

**“OCCUPATIONAL SAFETY HEALTH AND
WORKING CONDITIONS CODE, 2020: A RAY OF
HOPE FOR THE MINING SECTOR IN INDIA?”**

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ABSTRACT

The Occupational Safety Health and Working Conditions Code, 2020 is one of the three legislations which have been introduced by the Parliament in India to consolidate the prior existing central labour laws. The Code comprise of provisions relating to enhancement of the welfare and working conditions across various types of establishments across India including mines. Mining sector in India has boomed over the years as the demand as well as significance of minerals across the world has increased. However, the working environment in mines continues to be hazardous and it has often been seen that the workers are physically, socially and economically exploited at such establishments. The exploitation is especially prevalent in tribal areas, as can be seen by the dismal state of affairs existing in the mining industry of Jharkhand. The paper tries to provide a detailed analysis and comparison of the newly incorporated provisions in the Code alongside the

Mines Act, 1952 and tries to throw light on the current state of affairs existing in the mine industry of Jharkhand and examine the challenges existing at the ground level, analyzing as to whether the provisions of the Code will be able to bring a change in the working conditions existing in the mining industry.

Keywords: OSH Code, 2020; Mines Act, 1952; Labour Laws; Mines; Jharkhand; exploitation; workers.

INTRODUCTION

The Occupational Safety Health and Working Conditions Code, 2020 (hereinafter referred as ‘OSH Code’) comprise of provisions which will be applicable across various types of establishments across India and one of them is mines. Mining sector in India has boomed over the years as the demand as well as significance of minerals across the world has increased. However, the working environment in mines continues to be hazardous and it has often been seen that the workers are physically, socially and economically exploited at such establishments. The Constitution of India states that administration of the mining sector in India is the collective responsibility of the Central governmentⁱ as well as the State governmentsⁱⁱ. The Mines Act, 1952 is employed for the safety, security, protection and welfare of labourers and workmen employed in mines in India. The provisions of this Act along with certain additions and alterations have been incorporated in the OSH Code.

The present paper aims to provide a detailed analysis and comparison of the newly incorporated provisions in the

OSH Code alongside the Mines Act, 1952 relating to the mining sector. It would try to explore as to whether these provisions will be able to improve the safety, health and working conditions of the mine workers as well as pin point the areas which have been left unaddressed by the draftsmen. The paper also discusses at length the authorities which have been incorporated in the OSH Code. The paper then would exhibit the current state of affairs existing in the mine industry of Jharkhand and examine the challenges existing at the ground level, analyzing as to whether the provisions of the OSH Code will be able to bring a change in the working conditions existing in the mining industry.

AN INSIGHT TO THE PROVISIONS RELATING TO 'MINES'

UNDER THE OSH CODE

The Mines Act, 1952 is the chief legislation which has been instrumental in keeping a check and control over all the mines in the country, but the same will be substituted by the OSH Code. The need for this new labour code arises as the government of India has pondered over the fact that over the time there has emerged a need to overhaul the labour laws so as ensure simplification and to keep in touch with emerging forms of labour. The factors like multiplicity of laws each on wages and social security for different categories of workers with varying definitions of certain common terms such as “appropriate government”, “worker”, “employee”, “establishment”, and “wages”, resulted in varied interpretations that needed a quick response. OSH Code is the consolidation of 13 labour laws

of India. The Mines Act, 1952 is one of those 13 laws which is being merged together to form the OSH Code.

The draftsmen of OSH Code were well aware of the fact that mines are one of those workplaces which need effective labour laws so as to facilitate optimum utilization of resources and workforce present there. A mine has been defined under Section 2(zl) of the OSH Code. The OSH Code has dealt with mines through the provisions discussed below.

1. DEFINITION CLAUSE

The definitions under the Mines Act, 1952 and OSH Code in regards with words like Agent, Adult, Office of Mine, Open Cast Working, and Owner are exactly the same in both the legislations. The definition of legal words used in reference with Mines i.e. Establishment, Employee, Employer, Factory, District Magistrate, Hazardous Process, Inspector-cum- Facilitator, Mine, Principal Employer, Wages and Worker has however been amended according to the changing time and scenario.

