a) appoint such persons, being Gazetted Officers of Government, as it thinks fit to be registering officers for the purposes of this Act; and

(b) define the limits within which a registering officer shall exercise the powers conferred on him by or under this Act.

7. (1) Every employer shall,—

25 (a) in relation to an establishment to which this Act applies on its commencement, within a period of sixty days from such commencement; and

Registration of establishments.

(b) in relation to any other establishment to which this Act may be applicable at any time after such commencement, within a period of sixty days from the date on which this Act becomes applicable to such establishment,

30 make an application to the registering officer for the registration of such establishment:

Provided that the registering officer may entertain any such application after the expiry of the periods aforesaid, if he is satisfied that the applicant was prevented by sufficient cause from making the application within such period.

(2) Every application under sub-section (1) shall be in such form and shall contain such particulars and shall be accompanied by such fees as may be prescribed.

40 (3) After the receipt of an application under sub-section (1), the registering officer shall register the establishment and issue a certificate of registration to the employer thereof in such form and subject to such conditions as may be prescribed.

(4) Where, after the registration of an establishment under this section, any change occurs in the ownership or management or other prescribed particulars in respect of such establishment, the particulars regarding such change shall be intimated by the employer to the registering officer within thirty days of such change in such form as may be prescribed. 5

Revoca-
tion of
regis-
tration
in certain
cases.

8. If the registering officer is satisfied, either on a reference made to him in this behalf or otherwise, that the registration of any establishment has been obtained by misrepresentation or suppression of any material fact or that the provisions of this Act are not being complied with in relation to any work carried on by such establishment, or that for any other reason the registration has become useless or ineffective and, therefore, requires to be revoked, he may, after giving an opportunity to the employer of the establishment to be heard, revoke the registration. 10

Appeal.

9. (1) Any person aggrieved by an order made under section 8 may, within thirty days from the date on which the order is communicated to him, prefer an appeal to the appellate officer who shall be a person nominated in this behalf by the appropriate Government: 15

Provided that the appellate officer may entertain the appeal after the expiry of the said period of thirty days if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time. 20

(2) On receipt of an appeal under sub-section (1), the appellate officer shall, after giving the appellant an opportunity of being heard, confirm, modify or reverse the order of revocation as expeditiously as possible.

Effect
of non-
regis-
tration.

10. No employer of an establishment to which this Act applies shall,—

(a) in the case of an establishment required to be registered under section 7, but which has not been registered under that section, and 25

(b) in the case of an establishment the registration in respect of which has been revoked under section 8 and no appeal has been preferred against such order of revocation under section 9 within the period prescribed for the preferring of such appeal or where an appeal has been so preferred, such appeal has been dismissed, 30

employ building workers in the establishment after the expiry of the period referred to in clause (a) or clause (b) of sub-section (1) of section 7, or after the revocation of registration under section 8 or after the expiry of the period for preferring an appeal under section 9 or after the dismissal of the appeal, as the case may be. 35

CHAPTER IV

HOURS OF WORK, WELFARE MEASURES AND OTHER CONDITIONS OF SERVICE OF BUILDING WORKERS 40

Fixing
hours for
normal
working
day, etc.

11. (1) The appropriate Government may, by rules,—

(a) fix the number of hours of work which shall constitute a normal working day for a building worker, inclusive of one or more specified intervals;

(b) provide for a day of rest in every period of seven days which shall be allowed to all building workers and for the payment of remuneration in respect of such days of rest;

5 (c) provide for payment for work on a day of rest at a rate not less than the overtime rate specified in section 12.

(2) The provisions of sub-section (1) shall, in relation to the following classes of building workers, apply only to such extent, and subject to such conditions, as may be prescribed, namely:—

10 (a) persons engaged on urgent work, or in any emergency which could not have been foreseen or prevented;

(b) persons engaged in a work in the nature of preparatory or complementary work which must necessarily be carried on outside the normal hours of work laid down in the rules;

15 (c) persons engaged in any work which for technical reasons has to be completed before the day is over;

(d) persons engaged in a work which could not be carried on except at times dependant on the irregular action of natural forces.

