

# **PROFESSIONAL PRACTICE, LAW AND ETHICS**

## **UNIT 4**

**DR.GUJJATI SUDHAKAR**

### **ENGAGEMENT OF LABOUR**

The Building and Other Construction Worker's (Regulation of Employment and Conditions of Service) Act, 1996, is applicable to the establishments engaging ten or more building and other constructions workers.

- It seeks to regulate the employment and conditions of work for building and other construction workers and provides for their safety, health and other welfare measures. The establishments engaging less than ten workers are not covered under this Act.
- The Act provides for fixing hours for normal working day inclusive of one or more specified intervals; provides for a day of rest in every period of seven days and payment of work on a day of rest at the overtime rate, wages at the rate twice the ordinary rate of wages for overtime work. It also provides for adequate drinking water, latrines and urinals and accommodation for workers, crèches, first-aid, and canteens at the work site.
- The appropriate government (Central or State) is empowered to make rules for the safety and health of building workers.
- It provides for the constitution of Expert Committee to advise on matters relating to framing of rules by the appropriate government for registration of establishments, employing construction workers, appointment of registering officers, registration of building workers and issuance of their identity cards, lastly the establishment of welfare boards by the state governments.
- Section 22 of the Act describes the functions of the Board applicable to the beneficiaries. These are: to provide immediate assistance in case of accident, to pay pension to those who have completed the age of sixty years, to sanction loans and advances for construction of a house, to pay some amount in connection with premium for Group Insurance Scheme, to give financial assistance for the education of children of the beneficiaries, to meet medical expenses for treatment of major ailments of beneficiaries or dependents, to pay maternity benefit to the female beneficiaries, and to make provisions and improvement of other welfare measures as may be prescribed.

Further, the Board can also grant aid, loans, and subsidies to local authorities and employers in aid of any scheme relating to the welfare of the building workers.

- There are special provisions regarding fixing responsibility of employers to ensure compliance with regard to prevention of accidents, timely payment of wages, and safety provisions, etc.

## **CIVIL ENGINEERING LABOURERS**

Civil engineering labourers perform routine tasks in connection with the building and maintenance of roads, railways, dams and other civil engineering projects.

### **Tasks:**

Main Tasks include -

- (a) Digging and filling holes and trenches using hand held tools
- (b) Shovelling and spreading gravel and related materials
- (c) Trimming and cutting rocks and concrete and bitumen surfaces using jack-hammers
- (d) Loading and unloading construction materials, excavated material and equipment and transporting them around construction sites using wheelbarrows and hand trucks
- (e) Cleaning worksites and removing obstructions.

### **Inclusions:**

Examples of the occupations classified here:

- Construction labourer (civil engineering)
- Maintenance labourer (dams)
- Earthmoving labourer

### **Role of civil engineering labour**

- Operate and care for construction equipment and machines.
- Help equipment operators, carpenters, and other skilled labour when necessary.
- Prep construction sites by cleaning obstacles and hazards.
- Load or unload construction materials.
- Put together and take apart temporary structures, such as scaffolding.
- Remove, fill, or compact earth.
- Follow instructions from supervisors.
- Assist craft workers.
- Ready to learn from on-the-job training when necessary.
- Perform site clean-up.

## **TYPES OF LAWS REGULATING CONSTRUCTION COMPANIES**

To start and manage a construction company some several factors should be kept in mind. Construction companies deal with various projects, big or small, they all require a method of regulation and management. Further, the construction industry in India depends highly on the legal system to get the work done which includes contracts, incorporation, taxation, etc. Additionally, the important laws that control and regulate the working of construction companies in India, namely

### **(i) The Companies Act, 2013**

This mainly includes the incorporation of a company, management, and regulation. Click on the drop-down menu to see the process of registering a construction company in India. Before starting a construction business, a formation of a company with the relevant objects, names, documents, etc. is necessary. Further, a Company in India is incorporated/registered under the provisions provided in the Companies Act, 2013. In the instant case, a construction company can also be registered in the same way.

**Type of Company:** Under the Companies Act, only two types of companies can be registered

(i) Private Companies

(ii) Public Companies.

A construction company can be both private and public. When starting a construction business one can consider any of the above. Similarly, commonly, most construction companies are private because of the ease of management and registration process. Some examples of private companies operating in India are Larsen & Toubro Ltd. (L&T), Reliance Industries Ltd, Shapoorji Pallonji Group, etc.