2. REGISTRATION OF THE MINE

Under Section 3(1) of OSH Code it is compulsory for every establishment upon which this code applies or which will come into existence after the commencement of this code to get it registered with registering authorities within 60 days from the date of commencement of this Code. As a mine is also an establishment under the Section 2 (v) of OSH Code the laws pertaining to registration of an

establishment are also applicable over it. If an employer does not undergo the registration process of the establishment, the concerned employer is not allowed to appoint any employee for the establishment.

Registration of mines by its employers, i.e., owners and agents was not required under the Mines Act, 1952. However, every establishment including mines which come into existence after the commencement of OSH Code and to which this Code shall apply is without default required to get it registered before the registering authority authorized for this by the government of India under Section 3 of the OSH Code. The mandatory registration requirement will be a positive step towards ensuring higher accountability and better governance of such workplaces. There is also a provision to file an appeal before an appellate authority who shall be a person notified in this behalf by the government if someone is aggrieved by the order made under Section 3 of OSH Code.

3. DUTIES OF AN EMPLOYER

With respect to the fact that who is to be considered as an employer and employee, both the Mines Act, 1952 and the OSH Code are on the same wavelength. The owner or agent of a mine is considered as the principal employer of mines under Section 2 (zz) of OSH Code. The OSH Code prescribes certain obligations and responsibilities upon every employer of an establishment which they are bound to fulfill. These duties of the

employer are divided into three groups in this code. The first group comprises of the list of the general duties which every employer registered under the Code has to perform. The second list of duties is pertaining to those establishments which require extra care and attention like factory, mine, dock work, building or construction work, plantation etc. The third list of duties includes more stringent duties which are specially designed for the employers of mine.

The duties of the first group have been mentioned under Section 6 of the OSH Code which include duty as to ensure that the workplace is free from hazards that can cause injury or any occupational diseases, to comply with the occupational safety and health standards mentioned in the Section 18 of the OSH Code, to provide for regular health checkups at free of cost and maintain safe working environment, to ensure there is proper disposal of waste including e-waste, that every employee has been issued an appointment letter, that no charge is levied over employees for the maintenance of safety and health conditions and to be more careful regarding the safety and health of employees if the establishment is mine, dock work, building or construction site.

The duties of the second group have been listed under Section 6 (2) of the OSH Code which include duty as to ensure that the plants, systems, arrangements related to use, handling, transport and storage of articles of work are safe, maintained

and without risk to health. Also, to make provisions for such information, training, and supervision as are necessary for ensuring health and safety of employees and to ensure that not only there is proper maintenance and safety but also a safe working environment of the work place for the employees.

The duties of the third group mentioned under Section 7 of the OSH Code which should be performed only by the owners, agents and managers of the mine include that the owners and agents of mine are jointly and severally responsible for making financial and other provisions and for taking steps to ensure that all the bye-laws, rules and order made in relation to mines is complied with. Moreover, if there is a contravention in compliance with the provisions made under OSH Code, then the officials appointed for the compliance of provision contravened, the manager of mine, the owner and agent of mine, the person appointed under Section 24 of the code besides who contravenes, shall be deemed to be guilty of such contravention unless he proves that he had taken due diligence to secure compliance with the provisions and reasonable means to prevent such contravention. If the suit is brought under Section 7 of OSH Code against the owner and agent of mine, then the defence that the manager and other officials appointed are to be held responsible under the provisions of this Code cannot be taken. These duties present in the OSH

Code are more exhaustive and profound than the duties present in the Mines Act, 1952. In light of the same, it can be stated that the present OSH Code brings forward a better mechanism to put on more responsibility and accountability upon the employers for good governance of workplaces.

The chapter V titled 'Health, Safety and Working Condition' under Section 23(1) holds the employer of an establishment responsible for the maintenance of health and safety conditions there. The employer should take care of all the basic amenities which could be required by the employees in their workplaces during their working hours. It includes facilities like clean drinking water, proper ventilation and humidification, environment free from dust and other impurities, adequate lighting, separate arrangement for loo for men, women and transgender etc. The Code has rightly recognized the needs of transgender present at mines and such provision was absent in the Mines Act. Medical services like the presence of a first aid box should be easily accessible throughout the day and medical examinations of employees should be regularly conducted.