20 12. (1) Where any building worker is required to work on any day in excess of the number of hours constituting a normal working day, he shall be entitled to wages at the rate of twice his ordinary rate of wages.

Wages
for
overtime
work.

(2) For the purposes of this section, "ordinary rates of wages" means the basic wages plus such allowances as the worker is for the time being entitled to but does not include any bonus.

25 13. (1) Every employer shall maintain such registers and records giving such particulars of building workers employed by him, the work performed by them, the number of hours of work which shall constitute a normal working day for them, a day of rest in every period of seven days which shall be allowed to them, the wages paid to them, the receipts given by
30 them and such other particulars in such form as may be prescribed.

Main-
tenance
of
registers
and
records.

(2) Every employer shall keep exhibited, in such manner as may be prescribed, in the place where such workers may be employed, notice in the prescribed form containing the prescribed particulars.

35 (3) The appropriate Government may, by rules, provide for the issue of wage books or wage slips to building workers employed in an establishment and prescribe the manner in which entries shall be made and authenticated in such wage books or wage slips by the employer or his agent.

40 14. No person about whom the employer knows or has reason to believe that he is a deaf or he has a defective vision or he has a tendency to giddiness shall be required or allowed to work in any such operation of building or other construction work which is likely to involve a risk of any accident either to the building worker himself or to any other person.

Prohibi-
tion of
employ-
ment of
certain
persons in
certain
building
or other
construc-
tion
work.

Drinking
water.

15. (1) The employed shall make in every place where building or other construction work is in progress, effective arrangements to provide and maintain at suitable points conveniently situated for all persons employed therein, a sufficient supply of wholesome drinking water.

(2) All such points shall be legibly marked "Drinking water" in a language understood by a majority of the persons employed in such place and no such point shall be situated within six meters of any washing place, urinal or latrine.

Latrines
and
urinals.

16. In every place where building or other construction work is carried on, the employer shall provide sufficient latrine and urinal accommodation of such types as may be prescribed and they shall be so conveniently situated as may be accessible to the building workers at all times while they are in such place:

Provided that it shall not be necessary to provide separate urinals in any place where less than fifty persons are employed or where the latrines are connected to a water-borne sewage, system.

Creeches.

17. (1) In every place wherein more than fifty female building workers are ordinary employed, there shall be provided and maintained a suitable room or rooms for the use of children under the age of six years of such female workers.

(2) Such rooms shall—

(a) be adequately lighted and ventilated;

(b) be adequate lighted and ventilated;

(c) be maintained in a clean and sanitary condition;

(d) be under the charge of women trained in the care of children and infants.

First-aid.

18. Every employer shall provide in all the places where building or other construction work is carried on such first-aid facilities as may be prescribed.

Canteens,
etc.

19. The appropriate Government may, by rules, require the employer—

(a) to provide and maintain in every place wherein not less than two hundred and fifty building workers are ordinarily employed a canteen for the use of the workers;

(b) to provide such other welfare measures for the benefit of building workers as may be prescribed.

CHAPTER V

SAFETY AND HEALTH MEASURES

Safety
Committee
and
safety
officers.

20. (1) In every establishment wherein five hundred or more building workers are ordinary employed, the employer shall constitute a Safety Committee consisting of such number of representatives of the employer and the building workers as may be prescribed:

Provided that the number of persons representing the workers shall, in no case, be less than the persons representing the employer.

(2) In every establishment referred to in sub-section (1), the employer shall also appoint a safety officer who shall possess such qualifications and perform such duties as may be prescribed.

21. (1) Where in any establishment an accident occurs which causes death or which causes any bodily injury by reason of which the person injured is prevented from working for a period of forty-eight hours or more immediately following the accident, or which is of such a nature as may be prescribed, the employer shall give notice thereof to such authority in such form and within such time as may be prescribed.

Notice of certain accidents.

10 (2) On receipt of a notice under sub-section (1), the authority referred to in that sub-section may make such investigation or inquiry as it considers necessary.

15 (3) Where a notice given under sub-section (1) relates to an accident causing death of five or more persons, the authority shall make an inquiry into such accident within one month of the receipt of the notice.