**Reservation of Name:** All construction companies are associated with a name. The companies act suggests that a company before registration has to propose six names in order of preference so that at least one of them will be approved as the name of the company. Further, this proposal is to be made to the Registrar, Central Registration Centre. According to the incorporation rules, the name can also be reserved online. Further, after approval, the registrar can reserve the name for 20 days.

**Forming the Object:** Every company has to form a document called a 'Memorandum of Association' which consists of the objects and the possible scope of its operations. A company cannot go beyond the scopes and objects provided in the document. In the case of a construction company, the scope and object in the memorandum can be conducting construction activities and carrying out construction business in India.

**Preparing other documents:** For the registration of a construction company, several documents are required to facilitate the registration process, which includes identity proofs such as Pan Card, Aadhar Card, Address proofs such as rental agreements in case of a rented property, electricity bill of the office, and contact information such as email ID, mobile number. Other formalities including the power of attorney to any professional such as a Chartered Accountant, Advocate, Company Secretary. The list of directors should also be formed prior to the registration.

**Filing of Application:** After finishing all the above formalities and having the relevant documents, the next step is to file these documents with the Registrar within whose jurisdiction is the construction company going to be operating.

**Certificate of Application:** After scrutinizing the documents and all the required legal formalities, payment of fees are complete the registrar shall enter the name of the company in the register of companies and certify its incorporation. After that, the registrar will then issue a certificate under his signature. The registrar will also provide a CIN or Corporate Identity Number which will be the unique identity of the company.

#### **(ii) The Indian Contract Act, 1872**

All contracts will enforce and regulate under the Indian Contract Act, 1872. A construction company binds itself into several contracts when it takes up a project. This contract can be between two construction companies, a state government or central government, or a buyer. The various types of contracts in the construction industry will be discussed further.

#### **(iii) The Goods and Service Tax Act, 2017**

All construction projects come under taxation norms. The Goods and Service Tax, 2017 has issued fresh guidelines and rates for the regulation of construction contracts and projects.

#### **(iv) Taxation laws applied to a Construction Company**

Under the Goods and Service Tax Act, 2017 the contracts in construction projects are “work contracts”. Additionally, according to that, work contracts mean a contract for the building, construction, erection installation, fitting out, fabrication, etc. of immovable property only. Furthermore, according to this act work contracts are classified as a supply of service.

#### **(v) Obtaining specific clearances and certificates (NOCs) from the Ministry of Environment and Forests**

Environmental clearances are very important for a construction project before the project commences. This environmental clearance (EC) is obtained from the Ministry of Environment Projects. Any project which is greater than or equal to 20,000 sq. metres requires environmental clearance. Further, any township or area developing project covering more than 50 hectares

needs clearance. If the project is less than 20,000 sq. meters or 50 hectares as the case may be, then the EC will not require but the NOC/approval of the State Pollution Control Board, Local Municipal Committee/Panchayat, Approval of Fire Safety department, if applicable approval of the aviation department and if it is a forest area then the approval of the regional office of the Ministry of Environment and Forest will require.

## **DIFFERENT TYPES OF CONSTRUCTION CONTRACTS**

When a construction project starts, many legal formalities and dealings will take prior to the project. These include contractual relationships between parties. Additionally, the employer and the contractor form a construction contract before the project initiation. A construction contract is also a ‘work contract’ is one where an employer and a contractor form a contractual relationship for the construction of assets. In India, there is no standard form of the construction contract. There are, however, some commonly used contracts that are published by the International Federation of Consulting Engineers, Institute of Civil Engineers, and the model published by the Indian Institute of Architects. Some different types of contracts commonly found in the construction industry are –

### **(i) Engineering, Procurement and Construction Contracts (EPCs)**

The most likeable form of contracts in the construction industry is the EPC form of contracts. Similarly, it creates a binding relationship between the contractor and the employer, where the employer transfers the risk of the construction and a basic design all in the hands of the contractor.

### **(ii) Turn-key Contracts**

This model will also adopt frequently in the construction sector. Here, the employer hires a contractor to plan, design, and build an infrastructure project before a specific date. The contractors have to just “turn a key” to get the work complete. Further, this is advantageous because the completion process of the project is swift and fast. Additionally, it is seen frequently in large scale projects.

