

## **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.

#### **Reply to the Observations of the Committee of Experts**

##### **A. *Tripartite consultation on labour laws amendments/enactment of new laws***

India has an elaborate labour legislation system which operates through a federal structure. The country has ratified the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) and tripartite consultations are an integral feature of the labour law reform process. Based on the recommendation of the Second National Commission on Labour, the Government has taken steps to broadly codify the existing 44 central Labour Acts into four Labour Codes, including: the draft Code on Wages; the draft Code on Industrial Relations; the draft Code on Social Security and Welfare; and the draft Code on Occupational Safety and Health, in relation to which drafts have been prepared, except for the Code on Safety and Working Conditions, for which the drafting is at an advanced stage.

In accordance with the pre-legislative consultation policy of the Government, the draft Codes were uploaded on the website of the Ministry of Labour and Employment for a period of one month inviting suggestions from the public/concerned stakeholders. Subsequently, these draft Codes were also discussed in tripartite consultation meetings, involving representatives from the central trade unions, employers' associations, state governments and relevant central ministries. The Government has also consulted the ILO on a continuous basis for obtaining relevant technical assistance. It may be noted that the abovementioned Codes have not been adopted yet and are at the consultation stage only.

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The Government is also continuously engaged in amending important legislations with a view to making labour legislations attuned to the emerging requirements. Tripartite consultations constitute an integral component in formulating the relevant amendments. Some of the major amendments undertaken by the Government during the period 2015–17 with tripartite consultation concerned the Child Labour (Prohibition and Regulation) Amendment Act, 2016, the Maternity Benefit (Amendment) Act, 2017, the Payment of Wages (Amendment) Act, 2017 and the Payment of Bonus (Amendment) Act, 2015.

None of the legislation adopted has had any impact on the labour inspection system, or on the principles enshrined in Convention No. 81. The current national laws comply with the principles of Convention No. 81 and there is no intention on the part of the Government to move away from them. India has been taking, and would welcome in the future, technical assistance from the ILO in the legislative reform process.

## ***B. The free initiative of labour inspectors to undertake labour inspections***

As indicated in the last two reports submitted to the Committee of Experts in 2015 and 2016 and the report submitted to the Conference Committee in 2015, it shall be reiterated that no legislative amendments have been carried out to alter any of the existing provisions of the Acts that may dilute the provisions of Convention No. 81.

Technology-driven governance reforms have been introduced to strengthen the system, provide for transparency and accountability in the enforcement of labour laws and reduce the complexity of compliance. The web-enabled setup has only provided for the prioritization of inspections in workplaces based on risk assessments. The new setup has not curtailed the powers of inspectors to undertake workplace inspections in case that an inspection is required. Moreover, except for some routine inspections (which do not even make up 10 per cent of the total of inspections) all other inspections are unannounced. In the case of routine inspections, prior notice may be given (at the discretion of the inspector) to enable the employer to produce records for verification. It is reconfirmed that where there is a complaint or information with regard to any labour law violation, the system allows for full discretion/freedom to undertake an inspection of such an establishment at any point in time as well as to initiate the actions prescribed in the corresponding laws.

It is submitted for the consideration that the new system has enabled the inspectorates to better manage their inspection system and also to share the inspection information among agencies. A sizeable increase in the number of inspections is also witnessed since the launch of the new system. Details of the enforcement of various labour laws by the Central Labour Enforcement Agencies, including in relation to social security and safety in mines are provided in an annex to this submission.

Thus, the new inspection scheme has not affected the role of labour inspectors to undertake labour inspections where they have reason to believe that a workplace is in violation of legal provisions or when they believe that workers require protection. We again reiterate that labour inspectors have complete discretion, in law as well as in practice, to initiate prompt legal proceedings without previous warning, where required.

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**C. Annual reports on labour inspection activities, and statistical information on labour inspections**

Data is the basis for developing evidence-based policy initiatives. The Government has taken a number of steps over time to improve data on enforcement of labour legislation and labour inspection services. Data collection and reporting is done mainly by the Labour Bureau, a Department attached to the Ministry of Labour and Employment. The Government has also been obtaining technical assistance from the ILO to evaluate the data collection systems with a view to suggesting appropriate measures for improving their coverage and reliability. In fact, as requested by the Ministry, the ILO has undertaken an “Assessment of the Labour Statistics System in India” in 2014–15.

The Labour Bureau receives statutory statistics relating to the central and state levels in the form of annual returns under various Labour Acts. In addition to these annual returns, monthly returns are being received on a voluntary basis. These statutory and voluntary returns are received under 11 Labour Acts in relation to which reports have been released by the Labour Bureau in 2013 and 2014.

