

CHAPTER I

INTRODUCTION

This project for Study of the working of the State Construction Workers' Welfare Board was approved by Friedrich Ebert Stiftung for the year 2016. Later, ONGC, IOCL & ESIC came forward to support our study. We would also like to mention that Social Security Association of India has carried out the present Study in association with National Campaign Committee for Central Legislation for Construction Workers, an organization known for spearheading the movement for the welfare of the construction workers and protection of their rights; Bihar Institute of Economic Studies (BIES), Patna; and National Centre for Labour (NCL), Bengaluru, an organization dedicated to the cause of the unorganised workers.

2. We have carried out the Study with the following objectives:-

- (i) To study the role of State Governments and the Central Government in the implementation of "The Act of, 1996" and The "Building And Other Construction Workers' Welfare Cess Act, 1996" in accomplishing the objective of the respective Acts;
- (ii) To study the constitution and functioning of Construction Welfare Boards in different States of India;
- (iii) To study the problems afflicting the Construction Welfare Boards; and
- (iv) To suggest better functioning of the Welfare Boards.

CHAPTER- 2

Background of the Study and Literature Survey

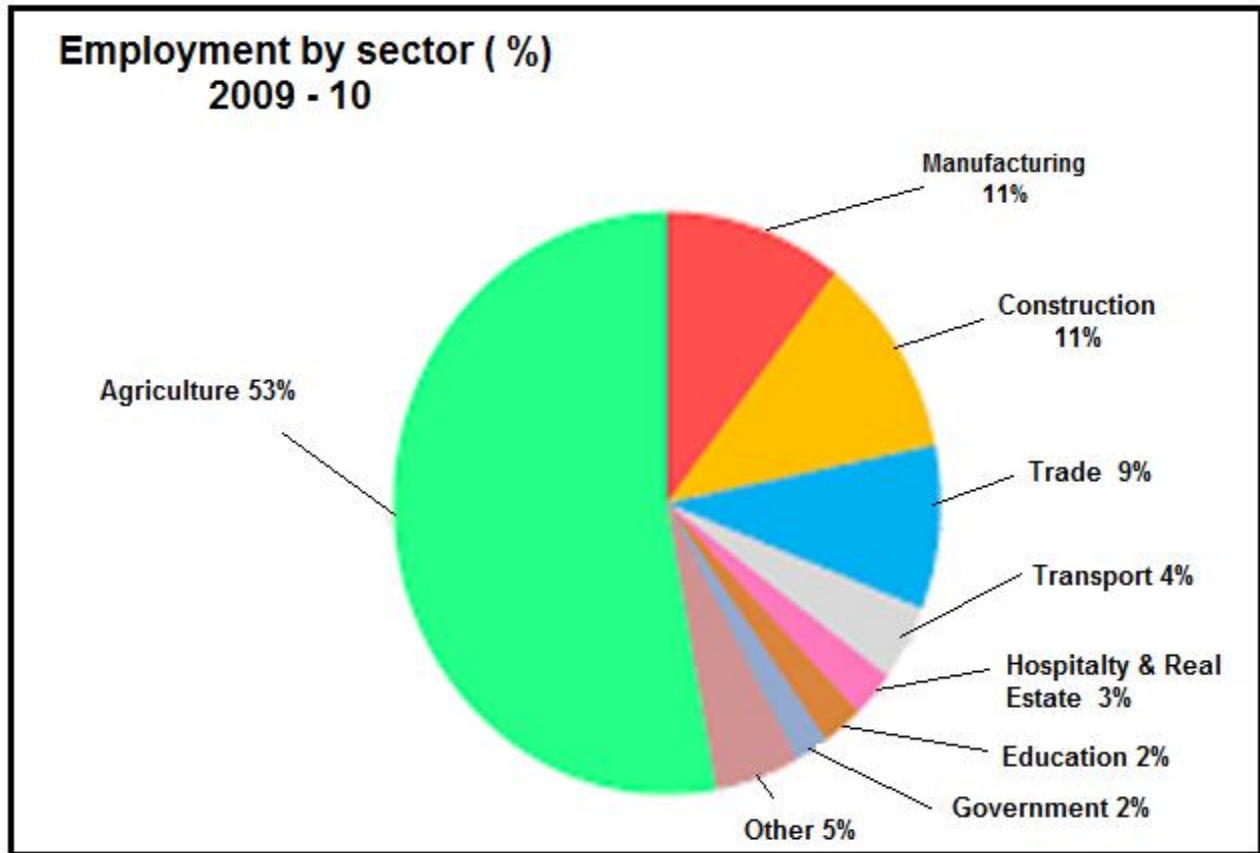
A construction worker is someone whose job is to work on a construction site where structures such as bridges or houses are being built. Construction workers use many types of tools (such as shovels and wrenches) and operate machines and vehicles such as trucks and bulldozers. Construction jobs offer a wide variety of opportunities; whether building things or taking a sledgehammer. Highway construction, tunnel excavation, residential construction, commercial projects and demolition are just a small sample of the many positions available. He could be a skilled or unskilled worker.

