

Committee on the Application of Standards

Date: 20 May 2021

Governments appearing on the preliminary list of individual cases have the opportunity, if they so wish, to supply on a purely voluntary basis, written information before 20 May 2021.

▶ Information on the application of ratified Conventions supplied by governments on the preliminary list of individual cases

India

Labour Inspection Convention, 1947 (No. 81)

(Ratification: 1949)

The Government has provided the following written information, as well as copies of the inspection scheme and an advisory sent to SEZs in 2019 to conduct unannounced inspections.

The Indian Government has taken note of the report of CEACR for 2020 and its 2021 Addendum on the application of Labour Inspection Convention in India. In this respect, the Indian Government wishes to bring to the attention of the Committee of Application of Standards the following information:

1. As regards to Ordinances of the State Governments of Uttar Pradesh, Madhya Pradesh, Rajasthan and Gujarat, the Indian Government wishes to point out that the Ordinances were received by the Central Government for concurrence as the subject of 'labour' falls in the concurrent list in 7th Schedule of the Constitution. Before promulgation of an Ordinance, the State Governments in the matters relating to labour laws, require approval of the Central Government. The Central Government (the concerned Ministry is M/o Labour and Employment in the Government of India) did not concur with any of the Ordinances. Hence, none of the Ordinances as mentioned in the Addendum were promulgated by any of the State Governments. India has a vibrant and independent judiciary. Any order which violates fundamental rights enshrined in the Constitution is amenable to judicial scrutiny. In case of Gujarat, increasing overtime hours from 8 hours to 12 hours a day without payment of overtime was struck down by the Supreme Court of India.
2. As regards certain Executive Orders issued by the State Governments under the Factories Act, 1948 it is submitted that the State Governments have statutory powers under Section 5 of the Factories Act to issue Executive Orders to exempt operation of various provisions of the Act applicable on factories for a limited period of 3 months in emergency. Concerning the issue of Executive Orders by Madhya Pradesh Government, it is clarified

that it was for a limited period of 3 months and was issued in exercise of powers under Section 5 indicated above. Period of 3 months has lapsed and no further order has been issued. The Central Government has not issued any orders exempting any factory/establishment covered under the Factories Act from the purview of inspection.

3. Labour inspection in SEZs:

- a) It is reiterated that Central Government had issued advisories to all State Governments and SEZs to carry out unannounced inspections. Thereafter, no complaint or report has been received from any person or Trade Union stating that any State Government or labour inspector in SEZ at present are giving notice prior to labour inspection. We further reiterate that in Central Sphere, 100 percent inspections are carried out unannounced. Inspections in Central sphere are being done by allotting the establishments to labour inspector on random basis through Shram Suvidha Portal which brings objectivity in shortlisting of establishments for inspection. Four newly enacted codes include (i) The Code on Wages, 2019 (ii) The Industrial Relations Code, 2020 (iii) The Occupational Safety, Health and Working Conditions Code, 2020 and (iv) The Code on Social Security, 2020. Inspection system under all these Codes has been given statutory backing and has been further strengthened by introducing the concept of surprise element even in respect of inspectors and establishments to be visited by them implying that the nexus between jurisdiction and a particular inspector has been made done away with. Requisite provision has been made to post the Report on the website within a specified period which at present is 48 hours.
- b) In so far as detailed statistical information on number of labour inspections for the year 2020–21 is concerned, it is common knowledge that COVID 19 pandemic and subsequent lockdowns have severely disrupted functioning of industries/ establishments and has also adversely impacted attendance of labour inspectors in the country. Even for sake of arguments, requisite information is collected for as suggested but the collected statistics would not be comparable vis-à-vis preceding years when economy and the establishments were functioning without any impact of COVID 19 pandemic. However, it is assured that requisite information will be made available after resumption of normalcy in industries and attendances in office.

4. Availability of statistical information on the activities of the labour inspection services at the central and state levels. Availability of statistics in specific sectors:

- a) For registration of workplace at Centre and State Level, we are glad to inform that at the Central level, Employees' Provident Fund Organization have been publishing through their website monthly data on number of establishments added/ enrolled with EPFO and the number of new employees (a workers who has first time availed the benefit). Information on registration of workplaces on real time basis is posted on EPFO's website. Statistics since commencement of online publication of payroll data is as under:

Year	No. of establishments registered with EPFO	No of registered workers with EPFO
2018-19	1,250,219	224,620,924
2019-20	1,350,372	240,125,801
2020-21	1,596,471	248,535,991

- b) This online system of EPFO is real time as stated and it is seeded with Unique Identity (Aadhar Number) linking Universal Account Number (UAN). In new Labour Codes, mandatory online registration of establishment has been made and there is single registration. Applicability of requirement of registration is mandatory for establishments under Central as well State Government sphere. From 2022-23, complete data on registration of workplaces at Central and State level would be available on real time basis and in electronic mode.