22. (1) The appropriate Government may, after previous publication, by notification, make rules regarding the measures to be taken for the safety and health of building workers in the course of their employment and the equipment and appliances necessary to be provided to them for ensuring their safety, health and protection, during such employment.

Power of appropriate Government to make rules for the safety and health of building workers.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

25 (a) the safe means of access to, and the safety of, any working place, including the provision of suitable and sufficient scaffolding at various stages when work cannot be safely done from the ground or from any part of a building or from a ladder or such other means of support;

30 (b) the precautions to be taken in connection with the demolition of the whole or any substantial part of a building or other structure under the supervision of a competent person and the avoidance of danger from collapse of any building or other structure while removing any part of the framed building or other structure by shoring or otherwise;

35 (c) the handling or use of explosives under the control of competent persons so that there is no exposure to the risk of injury from explosion or from flying material;

40 (d) the erection, installation, use and maintenance of transporting equipment, such as locomotives, trucks, wagons and other vehicles and trailers and appointment of competent persons to drive or operate such equipment;

45 (e) the erection, installation, use and maintenance of hoists, lifting appliances and lifting gear including periodical testing and examination and heat treatment, where necessary, precautions to be taken while raising or lowering loads, restrictions on carriage of persons and appointment of competent persons on hoists or other lifting appliances;

(f) the adequate and suitable lighting of every workplace and approach thereto, of every place where raising or lowering operations with the use of hoists, lifting appliances or lifting gears are in progress and of all openings dangerous to building workers employed;

(g) the precautions to be taken to prevent inhalation of dust, fumes, gases or vapours during any grinding, cleaning, spraying or manipulation of any material and steps to be taken to secure and maintain adequate ventilation of every working place or confined space;

(h) the measures to be taken during stacking or unstacking, stowing or unstowing of materials or goods or handling in connection therewith;

(i) the safeguarding of machinery including the fencing of every fly-wheel and every moving part of a prime mover and every part of transmission or other machinery, unless it is in such a position or of such construction as to be safe to every worker working on any of the operations and as if it were securely fenced;

(j) the safe handling and use of plant, including tools and equipment operated by compressed air;

(k) the precautions to be taken in case of fire; 20'

(l) the limits of weight to be lifted or moved by workers;

(m) the safe transport of workers to or from any workplace by water and provision of means for rescue from drowning;

(n) the steps to be taken to prevent danger to workers from live electric wires or apparatus including electrical machinery and tools and from overhead wires; 25

(o) the keeping of safety nets, safety sheets and safety belts where the special nature or the circumstances of work render them necessary for the safety of the workers;

(p) the standards to be complied with in regard to scaffolding, ladders and stairs, lifting appliances, ropes, chains and accessories, earth moving equipments and floating operational equipments; 30

(q) the precautions to be taken with regard to pile driving, concrete work, work with hot asphalt, tar or other similar things, insulation work, demolition operations, excavation, underground construction and handling materials; 35

(r) the safety policy, that is to say, a policy relating to the steps to be taken to ensure the safety and health of the building workers, the administrative arrangements therefor and the matters connected therewith, to be framed by the employers and contractors for the operations to be carried on in a building or other construction work; 40

(s) the information to be furnished to the Bureau of Indian Standards established under the Bureau of Indian Standards Act, 1936, regarding the use of any article or process covered under that Act in a building or other construction work; 45

(t) the provision and maintenance of medical facilities for building workers;

(u) any other matter concerning the safety and health of workers working in any of the operations being carried on in a building or other construction work.

23. The Central Government may, after considering the recommendation of the expert committee constituted under section 5, frame model rules in respect of all or any of the matters specified in section 22 and where any such model rules have been framed in respect of any such matter, the appropriate Government shall, while making any rules in respect of that matter under section 22, so far as is practicable, conform to such model rules.

Framing of model rules for safety measures.

CHAPTER VI INSPECTING STAFF

24. (1) The Central Government may, by notification, appoint a Gazetted Officer of that Government to be the Director General of Inspection who shall be responsible for laying down the standards of inspection and shall also exercise the powers of an Inspector throughout India in relation to all the establishments for which the Central Government is the appropriate Government.