2. Each job comes with unique working conditions; from simple loading and unloading, to challenging heights, or exposure to hazardous materials, construction workers need to be prepared for anything! While projects can pause for inclement weather, construction workers should be willing to work in heat, cold, rain, and just about anything else Mother Nature can throw at him. (www.snagajob.com)

3. Construction provides work opportunities for the poorest and most marginalized sections of society in developing countries. The high income countries of Europe account for 30 per cent of global output, the United States for 21 per cent and Japan for 20 per cent. India account for only 1.7 per cent; for China it is only 6 per cent (ILO Report 2007). There are huge discrepancy in the income level in the construction industry in developing and developed countries and technology is the reason for this discrepancy. Machines have largely replaced workers in new construction tasks in the developed countries except repair and maintenance work which is still very labour intensive. According to ILO report, labour being cheap in the developing countries, most tasks are still done by with minimum use of machinery and equipment. It is also been the experience worldwide that construction industry is a major source of employment across the globe, the second largest employment sector after agriculture. In India also it is, according to Employment Report by Sector 2009-10, construction was the second largest source of employment after agriculture as it is seen from the statistics provided by the Census Authority.

4. To briefly describe the global picture about construction activities it may be said that three-quarters of output is in the developed countries and three-quarters of

employment is in the developing world. Technology is the reason for this disparity. According to the International Labour Organization (ILO), in richer countries where labour is expensive, machines have largely replaced workers in many new construction tasks although repair and maintenance is still very labour intensive. In developing countries, where labour is cheap, most tasks are still done by manual methods with minimal use of machinery and equipment (ILO 2007)



5. As may be seen from the diagram above, agriculture sector is the biggest employment generating sector followed by manufacturing and construction. However, according to the latest census figure as well as NSO study, employment in construction sector is set up as third or fourth biggest employment generating sector. Informal sector which covers 92% of the total work force in India and 50% of the construction workers belong to informal/unorganized sector.

6. India is currently experiencing unprecedented economic growth. The government has put in place policies which are generating over 7% to 8 % growth on average for the last 3 years. The plans are on anvil to achieve 9-10 % annual growth rate in the next 5 years. This would be the basis for generating the resources needed for the massive investments to be made in development of physical infrastructure. The 11th Plan envisages a consistent growth rate of 10% per annum in the final years, and would need infusion of substantial capital, estimated at over Rs.14.0 lakh crores. The development of physical infrastructure, through such massive investments would need commensurate growth in delivery potentials of construction industry.

7.1 Construction workers who constitute a very large chunk of unorganised workers – numbering about 20 million people across the country, are to be taken care of assiduously in national interest. With economic growth, with increasing consumption and infrastructure development, housing and road construction activities are expanding exponentially. Construction ventures are spread from the mountain slopes to the corners of the villages, to the cities and to every nook and corner of the country. Because of the nature of their work, these workers remain at the construction sites, away from their hearth and home, living under the open sky, in shanties and, at the best, in the slums around the project sites. Each job comes with unique working conditions; from simple loading and unloading, to challenging heights, or exposure to hazardous materials, Construction workers need to be prepared for anything!.

7.2 There are usually no specific educational requirements for entry level construction workers. Balance, depth-perception and eye-hand coordination are all critical to keep a worker steady on high beams and his fingers clear of chop saws. He needs to keep up and pull his weight day after day. Thus, it is physical fitness for the job which is of prime qualification for the worker to do the job.

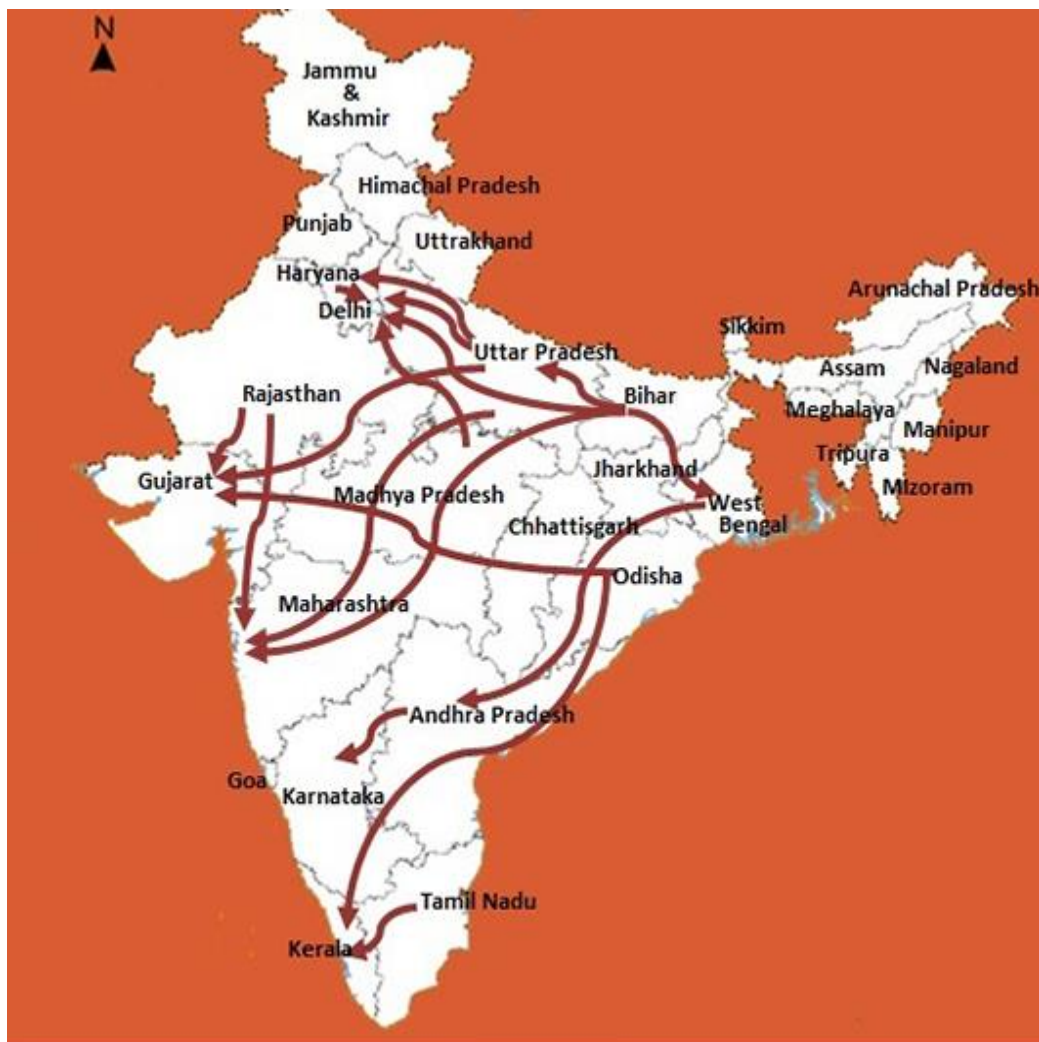
8. The construction workers are the most numerous and vulnerable section in India as elsewhere in the developing world. As the construction companies are growing more and more, many of farm labourers are joining into Reality and Construction Sector as unskilled workers because of poor income and uncertainty in the agriculture sector. The workers are being hired from the remote villages and sent to the construction sites without explaining