The Labour Bureau collects data on the enforcement of labour legislation in relation to the key legislation, i.e. the Factories Act, 1948, to be submitted through mid-year and annual returns. This data is compiled on an annual basis by the Labour Bureau and published as *Statistics of Factories*. The following statistics are attached to this submission: (1) detailed statistics for 2013, 2014 and 2015 in relation to 31 states/union territories concerning the number of factories inspected (under the Factories Act) and the number of factory inspectors; (2) information on the total number of labour inspectors in 2016 concerning some states; (3) information on the number of labour inspections undertaken in 2014–15, 2015–16 and 2016–17 as well as violations detected (concerning all Acts under the jurisdiction of the states) in relation to the states from which this information was available; and (4) statistics on occupational accidents for 2013, 2014 and 2015 in relation to some states/union territories.

The Labour Bureau has undertaken a project concerning the strengthening and modernization of the system for the collection of statistics from the states and establishments through the induction of technology, which is in the development phase. Upon implementation, the system for the collection and compilation of statistics shall be made online to the extent feasible. This will enable the Bureau to collect and compile timely statistics in the future.

We take note of the recommendation of the Conference Committee regarding the annual labour inspection report and the registers of workplaces liable to inspection. The Government is willing to seek the technical advice of the ILO on the matter.

**D. Self-certification and Occupational, Safety and Health (OSH) inspections undertaken by certified private agencies**

India has replied in detail to the observations made by the Committee of Experts concerning the self-certification scheme during the 2015 session of the Conference Committee, which has been noted by the Committee of Experts in its latest comments. We again reiterate that the self-certification scheme has been launched by some states, and that in no case has it ever substituted the labour inspection system. It is a scheme to encourage voluntary and simpler compliance, without compromising the rights of workers. Establishments availing themselves of the self-certification scheme are not exempted from

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the inspection process. Where security deposits are prescribed with the self-certification, the scheme provides for their forfeiture whenever a violation is detected.

India does not follow the system of private inspection services. The Government reaffirms its commitment to safeguard the interests of the working class while promoting a conducive working environment for inclusive growth and industrial harmony.

***E. Delegation of inspection powers in special economic zones (SEZs) and statistical information on labour inspections in SEZs***

There are seven SEZs zones in the country. In four zones, no powers have been delegated to the Development Commissioners of SEZs, whereas in another zone, which covers ten states, powers have been delegated only by one of these ten states. In two zones, powers have been delegated, while in one of these zones, no powers have been delegated under the Factories Act (which governs OSH regulations). Laws that are administered centrally have not been delegated in any of the zones. The Government has provided detailed statistics to the last Conference Committee and to the Committee of Experts in 2016 on inspections under various labour laws in individual states and SEZs, including on the number of inspectors, the number of units and the workers employed therein. This information is reiterated. The statistics on the enforcement of labour laws in SEZs where powers were delegated to the Development Commissioners is provided in an annex to this submission. In respect of the SEZs, where powers have not been delegated to the Development Commissioners, statistics are included in the inspection statistics of the different states, as no separate statistics are maintained.

As recommended by the Conference Committee, the Government, in a tripartite meeting held on 30 May 2017, reviewed with the social partners whether the delegation of inspection powers from the Labour Commissioner to the Development Commissioner in SEZs has affected the quantity and quality of labour inspections. Representatives of the Department of Commerce, the Government of India, officers from the SEZs and state governments were also present in this meeting. Reiterating their commitment for fundamental principles and rights at work, the employer representatives appreciated the single window system for compliance under labour laws and encouraged the Government to promote voluntary compliance mechanisms. The employers' representatives and state governments also expressed satisfaction concerning the present arrangements in relation to the delegation of inspection powers, while workers' representatives, in general, expressed that not only the rights of workers in SEZs, but also in other workplaces should be protected. One workers' representative did not agree with the views expressed by the representatives of the SEZs and the employers that the delegation of powers is working satisfactorily. However, he did not corroborate these statements with any statistics or specific instances. Accordingly, it was decided that the Government will institutionalize a system of regular review of the implementation of labour laws in SEZs.

IT and ITES companies are registered under the states' Shops and Establishment Acts and inspections therein are carried out by the state authorities, as the case may be and are included in the overall state's statistics. No separate statistics are maintained for the IT/ITES sectors.

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## ***F. Free access of labour inspectors to workplaces***

Reference is made to various labour laws providing for labour inspection powers. These laws provide that denying/preventing inspectors from accessing premises or records is an offence. Section 353 of the Indian Penal Code also provides that preventing public servants from discharging their duties (including denying them access) is a criminal offence.

There are no cases in which labour inspectors have not been able to access workplaces for inspections, hence the question of relevant statistics does not arise. The labour inspectors have the authority to avail themselves of assistance by the Police to compel access to workplaces, records or evidence whenever they face any concern. Labour inspectors can also initiate prosecutions in relation to persons denying them access to workplaces.

It is reiterated that labour inspectors are guaranteed free access to undertake labour inspections where they have reason to believe that a workplace is in violation of legal provisions or where they believe that workers require protection (Article 12(1)(a) and (b) of Convention No. 81).