Appointment of Director General, Chief Inspector and Inspectors.

(2) The State Government may, by notification, appoint a Gazetted Officer of that Government to be the Chief Inspector of Inspection of Building and Construction who shall be responsible for effectively carrying out the provisions of this Act in the State and shall also exercise the powers of an Inspector under this Act throughout the State in relation to establishments for which the State Government is the appropriate Government.

(3) The appropriate Government may, by notification, appoint such number of its officers as it thinks fit to be Inspectors for the purposes of this Act and may assign to them such local limits as it may think fit.

(4) Every Inspector appointed under this section shall be subject to the control of the Director General or the Chief Inspector, as the case may be, and shall exercise his powers and perform his functions under this Act subject to general control and supervision of the Director General or the Chief Inspector.

(5) The Director General, the Chief Inspector and every Inspector shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

25. (1) Subject to any rules made in this behalf, an Inspector may, within the local limits for which he is appointed,—

Powers of Inspectors.

(a) enter, at all reasonable hours, with such assistants (if any), being persons in the service of the Government or any local or other public authority as he thinks fit, any premises or place where building or other construction work is carried on, for the purpose of examining any register or record or notices required to be kept or exhibited by or under this Act, and require the production thereof for inspection;

(b) examine any person whom he finds in any such premises of place and who, he has reasonable cause to believe, is a building worker employed therein;

(c) require any person giving out building or other construction work to any building worker, to give any information, which is in his power to give with respect to the names and addresses of the persons to, for and from whom the building or other construction work is given out or received, and with respect to the payments to be made for the building or other construction work;

(d) seize or take copies of such register, record of wages or notices or portions thereof as he may consider relevant in respect of an offence under this Act which he has reason to believe has been committed by the employer; and

(e) exercise such other powers as may be prescribed.

(2) For the purposes of this section, the Director General or the Chief Inspector, as the case may be, may employ experts or agencies having such qualifications and experience and on such terms and conditions as may be prescribed.

(3) Any person required to produce any document or to give any information required by an Inspector under sub-section (1) shall be deemed to be legally bound to do so within the meaning of section 175 and section 176 of the Indian Penal Code.

45 of 1800.

(4) The provisions of the Code of Criminal Procedure, 1973, shall, so far as may be, apply to such search or seizure under sub-section (1) as they apply to any search or seizure made under the authority of a warrant issued under section 94 of the said Code.

2 of 1974.

CHAPTER VII

SPECIAL PROVISIONS

Responsibility of employers

26. An employer shall be responsible for providing constant and adequate supervision of any building or other construction work in his establishment as to ensure compliance with the provisions of this Act relating to safety and for taking all practical steps necessary to prevent accidents.

Responsibility for payment of wages and compensation

27. (1) An employer shall be responsible for payment of wages to each building worker employed by him and such wages shall be paid on or before such date as may be prescribed.

(2) In case the contractor fails to make payment of compensation in respect of a building worker employed by him, where he is liable to make such payment when due, or makes short payment thereof, then, in the case of death or disablement of the building worker, the employer shall be liable to make payment of that compensation in full or the unpaid balance due in accordance with the provisions of the Workmen's Compensation Act, 1923, and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.

8 of 1923.

2a. (1) An employer shall, at least thirty days before the commencement of any building or other construction work, send or cause to be sent to the Inspector having jurisdiction in the area where the proposed building or other construction work is to be executed, a written notice 5 containing--

Notice of commencement of building or other construction work.

(a) the name and situation of the place where the building or other construction work is proposed to be carried on;

(b) the name and address of the person who is undertaking the building or other construction work;

10 (c) the address to which communications relating to the building or other construction work may be sent;

(d) the nature of the work involved and the facilities, including any plant and machinery, provided;

15 (e) the arrangements for the storage of explosives, if any, to be used in the building or other construction work;

(f) the number of workers likely to be employed during the various stages of building or other construction work;

(g) the name and designation of the person who will be in overall charge of the building or other construction work at the site;

20 (h) the approximate duration of the work;

(i) such other matters as may be prescribed.

(2) Where any change occurs in any of the particulars furnished under sub-section (1), the employer shall intimate the change to the Inspector within two days of such change.