### **(iii) Public-Private Partnership Contracts (PPP)**

This is where the government or a statutory entity or an entity owned by the government enters into a contractual relationship with a private entity. It includes risk-sharing to the private sector, it benefits the public sector with more technical expertise, experience, and efficiency of the private sector. There are several types of PPP Contracts are namely, –

- Build-Operate-Transfer (BOT) where the private entity is responsible for the financing, construction, and operations before ownership will transfer to the government. It is the most common type of PPP contract
- Build-Own-Operate-Transfer (BOOT) the private partner completes the construction project for which concession grants. The public partner assists by giving tax exemptions and funding.
- Additionally, Build-Transfer-Operate (BTO) The private partner will permit to operate the facility for a specific time after the built infrastructure that transfers to the state.
- Further, Build-Own-Operate (BOO) where the asset ownership is with the private sector. Moreover, the private partner also builds, designs, owns, operates, and maintains the asset.

### **Methods of engaging labour**

- **Labour** is the general body of wage earners. Labour means any valuable service rendered by a human agent in the production of wealth, other than accumulating and providing capital or assuming the risks that are a normal part of business undertakings. It includes the services of manual labourers, but it covers many other kinds of services as well. It is not synonymous with toil or exertion, and it has only a remote relation to “work done” in the physical or physiological senses. The application of the physical energies of people to the work of production is, of course, an element in labour, but skill and self-direction, within a larger or smaller sphere, are also elements. A characteristic of all labour is that it uses time, in the specific sense that it consumes some part of the short days and years of human life.
- **Subcontracting:** Subcontracting is an older business term. It traditionally refers to the practice of bringing in an outside company or individual to perform specific parts of a business contract or project. In most cases, a company subcontracts another business to perform a task that cannot be handled internally. The subcontracting company and the provider work closely throughout the project, and the hiring party has a reasonable amount of control over the process. As an example, say a builder is hired to construct a model house. The builder's staff is perfectly qualified in all aspects of construction. But this is a model house, and the construction workers are not skilled in interior design. The builder subcontracts the decor out in order to complete the job.

- **Piece rate pay system:** Piece rate pay occurs when workers are paid by the unit performed (e.g. the number of tee shirts or bricks produced) instead of being paid on the basis of time spent on the job. Piece rates are frequently used in certain industries or occupations where the work is repetitive in nature, and where employees have a high level of control over the results. Examples include such tasks as plucking tea, pruning fruit trees, sorting second-hand books, producing garments, or kilometers driven. Home based workers and other out-workers are also frequently paid piece rates.

## **INDUSTRIAL DISPUTES ACT, 1947**

The main purpose of the Industrial Disputes Act, 1947 is to ensure fair terms between employers and employees, workmen and workmen as well as workmen and employers. The objective of the Industrial Disputes Act is to secure industrial peace and harmony by providing machinery and procedure for the investigation and settlement of industrial disputes by negotiations.

### **Industrial Disputes Act, 1947**

An Act to make provision for the investigation and settlement of industrial disputes, and for certain other purposes. The Industrial Disputes Act 1947 extends to the whole of India and regulates Indian labour law so far as that concerns trade unions. It came into force April 1, 1947. The objective of the Industrial Disputes Act is to secure industrial peace and harmony by providing machinery and procedure for the investigation and settlement of industrial disputes by negotiations. The laws apply only to the organised sector. Chapter V-B, introduced by an amendment in 1976, requires firms employing 300 or more workers to obtain government permission for layoffs, retrenchments and closures. A further amendment in 1982 (which took effect in 1984) expanded its ambit by reducing the threshold to 100 workers. The Act also lays down: The provision for payment of compensation to the workman on account of closure or lay off or retrenchment.

### **Applicability of the Act**

The Industrial Disputes Act extends to whole of India and applies to every industrial establishment carrying on any business, trade, manufacture or distribution of goods and services irrespective of the number of workmen employed therein. Every person employed in an establishment for hire or reward including contract labour, apprentices and part-time employees to do any manual, clerical, skilled, unskilled, technical, operational or supervisory work, is covered by the Act. This Act though does not apply to persons mainly in managerial or administrative capacity, persons engaged in a supervisory capacity and drawing more than

10,000 p.m. or executing managerial functions and persons subject to Army Act, Air Force and Navy Act or those in police service or officer or employee of a prison. The Industrial Dispute Act of 1947 has been described as the latest milestone in the industrial development in India. The Act has seen new additions in the past few years.

### **Objectives of Indian Industrial Dispute Act:**

1. To encourage good relations between labour and industries, and provide a medium of settling disputes through adjudicator authorities.
2. To provide a committee for dispute settlement between industry and labour with the right of representation by a registered trade union or by an association of employers.
3. Prevent unauthorized strikes and lockouts.
4. Reach out to labour that has been laid-off, unrightfully dismissed, etc.
5. Provide labour the right to collective bargaining and promote conciliation.