the nature of work, complexity and intricacies of building works. The migrant workmen are forced to work at deplorable conditions without proper food, shelter and basic amenities. Many face severe health problems because of geographical condition of that particular area/place where the construction site is located.

9. Modernization and industrialization have paved a good way to the construction industry. Small towns and cities have become more urbanized and the construction sector too has got a boost. Irrespective of occasional slumps in the economy or in construction works, the sector is going through a faster growth. Apart from old / traditional urban/ industrial centres, new industrial/urban centres have appeared on the map where construction works are going on large scale. Expanding and fast growing construction sector and, in general, lack of greater employment opportunity elsewhere, has drawn large number of workers in this sector. There are more than 20 million of construction workers in India at present. Cities, like Delhi alone, has more than 600 thousand of them. Apart from metros, other cities, like, Jamnagar in Gujarat, Guwahati & Shillong in the Northeast, are also expanding at fast rate.

10. Migration is an important feature of the construction sector. Construction workers migrate from different States to other States in India or from different districts within the same State impacting every aspect of the life of the workers. Migration has become a way of life to many who are unskilled and semi-skilled and find it difficult to get better jobs within their natives and localities. These migrant workers are spread across the width and length of the country. Some of these people are nomadic in their life and usually do not return to their birthplace or natives. They travel from one area of work to other area along with their families and live in a place, which is either provided by the owner of the construction company or somewhere nearby, building temporary shelters. They have maximum mobility because of the nature of their work. These labourers are engaged in huge industrial constructions, residential flat constructions, city beautification works. These construction labourers, as a part of unorganized work force, remain the most exploited ones even after seven decades of independence. In the recent past, trend shows that all big cities of the country have become the centers to recruit casual labourers as construction labourers. Most of the construction labourers who migrate to cities and metros are from poor families and are illiterate. Their lack of education and skill make their choice very limited. When they come to big cities, they have to face number of

problems because of their inexperience and lack of skill. They become easy victims of exploitation and have to work for their day today sustenance. These facts have been revealed in several studies conducted by various eminent researchers, like Prof Dileep Kumar M,ex Symbiosis Institute,Pune, byDrKumbhar, a study carried out by DrSampatiPramanik& S Ghose,"A Study on Problems of Construction Workers in West Bengal", and the studies by trade union bodies like, SEWAon the plight of the construction labourersand their problems including gender bias. The Report of IIT,Kanpur, called, Challenges before Construction Industry in India,200 as also report prepared by Sahai on migrant workers in IIT Kanpur,2011 are also relevant in this regard



Internal Migration Flows, 2001 (Source:IIPS, Mumbai)

11. The map shows the major migration corridors in India along which large scale movement of workers takes place. Some regions like UP and Bihar have been known for rural migration for decades - however newer corridors like Odisha, Madhya Pradesh, Rajasthan and recently even North East have become major sending regions of manual labour. Among the biggest employers of migrant workers is the construction sector (40 million), domestic work (20 million), textile (11 million), brick kiln work (10 million), transportation, mines & quarries and agriculture. Managed in many cases by private labour contractors and fuelled by social networks there are well formed patterns in movement of labour across hundreds of kilometers within the country. Figure 1: Major net migration flows, 2001 (Source: IIPS, Mumbai)

12. All researchers are of the view that life of a construction worker is hard and harsh. The extreme conditions of their working life working environment may be categorized as follows as found out in the Study of Prof Dileep Kumar M, called, “problem of Construction Workers-A Qualitative Study”:-

- (a) this sector employs more than four crore workers;
- (b) that these workers are one of the most vulnerable segments of the unorganized labour;
- (c) that their work is of temporary nature;
- (d) that the relationship between employer and the employee is temporary, intermittent and fragile,
- (e) that working hours are uncertain,
- (f) that basic amenities and welfare facilities provided to these workers are inadequate;
- (g) that risk to life and limb is inherent;

(h) that information system or statutory provisions to get the requisite information regarding accidents unsatisfactory.