25 CHAPTER VIII

PENALTIES AND PROCEDURE

29. (1) Whoever contravenes the provisions of any rules made under section 22 shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to two thousand 30 rupees, or with both, and in the case of a continuing contravention, with an additional fine which may extend to one hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

Penalty for contravention of provisions regarding safety measures.

(2) If any person who has been convicted of any offence punishable 35 under sub-section (1) is again guilty of an offence involving a contravention or failure of compliance of the same provision, he shall be punishable on a subsequent conviction with imprisonment for a term which may extend to six months or with fine which shall not be less than five hundred rupees but which may extend to two thousand rupees 40 or with both:

Provided that for the purposes of this sub-section, no cognizance shall be taken of any conviction made more than two years before the commission of the offence for which the person is subsequently being convicted:

45 Provided further that the authority imposing the penalty, if it is satisfied that there are exceptional circumstances warranting such a course

may, after recording its reason in writing, impose a fine of less than five hundred rupees.

Penalty
for
failure to
give
notice
of the
commence-
ment of
the
building or
other cons-
truction
work.

30. Where an employer fails to give notice of the commencement of the building or other construction work under section 28 shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to two thousand rupees, or with both. 5

Penalty
for
obstruc-
tions

31. (1) Whoever obstructs an Inspector in the discharge of his duties under this Act or refuses or wilfully neglects to afford the Inspector any reasonable facility for making any inspection, examination, inquiry or investigation authorised by or under this Act in relation to an establishment shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both. 10

(2) Whoever wilfully refuses to produce on the demand of an Inspector 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, an Inspector acting in pursuance of his duties under this Act, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both. 15 20

Penalty
for
other
offences

32. (1) Whoever contravenes any other provision of this Act or any rules made thereunder or who fails to comply with any provision of this Act or any rules made thereunder shall, where no express penalty is elsewhere provided for such contravention or failure, be punishable with fine which may extend to one thousand rupees for every such contravention or failure, as the case may be, and in the case of a continuing contravention or failure, as the case may be, with an additional fine which may extend to one hundred rupees for every day during which such contravention or failure continues after the conviction for the first such contravention or failure. 25 30

(2) A penalty under sub-section (1) may be imposed—

(a) by the Director General where the contravention or failure relates to a matter to which the appropriate Government is the Central Government; and 35

(b) by the Chief Inspector where the contravention or failure relates to a matter to which the appropriate Government is the State Government.

(3) No penalty shall be imposed unless the person concerned is given a notice in writing—

(a) informing him of the grounds on which it is proposed to impose a penalty; and

5 (b) giving him a reasonable opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the imposition of penalty mentioned therein, and, if he so desires, of being heard in the matter.

(4) Without prejudice to any other provision contained in this Act, 10 the Director General and the Chief Inspector shall have all the powers of a civil court under the Code of Civil Procedure, 1908, while exercising any powers under this section, in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of witnesses;

15 (b) requiring the discovery and production of any document;

(c) requisitioning any public record or copy thereof from any court or office;

(d) receiving evidence on affidavits; and

20 (e) issuing commissions for the examination of witnesses or documents.

(5) Nothing contained in this section shall be construed to prevent the person concerned from being prosecuted under any other provision of this Act or any other law for any offence made punishable by this Act or by that other law, as the case may be, or for being liable under this 25 Act or any such law to any other or higher penalty or punishment than is provided for such offence by this section:

Provided that no person shall be punished twice for the same offence.

33. (1) Any person aggrieved by the imposition of any penalty under section 32 may prefer an appeal,— Appeal.

30 (a) where the penalty has been imposed by the Director General, to the Central Government;

(b) where the penalty has been imposed by the Chief Inspector, to the State Government.

within a period of three months from the date of communication to such 35 person of the imposition of such penalty:

Provided that the Central Government or the State Government, as the case may be, may, if it is satisfied that the appellant was prevented by sufficient cause from preferring an appeal within the aforesaid period of three months, allow such appeal to be preferred within a further 40 period of three months.