4. DUTIES OF AN EMPLOYEE

The proviso to Section 2(t) of OSH Code defines 'person employed in mines', i.e., employees of mines as those who work as a manager or who work under appointment by the owner, agent or the manager or with the knowledge of manager

whether for wages or not in the mine. The OSH Code under Section 13 enumerates the duties of employees which the latter is bound to perform.

The duties are taking reasonable care of health and safety himself and other people working in the workplace, complying with safety and health standards of the Code, Cooperating with the employer, reporting to safety officers or officials for his workplace about the unhealthy and unsafe situations occurring in mine and not willfully interfere or misuse with the appliances at the workplace or endanger himself or others.

5. RIGHTS OF AN EMPLOYEE OF MINE

Besides duties, the employees also have certain rights granted to them under this Code under Section 14. The rights include:-

- Right to receive information about the employee's safety and health at work from the employer.
- Right to confront the employer directly or through a member of Safety Committee for inadequate provisions for the protection of his safety and health in the workplace and if not satisfied by the employer, then the right to represent to Inspector-cum-facilitator.
- If the employee has the reasonable apprehension of imminent personal injury or death, then he has the right to bring into notice about the same firstly

to the employer and then to the Inspector-cum Facilitator.

- Right to take imminent remedial action if satisfied that there is presence of imminent danger and then reporting the same to the Inspector-cum Facilitator.
- Right to receive full payment of wages when his employment is prohibited by the inspector- cum –facilitator under Section 38(1) (B) (b) and 38(1) (B) (d) of the code.

There are certain situations mentioned under Section 10 of the OSH Code which if take place in the mine, then the employer is duty bound to send the notice informing the same to the concerned authorities. The situations include the occurrence of an accident which leads to death or bodily injury to an employee who due to the same is prevented from working for a period of 48 hours or more, an occurrence which causes bodily injury or any physical disability and that the worker contracts any disease specified under Third Schedule of the OSH Code.ⁱⁱⁱ

6. WELFARE PROVISIONS

The Central Government has been vested the power under Section 24 of the OSH Code to direct any employer to maintain in his mines following welfare facilities:-

- Separate and suitable facilities for washing, bathing and locker rooms,

drying clothes for male, female and transgender employees.

- Sitting arrangement for all the employees who are obliged to work in a standing position.
- Canteen facilities where 100 or more persons are employed.
- Medical facilities like regular health checkup at fixed intervals of time period, presence of sufficient first aid boxes during all working hours.
- The presence of an ambulance room has been mandated in every mine where more than 500 persons are employed.
- Adequate and separate shelter rooms, rest rooms, lunch rooms for male, female and transgender employees where more than 50 persons are employed.
- Appointment of welfare officer in a mine where more than 250 workers are employed.
- The facility of crèche is to be provided by having suitable rooms for the use of children of the employees under the age of six years. It is to be situated either separately or along with common facilities in mines at suitable location and distance wherein more

than fifty workers are ordinarily employed.

The Mines Act, 1952 under the health and safety conditions and welfare provisions included only a few provisions such as Section 19, 20, and 21 dealing with drinking water, conservancy and medical appliances. On the other hand, the OSH Code in its Chapter V and VI contemplates a number of Health and Safety Conditions and Welfare provisions which must be accorded to by every establishment registered under the Code. Thus, it can be said that the OSH Code has expanded the scope of welfare for the employees and it is a welcome step.

7. WOMEN EMPLOYMENT

The importance of the OSH Code lies in the fact that it has significantly contributed towards women empowerment in the labour force. Under the provisions of this Code^{iv}, women are now entitled to get employment in any establishment comprising of any type of work, with their consent before 6 am and beyond 7 pm. The Code also directs employers to take adequate measures for the safety and well-being of women at the workplace especially when she is employed in some dangerous operation. The Mines Act, 1952 also allowed women to work in mine but they could be employed only between 6 am and 7 am. Also, they were never employed in any part of mine below ground. Thus, the Code has tried to

uphold that women can work at par with men in mines.

8. EMPLOYMENT OF MINORS IN MINE

Under S. 70 Persons who are less than 18 years of age are not allowed to work in the mines. However, trainees and apprentices, not below 16 years of age, with the prior approval of the Inspector are allowed to work under proper supervision of the senior officials. These provisions will help curtailing child labour in mines.