Studies carried out by various organizations to find out the condition of service of their workers have listed the following findings about these workers:-

- i. 66.7% of construction companies consist of 100-200 labourers.
- ii. Majority construction labourers are living in Tin sheet (71.5%), Rubber sheet shed (17.8%) and Huts (10.7).
- iii. Builder Company arrange temporary shed to labourers (22.8%) within the site.
- iv. A majority percentage of labourers (66.0%) are living in self-constructed temporary sheds nearby construction sites.
- v. Builder make electricity provision (27.8%) in their temporary sheds.
- vi. A considerable percentage of labourer's who are having temporary sheds (71.7%) haven't any electricity provision.
- vii. Sanitation and hygiene of the construction site and the temporary shed are very poor (75.4%).
- viii. 73.8% of sites do not have any toilets or toilets are of substandard quality.
- ix. 20.4 % of construction sites are making provision of drinking water.
- x. A considerable percentage of labourers have to depend on various sources like Bore well (34.1%), Tanker Lorry water (31.4%), public water supply (13.7% etc. for supply of drinking water.
- xi. 29 % of sites do not have any water provision or have water of substandard quality for washing.
- xii. A considerable percentage of construction labourers have to depend on other water sources for washing viz., open well (11.4%), public water supply (44.2%), Bore-well (11.5%) etc.

- xiii. 8.7% construction companies haven't any facility for washing at all.
- xiv. Around 10.7% of sites have water facility for washing clothes.
- xv. Majority construction labourers have to take open bath (63.3%), as there is no adequate provision for bathrooms.
- xvi. Nearly a quarter (26.7%) hasn't any bathroom at all.
- xvii. 72.2% of the companies do not pay medical cost incurred by the labourers.
- xviii. In 18.8% construction companies, contractors and the labourers have to meet the medical cost incurred partially.
- xix. 7.2% companies pay 61-80 Rs. per day to their labourers.
- xx. 74.2% of construction companies are not making provision of medical leave facilities.
- xxi. 2.2% construction companies made provision of medical leave facilities to their labourers.
- xxii. 12.3% provide medical leave to their labourers, but unofficially.
- xxiii. 64.8% of companies don't provide maternity leave to their labourers.
- xxiv. 12.5% of companies are making provision of maternity leave.
- xxv. While 13.8 % of construction companies do provide maternity leave, but unofficially.
- xxvi. 14.7% construction companies are making provision of holidays to their labourers.
- xxvii. Considerable percentages (66.8%) of companies doesn't provide holidays to their workers.
- xxviii. 63.5% of companies are not making provision of compensation benefits.
- xxix. 77.2% of companies are not making provision of insurance benefits.
- xxx. Majority construction companies (67.2%) do not make provision of helmets to their workers.
- xxxi. 15.9% does make provision of helmets to their workers.

- xxxii. Majority construction companies (52.0%) make provision of Hand Gloves and Shoes to their workers.
- xxxiii. 29.0% does make provision of Hand Gloves and Shoes to their workers.
- xxxiv. Majority construction companies (44.9%) make provision of Safety Belts to their workers.
- xxxv. 25.4% does not make provision of Safety Belts to their workers.
- xxxvi. 55.4% of construction companies do not make provision of 'eye wear for cutting iron road to their workers.
- xxxvii. 69.1% companies do not make provision of safety materials and equipment to their workers at the construction site.
- xxxviii. In majority construction sites (66.2%) labourers have to work 8 hours having a spread over of 10-11hr in a day.
- xxxix. Some construction sites (11.6%) labourers have to work 9 hours having a spread over of 11-12hr in a day.
- xl. Dal, Rotty Rice and Vegetables are the major food items (38.4%) of construction labourers.
- xli. 70.3% of construction companies are not making provision of food to their labourers.
- xlii. 79.7% of construction companies are not making provision of 'Crèches' to the labourers' children.
- xliii. 74.2% of construction labourers' children are illiterate. They are either at home or wandering here and there in the site when their family members are engaged in work.
- xliv. While a considerable proportion of laborer's family consider 'migration from one place to another as their problem to educate children (51.3%), some percentage (36.1%) economic problem to maintain the education and family. (Problem of Construction Workers: A Qualitative Research: Prof. Dileep Kumar M,Pune2006)

13. All these issues of living, like, supply of drinking water, facility for toilet, provision for bath-taking, washing, availability of PDS, maternity leave, medical facility, place for the kids to play, leave, recreation, etc. are the core issues which had been tormenting the wits of the administrators and social activists to protect the right of these workers to life and livelihood. Construction activities are undoubtedly a boom for the economic development but it is the construction workers who endure the most of the brunt of such developments by their sweat and toil.