(2) The appellate authority may, after giving the appellant an opportunity of being heard, if he so desires, and after making such further inquiry, if any, as it may consider necessary, pass such order as it thinks fit confirming, modifying or reversing the order appealed against or may

send back the case with such directions as it may think fit for a fresh decision.

Recovery
of penalty.

34. Where any penalty imposed on any person under section 32 is not paid,—

(i) the Director General or, as the case may be, the Chief Inspector may deduct the amount so payable from any money owing to such person which may be under his control; or 5

(ii) the Director General or, as the case may be, the Chief Inspector may recover the amount so payable by detaining or selling the goods belonging to such person which are under his control; or 10

(iii) if the amount cannot be recovered from such person in the manner provided in clause (i) or clause (ii), the Director General or, as the case may be, the Chief Inspector may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business and the said Collector on receipt of such certificate shall proceed to recover from such person the amount specified thereunder as if it were an arrear of land revenue. 15

Offences
by com-
panies.

35. (1) Where an offence under this Act has been committed by a company, 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: 25

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect 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. 35

Explanation.—For the purposes of this section,—

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm. 40

Cogni-
zance of
offences.

36. (1) No court shall take cognizance of any offence punishable under this Act except on a complaint—

(a) made by, or with the previous sanction in writing of, the Director General or the Chief Inspector; or

(b) made by an office-bearer of a voluntary organisation registered under the Societies Registration Act, 1860; or 45

(c) made by an office-bearer of a concerned trade union registered under the Trade Unions Act, 1926.

(2) No court inferior to that of a Presidency Magistrate or a Magistrate of the First Class shall try any offence punishable under this Act.

5 37. No court shall take cognizance of an offence punishable under this Act unless the complaint thereof is made within three months from the date on which the alleged commission of the offence came to the knowledge of the Director General, the Chief Inspector, an office-bearer of a voluntary organisation or, as the case may be, an office-bearer of a
10 concerned trade union.

Limitation of prosecutions.

CHAPTER IX

MISCELLANEOUS

38. The provisions of the Workmen's Compensation Act, 1923, shall, so far as may be, apply to building workers as if the employment to
15 which this Act applies had been included in the Second Schedule to that Act.

Application of Act 8 of 1923 to building workers.

39. The provisions of this Act shall be in addition to and not in derogation of any other law for the time being applicable to building workers immediately before the commencement of this Act.

Application of other laws to building workers.

20 40. (1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.

Protection of action taken under the Act.

(2) No suit or other legal proceeding shall lie against the Government for any damage caused or likely to be caused by anything which is in
25 good faith done or intended to be done in pursuance of this Act or any rule or order made or issued thereunder.

41. The Central Government may give directions to the Government of any State as to the carrying into execution in that State of any of the provisions of this Act.

Power to give directions.

30 42. (1) If any difficulty arises in giving effect to the provisions of this Act, the appropriate Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as appears to it to be necessary or expedient for removing the difficulty:

Power to remove difficulties.

35 Provided that no such order shall be made in relation to any State after the expiry of two years from the date on which this Act comes into force in that State.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament or, as the case may be, before each House of State Legislature where it consists of two Houses, or, where such Legislature consists of one House, before that House.

5

Power
to make
rules.

43. (1) The appropriate Government may, after consultation with the expert committee, wherever it considers necessary, and after previous publication, by notification, make rules for carrying out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the number of persons to be appointed as members representing various interests on the Central Board and the State Board, the term of their office and other conditions of service, the procedure to be followed in the discharge of their functions and the manner of filling vacancies under sub-section (3) of section 3, or, as the case may be, under sub-section (3) of section 4;

(b) the fees and allowances that may be paid to the members of the expert committee for attending its meetings under sub-section (2) of section 5;

(c) the form of application for the registration of an establishment, the levy of fees therefor and the particulars it may contain under sub-section (2) of section 7;

(d) the form of certificate of registration and the conditions subject to which such certificate may be issued under sub-section (3) of section 7;

(e) the form in which the change in ownership or management or other particulars shall be intimated to the registering officer under sub-section (4) of section 7;

(f) the matters required to be provided under sub-section (1) of section 11 and the extent up to which, and the conditions subject to which, the provisions of that sub-section shall apply to the building workers under sub-section (2) of that section;