9. HOURS OF WORK AND WAGES^v

The Code directs the government to notify working hours for various classes of establishments and employees and for women workers. In mines, workers are allowed to work below ground and above ground only for 8 hours a day. The workers working below ground should work in shifts, the period of which should not exceed the prescribed 8 hours. Furthermore, workers in mine are directed to work for only 6 days a week. For overtime, the prior consent of workers is required along with the payment of overtime wage. Every worker is entitled to one day of leave for every 20 days of work in a calendar year.

10. LEAVE WITH WAGES

Under the Mines Act, 1952 a complete chapter dealt with 'Leave with wages', however the same provisions have been reduced under the OSH as it

comprises of only a singular section regarding the same. In the Mines Act, 1952, the calendar year is deemed to be completed when the worker below ground in mine completes his attendance of one hundred and forty days and the worker working above the ground completes his attendance of two hundred and forty days in mine. Whereas, under Section 32 of OSH Code the calendar year for every worker completes after working in mine for more than one hundred and eighty days. He is entitled for a leave in a calendar year with wages for fifteen days of his work. The other workers are entitled for a leave with wages for their twenty days of work while the worker below ground receives the benefit after their fifteen days of work.

Furthermore, the Mines Act, 1952, provides that if a worker below ground does not commence his job on the first day of January, then he has to work for two-thirds of the days and with respect to any other worker, he has to work for one-half of the remaining days left in the calendar year respectively. However, as per the Code, if a worker commences his work not on the first day of January, then he has to put in the attendance of at least one-fourth of the days left in the calendar year to receive annual leave with wages. Therefore the new OSH Code has brought in a new development for the welfare of the mine workers and has set new standards of compliance in the Indian mining industry.

**AUTHORITIES UNDER OCCUPATIONAL SAFETY HEALTH
AND WORKING CONDITIONS CODE, 2020**

**1. CENTRAL BOARD AND STATE BOARD NATIONAL
AND STATE-LEVEL OCCUPATIONAL SAFETY AND
HEALTH ADVISORY BOARD:**

Under Section 12 of Chapter 3 of the Mines Act, 1952, the constitution of Committees by the Central Government by notification in the Official Gazette was mandated. This Committee performed various functions as stipulated in the Act and had the power to perform the functions of an inspector if required for discharging its duties. While trying a suit the Committee had the same powers as are vested in a Court under Code of Civil Procedure Code, 1908 while trying a suit.

On the other hand, the OSH Code under Section 16(1) and Section 17(1) provides for the constitution of National Occupational Safety Health and Advisory Board by the Central Government and State Occupational Health and Advisory Board by the State Government.

The authorities have been directed to set up a National Occupational Safety and Health Advisory Board under the OSH Code that will advise the federal government on matters relating to the standards, rules, and regulations to be declared under OSH Code, the implementation of its provisions and formulation of policy relating to matters of occupational safety and health and any other matters referred to it. Constitution of similar state-level advisory board has also been provided for under the OSH Code.

2. DISTRICT MAGISTRATE

The District Magistrate has the power under Section 36 of the OSH Code to perform the functions of Inspector-cum-Facilitator in case of mines within his jurisdictional areas.

3. INSPECTOR-CUM- FACILITATOR

Inspector-cum- Facilitator^{vi} is the officer who has the power to enter, inspect and examine any area of mine, inquire into the incidents of accidents or dangerous occurrences at the workplace, provide important information and sensitize the employers and employees about how to adhere to comply with the provisions of the Code. Additionally, the Inspector-cum-Facilitator may also require the employers to produce any register; he also has the power to search and seize any register, records or document and can take photographs, measurements and videos for the reason of examination and inquiry. He further has the power to show-cause notice and can also prosecute, conduct and inspect any complaint made under the OSH Code. With respect to mines, the Inspector-cum-facilitator has special powers:-

- (i) If the Inspector-cum- Facilitator feels that there is no express provision in the Code for a hazardous issue that could be dangerous for the health and safety of employees then the Inspector-cum- Facilitator may by summoning a notice to the employer, require him to remedy the same issue within the given time.
- (ii) If the employer fails to act on the notice served by the Inspector-cum- Facilitator, he can then prohibit the employment of any person in mine whose employment is not required for the compliance of terms of notice.