CHAPTER-3

Legislative History

The circumstances leading to the enactment of legislations on construction workers in 1996 are both interesting and fascinating, like, the history of our independence. A Committee was formed, named as, National Campaign Committee for Central Legislation for Construction Workers, in November 1985 at the initiative of the PMKTS, PRIA, CILAS and Legal Aid and Advise Centre under the Chairmanship of an outstanding public figure who was associated with many reforms and had to his credit many a campaign for securing justice for the downtrodden, viz., Justice V.R. Krishna Iyer, a retired Supreme Court Judge. The Committee was ably supported by a public spirited lawyer, viz., R. Venkateramani and Shri Subhas Bhatnagar who gave up his promising career in law to become the coordinator of this Committee. Some other important personalities who played a stellar role in shaping up the activities of the Committee, mention must be made of Justice Potti, retired Chief Justice of Gujarat, Shri T.S. Sankaran, former Additional Secretary, Ministry of Labour, and veteran trade union activists like, D. Thankappan, N.P. Samy and R. Geetha. This Committee started its activities by organizing a seminar in Delhi in which about 250 construction workers, trade union activists, lawyers, jurists, and voluntary organization and government officials gathered together to consider various aspects of the draft legislation for construction workers. They worked tirelessly for three years to come out with a viable draft for legislation.

2. The foremost task before the NCC-CL was to prepare a draft document for legislation which could ensure the welfare and social security needs of the construction workers. For this purpose, it held several seminars and workshops in the cities of Delhi, Mumbai, Chennai and Bangalore. It also made considerable efforts to create a consensus on the main issues to be included in the legislation for the construction labour using the forum of TWG. In December 5, 1986 it submitted a draft of the Bill and a scheme to the Petition Committee of the Lok Sabha. This draft was signed by more than 400 thousand workers all over the country. Thousands of workers wrote post cards to the Prime Minister requesting for an early hearing of their matter for bringing a bill in the panel. This led to its tendering of evidence by the Committee before the Petition Committee of Rajya Sabha on 30th September 1988.

3. Meanwhile the government on its own had introduced a bill in Rajya Sabha on construction workers but did not make much progress as it fell woefully short of providing any social security benefit to the construction workers.

4. On 25th July 1989, the Petition Committee submitted its report upholding its view points of NCC – CL and recommended that the Bill pending in the Rajya Sabha be withdrawn and a fresh comprehensive bill to be introduced so as to meet the long felt demands of the working class. The Petition Committee also called upon the Government to ensure that the Bill should finally meet the expectations of the workers.

5. A period of lull followed thereafter due to formation of a new government in 1989 which withdrew the said Bill from the Parliament. It was during this time that in December 1991 a National Federation of Construction Labour was established in Bangalore. NCC – CL to keep up its pressure on the government by organizing dharnas as well as lobbying for support of the legislators and for garnering support of the State governments like Kerala, Karnataka, Tamil Nadu Andhra Pradesh and Maharashtra. Its efforts resulted in the construction workers' demands finding a place in the common minimum programme of the United Front in their election manifesto for the next elections.

6. As a result of the pressure generated all these years for an effective legislation for the benefit of the construction workers, Central Government issued two ordinances in November 1995 but those ordinances fell short of the model draft bill prepared by the Campaign Committee. Then on 26th February 1996 construction workers observed a protest day all over the country to press further their demands. Because of the determined efforts of the NCC – CL and the support of the political leaders and some of the State governments, in July 1996 two bills on construction workers were introduced in the Parliament which were ultimately approved by the Parliament resulting in enactment of the two famous legislations, called, the Building and Construction Workers (Regulation of Employment and Condition of Service) Act, 1996 and the Building and Other Welfare Cess Act, 1996.

7. Passing of these two pieces of legislations in 1996 were no doubt a crowning success of 11 years' relentless efforts by the NCC – CL under the guidance of

Justice(retd) Krishna Iyer but all its dreams were not fulfilled by these legislations. In the words of Justice Krishna Iyer, “These Acts would fail to achieve the object by the reason of the absence of a suitable enforcing body with powers.” He, therefore, had urged before the then Prime Minister, Mr. Deve Gowda that the “Welfare Board should be properly constituted with requisite power and authority with appropriate functions for the purposeful enforcement of law.” Notwithstanding the aforesaid lacuna in the aforesaid legislations, what is of great significance is that, these are the only legislations for the protection of right of a group of unorganized workers which could be achieved through a fully democratic process by a non-political civil society organization with trade unions playing a very positive role all through.

8. It is necessary to take note of the main provisions of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 which are as follows:-

- To cover every establishment which means or had employed but any day of the preceding 12 months, 50 or more workers in any building or other construction workers.
- Constitution of Central and State Advisory Committee to advise legislation and establishment employee construction workers and appointment of registering office.
- Registration of building workers as beneficiaries and providing for their identity cards.
- Constitution of Welfare Board by the State Government and legislation of beneficiaries under the fund.