### **New Indian Industrial Dispute Act Principles:**

1. A permanent conciliation committee for the speedy settlement of industrial disputes.
2. Compulsory arbitration in public utility services and enforcement of arbitration awards.
3. Strikes during proceedings of conciliation and arbitration meetings are prohibited.
4. Set aside specific times for conciliation and arbitration meetings.
5. Employers have to be obliged to communicate with labour unions.
6. Mutual consultation has to be set up between industry and labour by the Works Committee.
7. Disputes between labour and industry have to be forwarded to an Industrial Tribunal. If the Industrial tribunal fails to handle the case, the case should be forwarded to the appropriate government.

### **Authorities under the Act and Their Duties**

The Industrial Dispute Act, 1947 makes provision for the investigation and settlement of disputes that may hamper the peace of the industry. It ensures harmony and cordial relationship between the employers and employees. The Act provides self-contained code to compel the parties to resort to industrial arbitration for the resolution of disputes. It also provides statutory norms besides helping in the maintaining of cordial relation among the employers and employees, reflecting socio-economic justice. The act provides for the following authorities for Investigation and Settlement of industrial disputes:

- (i) Works Committee
- (ii) Conciliation officer
- (iii) Boards of Conciliation
- (iv) Court of Inquiry



- (v) Labour Court
- (vi) Labour Tribunals
- (vii) National Tribunals

## **COLLECTIVE BARGAINING**

Industrial disputes between the employee and employer can also be settled by discussion and negotiation between these two parties in order to arrive at a decision. This is also commonly known as collective bargaining as both the parties eventually agree to follow a decision that they arrive at after a lot of negotiation and discussion.

### **Main Features of Collective Bargaining:**

#### **1. It is a Group Action:**

Collective bargaining is a group action as opposed to individual action. Both the parties of settlement are represented by their groups. Employer is represented by its delegates and, on the other side; employees are represented by their trade union.

#### **2. It is a Continuous Process:**

Collective bargaining is a continuous process and does not end with one agreement. It provides a mechanism for continuing and organised relationship between management and trade union. It is a process that goes on for 365 days of the year.

#### **3. It is a Bipartite Process:**

Collective bargaining is a two party process. Both the parties—employers and employees—collectively take some action. There is no intervention of any third party. It is mutual given-and-take rather than take-it-or-leave-it method of arriving at the settlement of a dispute.

#### **4. It is a Process:**

Collective bargaining is a process in the sense that it consists of a number of steps. The starting point is the presentation of charter of demands by the workers and the last step is the reaching of an agreement, or a contract which would serve as the basic law governing labour-management relations over a period of time in an enterprise.

#### **5. It is Flexible and Mobile and not fixed or Static:**

It has fluidity. There is no hard and fast rule for reaching an agreement. There is ample scope for compromise. A spirit of give-and-take works unless final agreement acceptable to both the parties is reached.

#### **6. It is Industrial Democracy at Work:**

Collective bargaining is based on the principle of industrial democracy where the labour union represents the workers in negotiations with the employer or employers. Industrial democracy

is the government of labour with the consent of the governed the workers. The principle of arbitrary unilateralism has given way to that of self-government in industry.

### **7. It is Dynamic:**

It is relatively a new concept, and is growing, expanding and changing. In the past, it used to be emotional, turbulent and sentimental, but now it is scientific, factual and systematic.

### **8. It is a Complementary and not a Competitive Process:**

Collective bargaining is not a competitive process i.e., labour and management do not cooperate while negotiating for the same object. It is essentially a complementary process i.e., each party needs something which the other party has, namely, labour can put greater productive effort and management has the capacity to pay for that effort and to organise and guide it for achieving the enterprise's objectives.

### **Importance of Collective Bargaining:**

The collective bargaining advances the mutual understanding between the two parties i.e., employees and employers.

#### **(1) From Management Point of View:**

The main object of the organisation is to get the work done by the employees at work at minimum cost and thus earn a high rate of profits. Maximum utilization of workers is a must for the effective management. For this purpose co-operation is required from the side of the employees and collective bargaining is a device to get and promote co-operation. The labour disputes are mostly attributable to certain direct or indirect causes and based on rumours, and misconceptions. Collective bargaining is the best remedial measure for maintaining the cordial relations.

