

## **Information supplied by governments on the application of ratified Conventions**

**India**

Convention No. 81

### **India**

#### **Labour Inspection Convention, 1947 (No. 81)**

**India** (ratification: 1949). The Government has provided the following written information:

The Government indicates that India has an elaborate system of labour legislation. The enforcement of the various labour laws has been prescribed under the relevant provisions legislation and is secured through a system of labour inspectorates, both at the state and central levels. The system of inspections and follow-up action that exists in India includes prosecution in the criminal court of law.

The mandate of the Ministry of Labour and Employment is to safeguard the interest of the working class while promoting a working environment conducive to inclusive growth and industrial harmony. India is a fast-growing nation with the largest proportion of youth population and thus creation of decent jobs for all is the top priority for the Government. In this context, government policy is to create an enabling environment for growth and development which will create ample opportunities for decent work for all. The government is committed to the principles of inclusive and equitable growth. Therefore, a correct balance in the policy environment needs to be achieved so that, while ensuring decent work for all, undue transaction costs and inefficiencies in the implementation of labour laws are eliminated to make the business environment competitive. In this endeavour, the Government is guided by the ethos of tripartite consultations involving government, employers' and workers' organizations.

In its observation, the Committee of Experts refers to allegations made by the Centre for Indian Trade Unions (CITU), wherein the CITU alleged that the Government proposes to exclude a great number of workers from basic labour laws. The Government reiterates that no such amendments to the scope of application of any labour laws have been enacted by the Government to exclude the workers from the purview of labour laws. On the contrary, the Government is taking affirmative action, and proposes to expand the coverage of various labour laws. All the proposed amendments to labour laws are being discussed in appropriate tripartite forums, and only after consultations with all stakeholders are amendments carried forward. This is in accordance with the recommendations of the Second National Labour Commission. The objective of consolidation of labour laws is to ease the transaction costs of compliance, and not to relax the compliance requirements. The Committee of Experts also refers to the proposed Small Factories (Regulation of

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Employment and Conditions of Service) Bill, 2014. The objective of the Small Factories Bill, 2014, is to have a comprehensive law consolidating all the essential provisions of the existing labour acts into one piece of legislation so as to achieve effective compliance and enforcement for small factories employing less than 40 workers. By making compliance less burdensome and cost effective, it in fact encourages the small units to register under the proposed Small Factories Bill. The draft bill, after due tripartite consultation, is presently under examination by the legislative department of the Ministry of Law and Justice.

The Government appreciates the technical assistance provided by the ILO in the formulation of labour laws, particularly in the recent drafting of labour legislation (wages, industrial relations, safety and working conditions, and social security and welfare). The Government would be glad to avail itself of technical assistance from the ILO in the future whenever needed.

Regarding limitations in the inspection system prevalent in the country, it is submitted that the phrase “End of Inspector Raj” in this context does not mean an end of the inspection system, but is intended to mean an end of malpractices in the current inspection system. The Government wishes to make the inspection system efficient and transparent so that its effectiveness and consequently the compliance of labour laws can be improved.

The Government is giving full effect to the provision of the Convention. The Government reiterates its commitment to the obligations contained in the Convention that workplaces shall be inspected as often and as thoroughly as necessary. There is no intent either to dilute this principle in theory or practice or to relax the enforcement of the rule of law.

Factories in all states are governed by the Factories Act and there is a similar set-up in all states under a chief inspector of factories. The statistics show that there has not been any drastic decline in the past few years, nor have there been serious imbalances in the number of inspections in the states. For instance, in 2014–15 under the provisions of the Contract Labour (Regulation and Abolition Act) 1970, a total of 2,729 inspections were carried out in the central sphere up until December 2014, and these inspections resulted in 1,634 prosecutions and 1,510 convictions. Similarly, 4,852 inspections were carried out under the Minimum Wages Act, 1948, which led to the detection of 179,958 irregularities in payment of minimum wages and, consequently, 1,790 prosecutions were launched which resulted in 1,041 convictions.

In relation to labour inspection in special economic zones (SEZs), the Government indicates that the Special Economic Zones Act, 2005, does not preclude applicability of the labour laws in SEZs. Rather, section 49(1) of the SEZ Act, which deals with the power to modify different acts specifically, states that such modifications should not apply to the matters relating to trade unions, industrial and labour disputes, welfare of labour including conditions of work, provident funds, employers’ liability, workmen’s compensation, invalidity and old-age pensions and maternity benefits applicable in any SEZs. The Special Economic Zones Rules, 2006, lay down the procedure for the establishment of SEZs. These, among others, include delegation of powers to the Development Commissioner under the Industrial Disputes Act, 1947, and other related acts in relation to the unit and the workmen employed in the SEZs, and also declare the SEZs to be public utility services under the Industrial Disputes Act, 1947. The Government has not diluted the provisions of any labour laws and their enforcement for the SEZs. Only in certain cases, the Development Commissioner of the SEZ (who is a senior government employee) has been delegated the powers of a labour enforcement officer for the ease of implementing and expediting enforcement activities. This does not in any way dispense with requisite labour inspection, as provided for under different acts.