- Providing for financing and augmenting resources of the Welfare Board constituted by the State Government.
- Fixing hours of normal working day, weekly paid rest day, wages for overtime, provision of basic welfare amenities like drinking water, latrine, urinal, crashes, first aid etc. for the building workers.
- Provision of temporary living condition to all building workers within or near the work site and making adequate provision for safety and health measure for construction workers including appointment of Safety Committee and Safety Officials and compulsory notification of accidents.
- Empowering the Central Government to frame model rules for safety measures headed by Director General of Inspection at the Central level and Inspector General at the State level.
- Provision for appointment of inspecting staff including Director General of Inspection at the Central level and Inspector General at the State level.
- Special provision regarding fixing responsibility of employer to ensure compliance with safety provisions and with regard to provision of accident temporary payment of wages etc.
- Provision for penalties for contravention, obstruction, violation an offence, taking cognizance of court of offence punishable under the Act and protection of action taken in good faith.
- Application of Workmen's Compensation Act, 1923 (now called Employees Compensation Act), to building and other construction workers.
- Empowering the Central Government to give direction to the State and to remove the difficulties arising and giving effect to the provisions of the Act.

9. The other Act, The Building And Other Construction Workers' Welfare Cess Act, 1996 has been enacted to provide for the levy and collection of a cess on the cost of construction incurred by employers, government, public and private, with a view to augmenting the resources of the Building and Other Construction Workers' Welfare Boards constituted under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.

10. The said Workers Welfare Cess Act, 1996 is complementary to the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996. The said act provides for the levy and collect of cess on the cost of construction incurred by the employer with a view to augmenting the resources of the State Welfare Board. The said levy is at the rate not exceeding 2% but not less than 1% of the cost of construction incurred by an employer. The cess so levied under the provisions of this act is collected through a legal authority where an approval of such building or other construction work by such authorities is required. The proceeds of the cess collected by the local authority after deducting the cost of collection shall be paid to the Board either by the local authority or the State Government, after deducting the cost of collection of such cess. If any employer fails to pay any amount of cess payable under the act within the time period specified in the order of assessment such employer shall be liable to pay interest on the amount to be paid @ 2% for every month or part of a month comprising the period from the date on which such payment was due till such amount is actually paid. The cost of construction shall include all expenditure incurred by an employer in connection with the building or other construction work excluding cost of land and any compensation paid or payable to a worker for a scheme under the Employees Compensation Act, 1926. The cess is payable by an employer within 30 days of completion of the construction project or

within 30 days of the date on which assessment of cess payable is finalised whichever is earlier.

11. It is also provided that where the approval of a construction work by a local authority is required every application for such approval shall be accompanied by a cross demand draft in favour of the Board. If the duration of the project is likely to exceed one year the demand draft may be for the amount of cess payable on cost of construction estimated to be incurred during one year from the date of commencement and further payment of cess due shall be made at the notified rate on the cost of construction.

12. At present more than Rs.30, 000 crores of cess has been collected by the different States but only a small percent of it has been utilized for the benefit of these workers. In spite of the Court's direction to the administration to energise the State Construction Boards to do their best for welfare of the construction workers, the Construction Boards of the country have not yet been able to deliver the intended benefits to these helpless workers.

13. Despite such forward looking step taken by the central government followed suit by all the States, the plight of the construction workers has remained a cause of serious concern for the policy makers and of social activists. The pitiable working conditions of the construction workers during the Common Wealth Games in Delhi between 2008 and 2010 had attracted the critical notice of Delhi High Court which had gone to the extent of appointing Dr. LD Mishra, Special Reporter, National Human Rights Commission, and one of the founder members of Social Security Association of India, to scrutinise the facilities made available for these workers and to recommend remedial actions to improve the situation. As a result of the reporting by Dr. Mishra, the Court directed the Delhi Government to fling into action. A Writ Petition© 318 of 2006 , a Public Interest Litigation, was heard by the Supreme Court of India filed by National Committee on Construction

Workers for Central Legislation against the Union of India & Others on the aforesaid very issues leading to the Central Government issuing directions to all State Governments and the Union Territories under Sec 60 of the Act of 1996 to enforce the provisions of BOWC Act,1996 and the Cess Welfare Act of 1996.For the sake of clarity, we quote Sec 60 of the Act of 1996 as follows:-

“60. Power of Central Government to give directions. - The Central Government may give directions to the Government of any State or to a Board as to the carrying into execution in that State of any of the provisions of this Act.”.

14. In spite of passing of these two Acts the State governments have been slow in implementing the provisions of these two Acts. We therefore propose to critically analyse the reasons for tardy implementation of the various labour friendly provisions of these two labour laws in the succeeding Chapters.

CHAPTER-4

Scope and Methodology of Study

This study encompasses the problems affecting life and livelihood of construction and other building workers across the country. The study also aims at finding out whether the activities of the State Boards are being carried out according to the mandates of the Acts of 1996, examining, inter alia, if provisions of the Act regarding registration of membership and renewal of membership require any correction for improvement of the working and living conditions of these workers. It also proposes to examine working of the various welfare schemes run by the State Boards for the workers and to assess the benefits that accrue to the workers and the scope for improvement in the management of the schemes in the best interest of the workers, especially to examine if the migrant workers get the value of the schemes.

2. The study is likely to be of interest to the planners, researchers, Construction Welfare Boards and above all, to the construction workers themselves who constitute a significant chunk of total work-force of the country.