#### **(2) From Labour and Trade Union Point of View:**

- Labour has poor bargaining power. Individually a worker has no existence because labour is perishable and therefore, the employers succeed in exploiting the labourers.
- The working class in united form becomes a power to protect its interests against the exploitation of the employers through the process of collective bargaining.
- The collective bargaining imposes certain restrictions upon the employer. Unilateral action is prevented. All employees are treated on equal footings. The conditions of employment and rates of wages as specified in the agreement can be changed only through negotiations with labour. Employer is not free to make and enforce decisions at his will.

- Collective bargaining can be made only through the trade unions. Trade unions are the bargaining agents for the workers. The main function of the trade unions is to protect the economic and non-economic interests of workers through constructive programmes and collective bargaining is one of the devices to attain that objective through negotiations with the employers.

### **(3) From Government Point of View:**

- Government is also concerned with the process of collective bargaining. Government passes and implements several labour legislations and desires it to be implemented in their true sense. If any person violates the rules and laws, it enforces them by force.
- Collective bargaining prevents the Government from using the force because an amicable agreement can be reached between employer and employees for implementing the legislative provisions. Labour problems shall be minimised through collective bargaining and industrial peace shall be promoted in the country without any force.
- Collective bargaining is a peaceful settlement of any dispute between worker and employers and therefore it promotes industrial peace and higher productivity resulting an increase in the Gross National Product or the national income of the country.

## **THE INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT 1946**

The industrial employment standing orders act is the piece of labour legislation which lays the model standing orders applicable to every industrial establishment under the act.

### **Objectives of the Act**

To require employers in industrial establishments formally to draft and define conditions of employment under them. Standing orders mean set of conditions defining the:

- Conditions of recruitment
- Disciplinary action
- Discharge
- Holidays and leave

The purpose of standing orders act 1946 is to minimize friction between the management and workers in the industrial establishments. The act contains 15 sections and a schedule.

### **History**

The Indian labour conference tripartite on Indian labour conference revealed a consensus of opinion in favor of legislation. The bill accordingly seeks to provide for the framing of standing

orders in all industrial establishments employing 100 or more workers. Section 2(g) of the act defines “standing orders “as the rules relating to matter set out in the schedule.

### **Industrial Establishment**

- Section 2(e) defines industrial establishment as:
- any factory under the factories act 1948
- industrial establishment as under section 2(ii) of the Payment of wages act, 1936
- railway under Indian railways act 1890

### **Procedural Aspects:**

Section 3 defines about submission of draft standing orders. The section lays the procedure that employer shall draft standing orders relating to the industrial establishment and submit it to the certifying officer who is generally termed as regional labour commissioner or labour officer. Where such a model standing order has been prescribed, the standing order draft shall be in conformity with that model standing orders. The standing orders on being certified by the certifying authority shall bind on both the employer and workman.

### **Appeals**

Section 7 the person workman or any employer, trade union or any parties who are aggrieved by the order of certifying officer shall appeal to the appellate authority within 30 days of such order sent by certifying authority. The appellate authority on receipt of order shall modify the order, add, some conditions in it and within seven days of receipt shall send copies to the certifying officer who shall certify it.

### **Concept of Subsistence Allowance Section 10A**

The act also provides for the payment of subsistence allowance.

As a result of enquiry and investigation or misconduct charges against any workman and it results in his suspension by the employer then

- For the first 90 days : the workman shall be entitled for 50 % wages
- For the remaining period: if suspension remains for more than 90 days than 75 % of wages shall be paid as subsistence allowance.

### **Schedule and Contents**

The act contains only 1 schedule which lays down the matters to be provided in the standing orders of industrial establishments depending upon the nature of industrial establishment the employer shall draft standing orders. The matters to be stated are:

- Classes of workman
- Hours of work

- Shift working
- Attendance
- Condition regarding holidays
- Entry conditions and requirements
- Closure and reopening of industrial establishments
- Termination of employment
- Suspension
- Means of redressal for unfair treatment
- Such other matters as may be prescribed

Thus the act and its ambit in providing subsistence allowance and applicability of the industrial employment (standing orders) act 1946 are discussed. The employer shall at his discretion draft the standing orders and get it certified by the authority provided it is in conformity with the model standing orders.

### **THE WORKMEN COMPENSATION ACT, 1923**

The Workmen Compensation Act, 1923 is an enactment that was issued by the Government and was implemented by various State Governments which gives social security to workers. This security is offered by the law for people who work. The Act was formed after it was noted that labourers were getting more exposed to danger with the use of advanced and sophisticated machinery. The common law had it that the employer would only take up the compensation responsibility if it is found that the industrial accident was a result of his negligence. In India, the issue of compensating workmen after fatal and major accidents hit the road in 1884. It was then in 1885 that the factory and mining inspectors realized that the Fatal Accidents Act, 1885, was not enough to attend to the intended purposes.