5. Material means and human resources at the central and state levels:

- a) It is reiterated that there has been no dearth of resources at the disposal of Central Labour Inspection agencies and the same applies for the State Governments although the data of all these State Governments are not Centrally maintained.
- b) Adequate transport facilities are available as per entitlement of each officer besides there is a provision of transport allowance which is paid on monthly basis as part of monthly salary. Further, we would reiterate that the compilation of information of the State Governments may not be possible at present and it is assured that the same shall be provided at the earliest possible opportunity. Inspection made in Central Sphere is as follows:

Head	2018-19	2019-20
Inspections conducted	36,470	40,698
No of irregularities detected	2,10,697	2,15,927
No. of irregularities rectified	1,13,119	98,152
No of prosecution cases filed	6,613	6,747
No of convictions secured	2,433	3,168

6. Free initiative of labour inspectors to enter workplaces without prior notice, and discretion to initiate legal proceedings without previous warning:

- a) There is no violation of Article 12(1)(a) of the Convention under newly enacted The Occupational Safety, Health and Working Conditions Code, 2020, (**OSH code**). It is confirmed that the OSH code does not envisage under any of the provisions taking away the power of inspection including free entry without previous notice at any hour of the day or night any workplace liable for inspection. Section 35 of the OSH Code gives the Inspector-cum-Facilitator all the powers of free entry to the workplace, to inspect and examine any premises, plant machinery or article, inquire into any incident and all other powers required for effective inspection. Section 38 of the OSH Code entitled "**Special powers of Inspector- cum-Facilitator in respect of factory, mines, dock work and building or other construction work**" confers wide and unfettered powers to Inspector cum Facilitator to carry out inspections. The idea of addition of word 'Facilitator' with inspector is also to support and strengthen the rights of workers, to extend advice/ support in complying with the various provisions of the Code. It supplements the powers and does supplant the powers of inspection. It is to be noted that the guidelines framed under Code on Wages will not include any instructions which is in violation of Article 12(1)(a) of the Convention. All Rules drafted under various codes including under the Code on Wages were published for consultation with stakeholders and it is confirmed that they did not have any clause which violated Article 12(1) (a) of the Convention.

- b) Section 20 of The Occupational Safety, Health and Working Conditions Code, 2020 titled 'safety and occupational health survey' aims at empowering the various organizations under Ministry of Labour and Employment and the officers to conduct surveys of any establishments including allowing examination of facilities, testing of plant and machinery, collection of samples required for survey. This section does not relate to inspection, it only enables an officer of the organization responsible for occupational safety, health to collect data or take samples for furtherance of requirement of health and safety at workplace. The schematic arrangement of various chapters under the OSH Code is such that Chapter IX contains provisions governing inspections and the "Inspector-cum-Facilitator and Other authority" and whereas Section 20 in Chapter IV concerns "**Occupational Safety and Health**" and, inter-alia, envisages setting up of the National Occupational Safety and Health Advisory Board (Section 16), State Occupational Safety and Health Advisory Board (Section 17), Occupational Safety and Health Standards (Section 18), Research and related activities (Section 19), Collection of Statistics and Portal for inter-State migrant workers (Section 21). Section 20 entitled "Occupational Safety and Health Survey" is intertwined between above mentioned sections and pertains to collection of data, taking of samples by the officers in the interest of promoting health and safety at workplace and in no way impedes free inspection by labour inspector.

7. In addition to above, the Indian Government would also like to submit the following information:

- a) There is in place a scheme of inspection which includes emergency inspections (in case of accidents, strikes etc) and mandatory inspection (carried put atleast once a year). A copy of the inspection scheme in the central sphere is annexed.
- b) Essence of Section 110 of the OSH Code: The prosecution cases in the current Judiciary system take a lot of time to be processed and although the employer would be penalised at the end, the worker's right also gets delayed. Hence, prosecution does not always serve the purpose of the worker. Section 110 introduces a provision of "improvement notice" wherein if violation of any labour law is detected; the Labour inspector is entitled to send a notice to the Employer regarding violation of concerned labour law and to rectify the violation. In other words, it aims to ensure that violations are timely addressed. However, this is a limited window facility available to the inspector. The benefit of the Section is given to the employer only once in 3 years.
- c) Delegation of powers of inspection to Development Commissioner in SEZ: In SEZs, Development Commissioner is only an administrative arrangement for promotion of industrial activities. In the SEZs, where the power has been delegated to Development Commissioners, the labour inspectors from State Government have been deputed under him to carry out the functions of labour inspections in SEZs. These inspectors are still drawing the salary from their respective state governments and function independently to effectively enforce the labour laws.
- d) The Indian Government would also like to assure the Committee that the following actions will be undertaken at the earliest and information will be sent to the Committee:
- (i) In line with the advisory sent to SEZs in 2019 to conduct unannounced inspections (copy annexed), we will again send an Advisory to ensure independence of labour inspections as well to ensure that all inspections are unannounced to SEZs and States/ Union Territories.

- (ii) An advisory will be sent to Chief Labour Commissioner (Central) as well as to States/ Union Territories to set an appropriate minimum number of inspections to be undertaken every year.
- (iii) Statistical information on labour inspection for the years 2019-2020 and 2020-2021 will be compiled and sent at the earliest.