3. The present government is very serious about giving minimum social security to all informal workers including construction workers. The Union Labour Ministry has mooted an idea of forming a National Social Security Authority, chaired by the Prime Minister and a separate Social Security Department within that Ministry to provide social security to the entire population to strengthen social security net for the working population, according to a concept note reported by *The Hindu*.

4. The findings of the Study will be formally submitted to the Government of India as well as to Friedrich Ebert Stiftung, New Delhi, and distributed as a research publication to national and international labour organizations, social development schools and such like

academic institutions, over and above being published in the Indian Journal of Social Security.

QUESTIONNAIRE FOR STUDY

5. The study of the State Welfare Boards is based on two pre-set questionnaires framed by an expert in the field of opinion survey and sampling. Our expert team members, based on their interaction with the senior trade union leaders, National Coordinator of NCCCL, social activists and the empirical knowledge gained from the deliberations of the various Seminars/Round Table Conferences/Workshops held by SSAI in the cities of Delhi, Bengaluru, Bhubaneswar, Jaipore, Vadadora and Kolkata during last several years since 2010 framed the questionnaires for culling out opinion/suggestion of the respective State Boards for evaluation of the efficacy of the provisions made in the two legislations referred to in Chapter-3 above.

2. The first questionnaire has been framed to elicit opinion of the Boards on first 38 Sections of the Act concerning management of the affairs of the Board. In addition, questions have been framed to find out the extent of implementation of the directives issued by the Central government under Section 60 of the Act for securing rights of the construction workers under the Act and if there are any ambiguity existing in any of the provisions of the Act hampering its smooth implementation. The characteristics of the questionnaire may be elaborated as follows:

- (i) A question has been raised as to whether the definition of 'building and construction worker' as given in the Act is creating any identity confusion (Sec 2(i))
- (ii) Whether any survey has been carried out to assess the need of the construction workers?

(iii)The rationality behind putting the eligibility condition of 90 days service limit for a worker to be reckoned as construction worker.(Sec12)

- (v) Process of identification and weeding out of non-construction workers.(Sec17)
- (vi) On health and safety provisions for workers at site who are having less than 90days service(Sec38)
- (vii) Manner of cessation of membership(Sec-14)
- (viii) Process set up for renewal of membership(Sec 16)
- (ix) Effect of non-payment of membership/renewal fee(Sec16)-
- (x) About the Constitution of the Board & staffing pattern-adequacy(Sec18)
- (xi) Meeting of the Board & its decision making process(Sec 20)
- (xii) Application of the Fund accumulation (Sec 24)
- (xiii) About budget preparation process and pattern of expenditure(Sec25)
- (xiv) On preparation of Annual report(Sec 26)
- (xv) Status of statutory audit of account of the Fund by CAG(Sec27)
- (xvi) On provision of living accommodation, drinking water, canteen & First Aid facilities. (Sec37)
- (xvii) Activities pursuant to directives of the Central Government under the Act(Sec^0)

3. The second questionnaire has been framed with a view to gather information on the following aspects to assess the quality of performance of the respective Board:-

- (i) About the State Welfare Board, its size and functioning.(Sec27)
- (ii) Financial performance report of the Board for last three years from 2012-2013, 014-2015.
- (iii) About construction workers in the State from other States:
- (iv) The number of construction workers vis a vis no of identity cards issued;
- (v) The number of construction workers and the number of workers in live register and
- (vi)The number of court cases filed during last three years and the number pending.

CHAPTER -5

FIELD STUDY ANALYSIS

Extensive field studies were carried out in regard to the working of the Building and Other Construction Workers' Welfare Boards (herein after referred as "Board") constituted by the various States in India.

2.The field study has been carried out by gathering information from the various State Boards in two proformas as described in the preceding Chapter. The information furnished and/or collected by the Boards, item wise, is as under:

A. Basic Information Collation

1. Constitution of State Welfare Boards

(i) What is the size of your Board?

S.No.	Name of the Board	Response
1.	Jharkhand	17
2.	Uttarakhand	11
3.	Haryana	16
4.	Punjab	13
5.	Gujarat	15
6.	Bihar	17
7.	Rajasthan	11
8.	Kerala	16
9.	Madhya Pradesh	Presently, the Board is dissolved
10.	Karnataka	14
11.	Delhi	15

(ii) What is its composition of representatives of employers, workers, trade unions, professionals and Govt. officials in the Board?

S.No.	Name of the Board	Response
1.	Jharkhand	1 Chairman, 1 Central Government, 5 employers, 5 employees, 5 State Government
2.	Uttarakhand	1 Chairman, 3 State Government, 3 employers, 3 workers, 1 Central Government
3.	Haryana	1 Chairman, 5 State Government, 5 employers, 5 Trade Union

4.	Punjab	1 Chairman, 3 employers, 3 workers, 7 Government officials
5.	Gujarat	5 Government and 10 others
6.	Bihar	1 Chairman, 1 Central Government, 5 employers, 5 employees, 5 State Government
7.	Rajasthan	1 Chairman, 3 State Government, 3 employers, 3 employees, 1 Central Government
8.	Madhya Pradesh	Presently, the Board is dissolved
9.	Karnataka	1 Chairperson, 5 Government, 4 employers (Builders) 4 Trade Unions.