#### **Aspects of the Workmen Compensation Act**

The Act has its basis on two aspects:

- Theory of least cost.
- The production cost shall have the cost of blood and workmen included.

For an industry to run, an employer uses capital, skills in business and the labour of workers who are paid for the labour. The management has to put aside finances for the possibility of the expense needed to repair the machines when they break down. If that care and attention can be given to machines, human beings working in the same environment need also receive care and attention for the risks they undertake when working in that industry. Social security offers

to ensure compensation is paid to a disabled or injured person only if the accident rose in the middle of the employment. The compensation paid to a workman by an employer when an accident occurs is a relief and social security measure provided by the Act.

- A workman is now able to get compensation regardless of his negligence.
- The Act also puts in place the amount that is to be paid according to the intensity of the injury.
- This makes an employer aware of the amount of compensation he is liable to pay in case of an accident.
- The Act is recognized all over India and applies to all workmen and casual workers in factories, plantations, mines, transport establishments, railways, ships, circuses, construction work and any other potentially dangerous occupations made mention in Schedule II of this Act. The Act is not applicable to people in the Armed Forces.

### **Objective of the Workmen Compensation Act**

- The Workmen's Compensation Act of 1923 was formed majorly to give compensations to workmen in the event of an accident.
- The Act has it that employers should have duties and obligations that include the welfare of workers after an injury resulting from employment in the same way they have reserved the right to make profits. The Act aims to see workmen have a sustainable life after an employment-related accident.

### **Scope of Workmen's Compensation Act**

The workmen's compensation act, 1923, is applicable for those workers who are working with an industry that is mentioned in the act. Under this act, the protection of workmen from injuries and losses caused through an accident in course of and arising out of the employment subject to specific expectations as mentioned in the act. The objective of the Workmen's Compensation Act the Workmen's Compensation Act, 1923 was majorly formed to provide compensation to the workmen at the time of an accident. The act mentions that it is the duty and responsibility of the employer to include the welfare of the workers when an injury is the result of the employment in the same way the employer has reserved the Liability of the Employer for Compensation To make the employer pay the compensation at the time of injury or death suffered by the employee or workman should be a consequence of some accident in course of or out of his/her employment.

**Employer's Liability for Compensation:** To make the employer pay compensation, the death or injury suffered by the workman must be consequence of an 'accident arising out of and in the course of his employment' is dependent upon the following four conditions:

- (1) The casual connection between the injury and the accident (i.e., personal injury is caused to workman while on work);
- (2) The injury and accident caused during the course of employment;
- (3) The probability tenable to reason that the work contributed to the causing of personal injury; and
- (4) The applicant proves that it was the work and the resulting strain which contributed to or aggravated the injury.

### **Applicability of the Workmen's Compensation Act**

This act is applicable across India except for Jammu and Kashmir. This act does not apply to the areas that are covered by the Employees State Insurance Act, 1948.

### **BUILDING AND OTHER CONSTRUCTION WORKERS ACT, 1996**

There are more than 28 million skilled and unskilled workers engaged in the construction sector in India. The sector is labour-intensive and most of the labourers are unskilled, unorganized and tend to work under inhuman and pitiful conditions. To address such inhuman working conditions and poor health and safety standards in the real estate industry, the Government of India enacted the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (the "BOCW Act"). The BOCW Act is a social welfare legislation that aims to benefit workers engaged in building and construction activities across the country. The Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Central Rules, 1998

### **Duties and responsibilities of employers, employees and others**

(1) It shall be the duty of every employer who is undertaking any of the operations or works related to or incidental to building or other construction work to which these rules apply

(a) to comply with such of the requirements of these rules as are related to him: Provided that the requirements of this clause shall not affect any building worker and so long as his presence in any place of work is not in the course of performing any work on behalf of his employer and he is not expressly or impliedly authorised or permitted by his employer to do the work; and

(b) to comply with such of the requirements of these rules as are related to him in relation to any work, act or operation performed or about to be performed by him.

(2) Where a contractor, who is undertaking any of the operations or works to which these rules apply, appoints any artisan, tradesman or other person to perform any work or services under a contract for services, it shall be the duty of the contractor to comply with such of the requirements of these rules as affect that artisan, tradesman or other person and for this purpose of any reference in these rules to an employee shall include a reference to such artisan, tradesman or other person and the contractor shall be deemed to be his employer.