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With regard to the information technology (IT) and IT-enabled services (ITES) sectors, the central acts, such as the Minimum Wages Act, 1948, the Contract Labour (Regulation & Abolition) Act, 1970, the Payment of Wages Act, 1936, the Payment of Bonus Act, 1965, the Equal Remuneration Act, 1976, and the Payment of Gratuity Act, 1972, are applicable to these sectors. These establishments are inspected by the regular state government labour enforcement machinery like any other establishment. The working conditions in the IT and ITES sectors are regulated by the provisions of the Shop and Commercial Establishment Act of respective state governments and ensured through inspection and through returns submitted by employers.

The Committee of Experts has sought information on any amendments proposed to the Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988. This Act provides for the exemption of employers in relation to establishments employing a small number of persons from furnishing returns and maintaining registers under certain labour laws. The Government indicates, in this regard, that a series of tripartite consultations were undertaken on 23 January 2006, 22 June 2006, 1 March 2007, 15 March 2007 and 7 June 2007 prior to the introduction of the bill to amend this legislation, in 2011, which was subsequently passed by the Parliament on 28 November 2014. The amendment was notified on 10 December 2014.

With regard to the observation by the Committee of Experts concerning the self-certification system introduced in 2008 in the State of Haryana, the Government indicates that self-certification is fundamentally a support system to help the employer ensure compliance with labour laws on their own and then to support the labour inspector at the time of inspection. This scheme does not entail any relaxation of statutory inspections by labour inspectors. The Government emphasizes that this self-certification is an additional requirement to the system of statutory labour inspections and is in no way a substitute to the main work of labour inspection.

The Committee of Experts has sought information on the pay scales and code of conduct of labour inspectors. In India, the appointments of inspectors are notified in the *Gazette* and inspectors are deemed to be public servants, governed by relevant service conditions and conduct rules, and they take an oath of allegiance to the Constitution of India. All inspectors under the Factories Act, 1948, and the Dock Workers (Safety, Health & Welfare) Act, 1986, in major ports are appointed by a notification in the *Official Gazette* and as such their pay scales are the same as those applicable to other public officers such as tax inspectors. The pay scale of the inspector staff in all these organizations is 9,300 Indian rupees (INR) to INR34,800 + INR4,600 (GP) plus dearness allowance and other allowances as may be applicable.

On the matter of observations of the Committee of Experts regarding free access of labour inspectors to a workplace and the recommendation of the Committee of Experts to amend the Factories Act, 1948, and the Dock Workers (Safety, Health & Welfare) Act, 1986, so that the rights of inspectors to enter workplaces freely is guaranteed in law, the Government indicates that section 9 of the Factories Act, 1948, and section 4 of the Dock Workers (Safety, Health & Welfare) Act, 1986, already guarantees powers to inspectors to enter freely in workplaces and dockyards, etc. Thus amendment to the Factories Act, 1948, and the Dock Workers (Safety, Health & Welfare) Act, 1986, do not seem necessary.

The Committee of Experts has further suggested removing all restrictions in practice, where they exist, with regard to the principle of the free initiative of labour inspectors to enter any workplace liable for inspection. The existing labour laws guarantee this power to inspectors already. In practice, too, the right and power of the labour inspection authority has not been curtailed by the Government. As regards the inspection system in state governments, the Central Government does, from time to time, advise state governments to enforce labour laws effectively and to have effective enforcement mechanisms. The

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Government has recently launched a major good governance initiative to improve the labour enforcement mechanism in terms of transparency, accountability and ease of compliance with the ultimate aim of promoting industrial peace and harmony. The Government reiterates that the rights of the inspection authority have not been curtailed.

The observation of the Committee of Experts also concerns the inadequacy of penalties under the Factories Act, 1948, and the Dock Workers (Safety, Health & Welfare) Act, 1986, and the delay in making the necessary amendments to these Acts for enhancing penalties. The Government indicates that under the current provisions of these Acts, penalties consist of a fine or imprisonment, or both, depending on the nature of the violation. The Government is in the process of making certain amendments to the Factories Act, 1948, which, among others, include amendments with respect to provisions concerning penalties. Based on the inputs received from the stakeholders, the proposed amendments are under re-examination in the Ministry. The bill could not yet be passed due to a lack of consensus among various stakeholders on the proposed amendments.

The Government is committed to the cause of labour in the developmental process and ensuring efficiency and transparency in the world of work. It reiterates its commitments towards international labour standards, as prescribed by the ILO, and particularly the Convention. It remains open to any technical assistance from the ILO as needed.