(g) the registers and records that shall be maintained by the employer and the form in which such registers and records shall be maintained and the particulars to be included therein under sub-section (1) of section 13;

(h) the form and manner in which a notice shall be exhibited and the particulars it may contain under sub-section (2) of section 13;

(i) the issue of wage books or wage slips to building workers and the manner in which entries are to be made and authenticated in wage books or wage slips under sub-section (3) of section 13;

(j) the types of latrines and urinals required to be provided under section 16;

45

(k) the first-aid facilities which are to be provided under section 18;

(l) the canteen facilities which are to be provided under clause (a) of section 19;

(m) the welfare measures which are to be provided under clause (b) of section 19;

(n) the number of representatives of the employer and the building workers under sub-section (1) of section 20 and the qualifications of safety officers and the duties to be performed by them under sub-section (2) of that section;

(o) the form of a notice of accident, other matters to be provided in this behalf and the time within which such notice shall be given under sub-section (1) of section 21;

(p) the rules to be made for the safety and health of building workers under section 22;

(q) the powers that may be exercised by an Inspector under clause (e) of sub-section (1) of section 25 and the qualifications and experience which the experts or agencies employed under sub-section (2) of that section shall possess and the terms and conditions on which such experts or agencies may be employed;

(r) the date on or before which wages shall be paid to a building worker under section 27;

(s) the matters which are required to be prescribed under clause (i) of sub-section (1) of section 28;

(t) any other matter which is required to be, or may be, prescribed.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

(4) Every rule made by the State Government under this Act shall be laid, as soon as may be after it is made, before each House of State Legislature where it consists of two Houses, or, where such Legislature consists of one House, before that House.

STATEMENT OF OBJECTS AND REASONS

The building and other construction work provides employment to more than two million building workers. Most of these building workers are engaged by contractors. But many of them are also employed on casual basis.

2. At present, certain aspects relating to employment and conditions of work of building and other construction workers are being regulated by certain legislative measures. There is, however, necessity for a specific legislation regulating more effectively the employment, safety, health, welfare and other conditions of service of building and other construction workers.

3. The State Government and Union territory Administrations were consulted about enacting an appropriate Central legislation for regulating the safety, health, welfare measures and other conditions of service of building and other construction workers. A majority of them has favoured such a legislation. The State Labour Minister's Conference held in July, 1980, also recommended a Central legislation to regulate the working conditions, hours of employment, payment of wages, welfare and safety measures in respect of workers in the building and other construction work.

4. The work of construction, maintenance, alteration, repair and demolition of buildings is characterised by inherent risk to the life and limb of the workers. In the absence of adequate statutory provisions, requisite information regarding the number and nature of accidents in respect of such matters is not available. However, it is generally accepted that the accident rate in respect of such matters is high.

5. In this context, the proposed legislation *inter alia*, provides for the following matters, namely:—

(i) to apply it to every establishment which employs, or had employed on any day of the preceding twelve months, fifty or more building workers in any building or other construction work;

(ii) to define "appropriate Government" in respect of various establishments and also to enable the Central Government to notify any public sector undertaking which is owned, controlled or managed by the Central Government in respect of which the Central Government will be the appropriate Government;

(iii) to empower the Central Government and the State Governments, as the case may be, to constitute Advisory Boards to advise on such matters arising out of the administration of the proposed legislation as may be referred to them. Such Advisory Boards shall consist, *inter alia*, of persons representing the employers,

building workers, association of architects, engineers, accident insurance institutions and any other interest which in the opinion of the Government, ought to be represented on such Boards;

(iv) to provide for the constitution of one or more expert committees consisting of persons especially qualified in building or other construction work for advising the Government for making rules under the proposed legislation;

(v) to provide for the registration of certain establishments, as defined in the proposed legislation, carrying on building or other construction work;

(vi) to enable the appropriate Government to fix hours for normal working day, day of rest, payment of wages for the day of rest, payment of overtime allowance and other welfare measures, such as facilities regarding drinking water, latrines and urinals, cèches, first-aid and canteens in respect of building workers;

(vii) to make adequate provisions in respect of building workers for their safety and health measures including appointments of safety committees and safety officers therefor;

(viii) to empower the Central Government to frame model rules for safety measures;

(ix) to provide for the appointment of appropriate inspecting staff including Director General of Inspection at the Central level and the Chief Inspector of Inspection of Building and Construction at the State level for ensuring effective implementation of the proposed legislation;

(x) to make special provisions regarding responsibility of employers to ensure compliance of the provisions of the proposed legislation and payment of wages in time to building workers;

(xi) to provide for deterrent punishment for contravention of provisions of the purposed legislation.