(3) It shall be the duty of every employee to comply with the requirements of such of these rules as are related to the performance of or the refraining from an act by him and to co-operate in carrying out these rules.

(4) It shall be the duty of every employer not to permit an employee to do anything not in accordance with the generally accepted principles of standard safe operating practices connected with building and other construction work as specified by the Central Government.

(5) No employee shall do anything which is not in accordance with the generally accepted principles of standard safe operating practices connected with building and other construction work as specified by the Central Government.

(6) No person related with any building and other construction work shall wilfully do any act which may cause injury to himself or to others.

(7) It shall be the duty of every employer not to allow lifting appliance, lifting gear, lifting device, transport equipment, vehicles or any other device or equipment to be used by the building workers which does not comply with the provisions given in these rules.

(8) It shall be the duty of the employer to maintain the latrines, urinals, washing facilities and canteen in a clean and hygienic condition. The canteen shall be located in a place away from the latrines and urinals and polluted atmosphere and at the same time be easily accessible to the building workers.

(9) It shall be the duty of the employer to abide by the dates fixed and notified by him for payment of wages for a period in accordance with these rules and no change in such dates and such period shall be effected without notice to the building workers and the Inspector. The employer shall ensure timely payment of wages as specified under these rules and at the place and time notified by him.

(10) It shall be the duty of the employer to ensure that the lifting appliance, lifting gear, earth moving equipment, transport equipment or vehicles used in the building or other construction work undertaken by him conforms to the requirements relating to testing, nomination and inspection of such equipment as provided under these rules



**Responsibilities of architects, project engineers and designers.**

- (1) It shall be the duty of the architect, project engineer or designer responsible for the design of any project or part thereof or any building or other construction work to ensure that, at the planning stage, due consideration is given to the safety and health aspects of the building workers who are employed in the erection, operation and execution of such projects and structures as the case may be.
- (2) Adequate care shall be taken by the architect, project engineer and other professionals involved in the project, not to include anything in the design which would involve the use of dangerous structures or other processes or materials, hazardous to health or safety of building workers during the course of erection, operation and execution as the case may be.
- (3) It shall also be the duty of the professionals, involved in designing the buildings structures or other construction projects, to take into account the safety aspects associated with the maintenance and upkeep of the structures and buildings where maintenance and upkeep may involve special hazards.
- (4) Responsibilities of the persons in the service of the State Government and the Board. It shall be the duty of every person in the service of the Government of any State or a Board to comply with the directions given by the Central Government from time to time to carrying into execution in that State the provisions of the Act and these rules.

**Duties and responsibilities of workers**

- (1) It shall be the duty of every building worker to comply with the requirements of such of these rules as relate to him, and act and co-operate in carrying out the requirements of these rules and if he discovers any defects in the lifting appliance, lifting gear, lifting device, concerning any transport equipment or other equipment, to report such defects without unreasonable delay to his employer or foreman or other person in authority.
- (2) No building worker, shall unless duly authorised or except in case of necessary remove or interfere with any fencing, gangway, gear, ladder, hatch covering, life-saving appliances, lighting or other things whatsoever required by the Act and these rules to be provided. If any of the aforesaid things is removed, such thing shall be restored at the end of the period during which its removal was necessary, by the persons engaged in that work.
- (3) Every building worker, shall use only means of access provided in accordance with these rules and no person shall authorise or order another to use means of access other than such means of access.

(4) It shall be the duty of a building worker to keep the latrines, urinals, washing points, canteen and other facilities provided by the employer for securing his welfare in a clear and hygienic condition.

### **RERA ACT 2017**

RERA stands for Real Estate Regulatory Authority came into existence as per the Real Estate Act, 2016 which aims to protect the home purchasers and also boosts the real estate investments. The bill of this Parliament of India Act was passed on 10 March 2016 by the Upper House (Rajya Sabha). The RERA Act was effective on and from 1 May 2016. At that time, out of 92 sections only 52 were notified. All the other provisions were effective on and from 1 May 2017.

### **RERA Act and Rules**

The Real Estate (Regulation and Development) Act, 2016 under Section 84 envisions that within a period of six months from its commencement date, State Governments will set the rules to carry out the provisions associated with the Act. On 31 October 2016, the centre, through HUPA (Housing & Urban Poverty Alleviation) Ministry, released the general rules of the Real Estate (Regulation and Development) Act, 2016. All these rules are applicable to the Union Territories like Chandigarh, Lakshadweep, Daman & Diu, Dadra & Nagar Haveli and Andaman & Nicobar Islands.