- (iii) He can prohibit the extraction of minerals from the mine if he is of the opinion that it can cause crushing of blocks of minerals or premature collapse of any part of workings or that adequate provisions are not present for outbreak of fire or flooding.
- (iv) He can prohibit the employment of any person in or about the mine if he believes that there is looming danger to the life and safety of mine worker and he may prohibit the same till the period he is satisfied that the danger has been removed.
- (v) Every person whose employment has been prohibited because of above mentioned reasons is entitled to receive full wages from the employer of the mine.

The Chief Inspectors and the Inspectors were appointed statutorily by the Government of India under the Section 5 of the Mines Act, 1952 to control and supervise the operations of mining areas all over India. But after the enforcement of OSH Code, these statutory posts will get substituted by the statutory posts of the Chief Inspector-cum-Facilitator, Additional Chief Inspector-cum-Facilitator, Joint Chief Inspector-cum-Facilitator, Deputy Chief Inspector-cum-Facilitator and Inspector -cum- facilitator.

Unlike the Mines Act, 1952, the OSH Code has not only introduced the system of 'inspection scheme'^{viii} for the purposes of making an effective web - based inspection and calling of information about an establishment but also has provided for the factors for designing of the inspection scheme. All the functions which were earlier performed by

inspectors and chief Inspectors will be performed by the Inspector-cum- facilitator and chief Inspector-cum-facilitator respectively.

It is needs to be noted that under the new Code there has been considerable progress with regards to the powers of the Inspector- cum – facilitator as it has increased his powers when compared with the powers of inspectors appointed under the Mines Act, 1952. The powers are mentioned in Section 35(1) of the Mines Act, 1952. There is also a separate provision describing the special powers of the Inspector-cum- facilitator of mines. Random authorization of Inspector- cum- facilitator is another feature included in the Code, to increase transparency and reduce corruption.

4. MEDICAL OFFICER

Medical officers are appointed by the Government of India under Section 42 of the OSH Code in every mine to perform the functions of examination and certification of workers in the mine, providing medical administration where the cause of illness of workers is the nature of work they do and also providing fitness certificates to adolescents for employment in mine. The term 'Certifying Surgeon' used in the Mines Act, 1952 for medical practitioners providing health related services to the workers of mines is not used in the OSH Code. Rather, the term Medical Officer has been used in the Code. The Medical Officer performs the duties like examination as well as certification of workers employed in the dangerous activities of the mine and providing medical supervision when the illness is

primarily caused by the nature of work carried on in the mine.

Thus, it can be concluded that the scope of power as well as reach of the authorities has been expanded under the OSH Code and the primary reason behind the same is the level of corruption and manipulation that exists at the ground level in mines. To curb the same, enactment of such authorities with such powers was a much needed step.

ANALYSING THE SIGNIFICANCE OF OSH CODE IN THE STATE OF JHARKHAND

The state of Jharkhand is considered to be one of the richest mineral zone states of India as well as in the world. 40% of mineral reserves of India come from Jharkhand(Geology, 2021). The mineral resources of the State include coal (27.3% of India's reserves), iron ore (26% of India's reserves), copper ore (18.5% of India's reserves), uranium, mica, bauxite, granite, limestone, silver, graphite, magnetite and dolomite(IBEf, 2021). The mineral production of the State stood at Rs.927.48 crore (US \$127.21 million) in FY21 which makes it the leading producer of minerals in India(IBEf, 2021). Thus, the mining industry is a significant sector for the state and taking into account of the same, the vision for 2022 of the State includes achieving "mining development and control along with social and environmental compliance"(Council, 2021).

Moreover, Jharkhand has implemented a Single Window Clearance System (SWS) for faster and one point clearance of industrial project which will facilitate speedy clearances of mega

projects(Industry, 2021). The investors in the mining industry of State include big names like Shyam Steel industries, Tata Steel, Jindal Steel and power Ltd, Hindalco Industries Ltd, Steel Authority of India Ltd etc.^{viii} Looking at it from the point of view of ease of doing business this scheme seems to be a great step towards attracting huge projects in the State, however, it needs to be noted that such speedy clearances of mega industrial projects without checking upon them for maintenance of conducive social environment, upholding rights of workers, etc may result in gross violation of basic rights of the workers as has also been recently seen in Karnataka(Akshatha, 2020).