6. The Bill seeks to achieve the above objects.

NEW DELHI;

BINDESHWARI DUBEY.

The 25th November, 1988.

FINANCIAL MEMORANDUM

In accordance with the scheme of the Bill, the Central Government in relation to certain establishments carrying out building or other construction work will be the appropriate Government. There are certain provisions in the Bill, in particular, clauses 3, 5 and 24 and sub-clause (2) of clause 25 thereof, the administration of which may involve some expenditure from the Consolidated Fund of India. It is, however, proposed to incur expenditure only in respect of payment of fees and allowances to the concerned persons. It is not proposed to have a separate inspectorate organisation at the Centre for the purposes of the proposed legislation. At this stage it is not possible to make an accurate estimate of the amount which may be required for payment of the said fees and allowances. According to the present estimates, it is, however, not likely to exceed rupees one lakh per annum.

2. The provisions of the Bill do not involve any other expenditure of a recurring or non-recurring nature.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 11 of the Bill empowers the appropriate Government to make rules for fixing hours for normal working day for a building worker, a day of rest in every period of seven days which shall be allowed to all building workers and for the payment of remuneration of them.

2. Clause 22 of the Bill empowers the appropriate Government to make rules for the safety and health of building workers. Sub-clause (2) of that clause specifies the matters in respect of which rules may be made under this clause. These include, among other things, the safe means of access to, and the safety of, any working place, the precautions to be taken in connection with the demolition of a building or other structure, the handling or use of explosives, the erection, installation, use and maintenance of transporting equipments and lifting appliances, lighting of every working place, precautions to be taken to prevent inhalation of dust, etc., the precautions to be taken in case of fire, the steps to be taken to prevent danger to workers from live electric wires or apparatus, etc., the safety policy relating to the steps to be taken to ensure the safety and health of the building workers, the provisions and maintenance of medical facilities and other matters concerning the safety and health of building workers. Clause 23 of the Bill provides for framing of model rules by the Central Government for the safety measures referred to in clause 22. Clause 23 also provides that the appropriate Government shall, while making any rules in respect of any matter under section 22, so far as is practicable, conform to such model rules.

3. Clause 43 of the Bill empowers the appropriate Government to make, after consultation with the expert committee constituted under clause 5 of the Bill, wherever it considers necessary and, after previous publication thereof, rules for carrying out the provisions of the proposed legislation. Sub-clause (2) of that clause specifies the matters in respect of which rules may be made under clause 43. These include, among other things, the appointment, etc., of members representing various interests on the Central and State Advisory Boards, the various types of forms to be prescribed of applications, certificates, registers, etc., under various provisions of the Bill, latrines, urinals, first-aid facilities, canteen facilities and welfare measures for building workers, qualifications of safety officers powers to be exercised by an Inspector, conditions of service of the experts and agencies to be employed and the period within which wages shall be paid to building workers.

4. The matters with respect to which the said rules may be made are matters of procedure or administrative detail and it may not be possible to provide for them in the Bill itself. The provisions have also been made for laying of such rules before Parliament or the State Legislature, as the case may be

3. In view of the nature of legislation involved, clause 42 empowers the appropriate Government to remove by order any difficulty which may arise in giving effect to the provisions of the proposed legislation. This is by way of abundant caution and for covering difficulty which it is not practicable to visualise. It has, however, been provided that no such order shall be made after the expiry of a period of two years from the commencement of the Act. It has also been provided that a copy of every such order made shall be laid before Parliament or the State Legislature, as the case may be.

6. In the context of the circumstances as explained above, the delegation of legislative power involved is of a normal character.