### **Some Points under Real Estate Regulation and Development (RERA)**

- **Security:** Under the RERA act, a minimum of 70% of the buyers' and investors' money will be kept in a separate account. This money will then be allotted to the builders only for construction and land related costs. Developers and builders cannot ask for more than 10% of the property's cost as an advance payment before the sale agreement is signed.
- **Transparency:** Builders are supposed to submit the original documents for all projects they undertake. Builders are not supposed to make any changes to the plans without the consent of the buyer.
- **Fairness:** RERA has now instructed developers to sell properties based on carpet area and not super built up area. In the event that the project has been delayed, buyers are entitled to get back the entire money invested or they can choose to be invested and receive monthly investment on their money.

- **Quality:** The builder must rectify any issue faced by the buyer within 5 years of purchase. This issue must be rectified within 30 days of the complaint.
- **Authorisation:** A regulator cannot advertise, sell, build, invest, or book a plot without registering with the regulator. After registration, all the advertisement for investments should bear a unique project wise registration number provided by RERA.

### **Benefits of RERA**

RERA has a number of benefits for the buyer, the promoter, and the real estate agent. These include:

- **Standardisation of carpet area:** Before RERA the manner by which a builder calculated the price of a project wasn't defined. However, with RERA there is now a standard formula that is used to calculate carpet area. This way, promoters cannot provide inflated carpet areas to increase prices.
- **Reducing the risk of insolvency of the builder:** Most promoters and developers tend to have multiple projects being developed at the same time. Earlier, developers were allowed to move funds raised from one project to that of another. This is not possible with RERA since 70% of the funds raised need to be deposited in a separate bank account. These funds can be withdrawn only after certification by an engineer, a chartered accountant, and an architect.
- **Advance payment:** As per the rules, a builder cannot take more than 10% of the cost of the project from the buyer as advance or application fees. This saves the buyer from having to source funds fast and having to pay a large amount.
- **Rights to the buyer in case of any defects:** Within 5 years of possession, if there is any structural defects or problems in quality, the builder has to rectify these damages within 30 days at no cost to the buyer.
- **Interest to be paid in case of default:** Prior to RERA, if the promoter delayed possession of the property, the interest paid to the buyer was much lower than if the buyer delayed payments to the promoter. This has changed with RERA and both parties have to pay the same amount of interest.
- **Buyer's rights in case of false promises:** If there is a mismatch in terms of what was promised by the builder and what has been delivered, the buyer is entitled to a full refund of the amount that was paid as advance. At times, the builder may have to provide interest on the amount as well.

- If defect in title: If at the time of possession, the buyer discovers that there is a defect in the title of the property, the buyer can claim compensation from the promotor. There is no limit to this amount.
- Right to information: The buyer has the right to know all the information about the project. This includes plans related to layout, execution, and completion status.
- Grievance Redressal: If the buyer, the promoter, or the agent has any complaints with respect to the project, they can file a complaint with RERA. If they aren't pleased with RERA's decision, a complaint can also be filed with the Appellate Tribunal.

### **THE NATIONAL BUILDING CODE OF INDIA (NBC 2017)**

The Code was first published in 1970 at the instance of Planning Commission and then first revised in 1983. Thereafter three major amendments were issued to the 1983 version, two in 1987 and the third in 1997. The second revision of the Code was in 2005, to which two amendments were issued in 2015. The National Building Code of India (NBC), a comprehensive building Code, is a national instrument providing guidelines for regulating the building construction activities across the country. It serves as a Model Code for adoption by all agencies involved in building construction works be they Public Works Departments, other government construction departments, local bodies or private construction agencies. The Code mainly contains administrative regulations, development control rules and general building requirements; fire safety requirements; stipulations regarding materials, structural design and construction (including safety); building and plumbing services; approach to sustainability; and asset and facility management.

Due to large scale changes in the building construction activities, such as change in nature of occupancies with prevalence of high rises and mixed occupancies, greater dependence and complicated nature of building services, development of new/innovative construction materials and technologies, greater need for preservation of environment and recognition of need for planned management of existing buildings and built environment, there has been a paradigm shift in building construction scenario. Considering these, a Project for comprehensive revision of the Code was taken up under the aegis of the National Building Code Sectional Committee. CED 46 of BIS and its 22 expert Panels; involving around 1000 experts. As a culmination of the Project, the revised Code has been brought out in 2016 as National Building Code of India 2016 reflecting the state-of-the-art and contemporary applicable international practices.