Jharkhand Industrial and Investment Promotion Policy, 2021 has been enacted recently which states that the rationale behind enactment of this legislation includes decentralized employment augmentation through the promotion of labour-intensive industries such as mining and minerals. The Act deliberates over the role that labour-intensive industries will be playing towards fully exploiting the economic scenario and leveraging the low labour cost(Jharkhand Industrial and Investment Promotion Policy, 2021), but ironically does not where mentions about balancing the welfare of the labourers or promotion of a conducive environment for the workers in such labour-intensive industries. This shows how the policies being formulated by the States often tend to ignore the welfare of the workers, but rather only tend to focus upon the

economic gains which will be generated out of these workplaces.

Often it has been seen that setting up mines for the extraction of uranium, coal, etc has had serious environmental impacts on the area and upon the health of not only the workers but also the residents of the area (Basu, 2009). Many companies have been vehemently flouting national and international safety standards for many years and they take up no responsibility for the same and the dismal state of affairs existing at Jadugoda mines serves as a testimony for the same (George, 2005). These sites pose a severe threat to the lives of the mine workers as they often contract chronic illnesses such as silicosis due to the rampant mining dust and insanitary living conditions. The OSH Code has provisions relating to responsibilities of employers as well as the welfare provisions which shall help to reduce the deaths at mines due to chronic diseases and improve their well being.

The State of Jharkhand has not been able to ensure that the mines serve as a safe working place for the workers where majority of the workers belong to various tribal communities and are already oppressed in the society. It should be noted that a large number of informal workers are also often involved at mining sites which leads to their economic and social exploitation, however, the legislators have not addressed this anywhere in the Code even though it is a well known reality that they along with migrant workers constitute a huge unit in mines and are often the most exploited. Often local landlords supply labourers to the contractors, who then take commissions from the

labourers and in this way the onerous upon the employer is reduced due to the sub-contracting system (Sammadar, 2018). Migration also termed as 'transit labour' is also a crucial factor through which the exploitation of labourers exists in the informal mining (Sammadar, 2018). It can be said that OSH Code has left a lacuna in this aspect. However, with the inclusion of various authorities in the OSH Code it can be expected that there will be greater accountability of the persons/companies in charge.

A survey conducted by National Commission for Protection for Child Rights (NCPCR) indicates that a large number of children between the age group of 6 to 14 years in Bihar and Jharkhand are engaged in the mines compromising with their primary schooling (Consulting, 2020). The provisions relating to minors in the OSH Code, if implemented properly shall help in reduction of child labour in the industry. Under Chapter- XII, a number of penalties have been enlisted which are stringent enough to deter the violation of provisions of the Code.

The OSH Code will prove to be a step towards the betterment of working situation for the mine workers only and only if it is ensured that it is implemented properly at the ground level. Thus, with the implementation of the Code a hope for a better future lies ahead for the welfare of mine workers in the state of Jharkhand.

CONCLUSION

With the introduction of the OSH Code there are expectations that this legislation will turn out to be beneficial for the workers employed in unsafe and unstable working establishments such as mines. The introduction of

new provisions relating to safety and welfare of the workers, rights of employees, duties of employers and creation of new authorities under the OSH Code shall be of assistance in reducing the exploitation of mine workers. However, the current state of affairs in the mining sector at the ground level are not very pleasing as has been seen in the case of Jharkhand, which is considered as the mining hub of the country; wherein people work in abysmal working conditions and are socially and economically exploited by huge companies. The newly enacted labour laws as well as the state laws regarding the welfare of the mine workers shall pave the way for their betterment, subject to the condition that these are properly enforced and implemented at the ground level.

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ⁱ Under Constitution of India, Entry 54, Union List.

ⁱⁱ Under Constitution of India, Entry 23, Union List.

ⁱⁱⁱ OSH Code, s 12.

^{iv} OSH Code, s 43; OSH Code, s 44.

^v OSH Code, s 7; OSH Code, s 25; OSH Code, s 26.

^{vi} OSH Code, s 35; OSH Code, s 34; OSH Code, s 38(1) (B); OSH Code, s 41.

^{vii} OSH Code, s 34.

^{viii} The Coal Mines (Special Provisions) Act, 2015, Schedule 1.