2. The year in which the Board was constituted

S.No.	Name of the Board	Year in which constituted
1.	Jharkhand	No information
2.	Uttarakhand	31st October 2005
3.	Punjab	2009
4.	Gujarat	14 th November 2014
5.	Bihar	2008
6.	Rajasthan	2009
7.	Kerala	1998
8.	Madhya Pradesh	April 2003. Presently, the Board is dissolved
9.	Karnataka	18 th January 2007
10.	Delhi	2 nd September 2002
11.	Tamil Nadu	30 th November 1994

3. Number of Board members

S. No.	Name of the Board	Full Time	Part - Time
1.	Jharkhand	17	
2.	Uttarakhand	10	NIL
3.	Punjab	13	NIL
4.	Gujarat	15	
5.	Bihar	17	
6.	Rajasthan	11	6
7.	Kerala	16	NIL
8.	Madhya Pradesh	Presently, the Board is dissolved	
9.	Karnataka	14	NIL
10.	Delhi	15	NIL

4. Number of employees in the Board

S. No.	Name of the Board	Full Time	Part - Time
1.	Jharkhand	3	2
2.	Uttarakhand	Not available	NIL
3.	Punjab	165	NIL
4.	Gujarat	126	NIL
5.	Bihar	4	3
6.	Rajasthan	6	NIL
7.	Kerala	175	15
8.	Madhya Pradesh	33	1
9.	Karnataka	58	NIL
10.	Delhi	3	90 (On Contract basis)

5. Secretary & Other officers of the Board

(i) Whether the Board has a full time Secretary. If not, what are the arrangements?

S.No.	Name of the Board	Response
1.	Jharkhand	Joint Labour Commissioner is looking after the Board.
2.	Uttarakhand	No
3.	Haryana	No
4.	Punjab	The Labour Commissioner Punjab is also the Secretary of the Board.
5.	Gujarat	Yes
6.	Bihar	-
7.	Rajasthan	No, Labour Commissioner is ex-officio Secretary.
8.	Kerala	Yes
9.	Madhya Pradesh	Yes
10.	Karnataka	Yes

- (ii) Do you have full time staff for collection of contribution, maintenance of live register, compilation of defaulters' list, issuing notices and other related work for managing membership of the Board?

S.No.	Name of the Board	Response
1.	Jharkhand	Yes, Labour Superintendent & Secretary of the Board
2.	Uttarakhand	No. Additional responsibility has been given to staff of State Labour Department
3.	Haryana	Board has contractual staff of 150 persons. Board has sanctioned the recruitment of 330 full time staff.
4.	Punjab	Yes. Board 164 employees as full time staff.
5.	Gujarat	No
6.	Bihar	Yes , Labour Superintendent
7.	Rajasthan	Joint Secretary is full time and other persons on contractual basis.
8.	Kerala	Yes, The Board has appointed regular staffs from various Government departments on deputation basis.
9.	Madhya Pradesh	The Board has appointed computer operators through outsource agency to maintain different registers. The Labour Department officers doing other regularization activities.
10.	Karnataka	No information provided

6. Meetings of the Board

- (i) How many times in a year the Board is meeting?

S.No.	Name of the Board	Response
1.	Jharkhand	3 times in a year
2.	Uttarakhand	Normally 2
3.	Haryana	Normally 1
4.	Punjab	Average 3 times in a year. In 2015-16, 4 meetings were held.
5.	Gujarat	At an interval of 3 -4 months
6.	Bihar	2 times
7.	Rajasthan	In 2014, there was no meeting, otherwise meetings are regular.
8.	Madhya Pradesh	Presently, the Board is dissolved
9.	Karnataka	Approximately 2-3 times regularly

- (ii) How many times has it met during the previous three years viz. 2012-2013, 2013-2014 & 2014-2015 respectively?

S.No.	Name of the Board	2012-2013	2013-2014	2014-2015
1	Jharkhand	3	3	3
2	Uttarakhand	4	2	2
3	Haryana	0	1	1
4	Punjab	4	4	3
5	Gujarat	Total 7 meetings in all three years		
6	Bihar	2	2	2
7	Rajasthan	4	-	1
8	Kerala	13	12	12
9	Madhya Pradesh	8 times. The Board was dissolved in December 2013.		
10	Karnataka	3	2	3

(iii) What are the items of agenda discussed in the meetings?

S.No.	Name of the Board	Response
1.	Jharkhand	To enhance cess collection and registration of workers
2.	Uttarakhand	Welfare Schemes
3.	Haryana	Policy Planning , Welfare Schemes
4.	Punjab	Welfare Schemes
5.	Gujarat	No comments
6.	Bihar	Cess collection & Registration of workers
7.	Rajasthan	Welfare Schemes
8.	Kerala	Welfare Schemes
9.	Madhya Pradesh	Presently, the Board is dissolved
10.	Karnataka	1. Registration 2. Cess collection 3. Disbursement of benefits 4. Budget etc.

(iv) What are the decisions taken?

S.No.	Name of the Board	Response
1.	Jharkhand	Thrust on enforcement
2.	Uttarakhand	On Welfare Schemes
3.	Haryana	On Welfare Schemes
4.	Punjab	On Welfare Schemes
5.	Gujarat	No comments
6.	Bihar	Enforce promptly
7.	Rajasthan	On Welfare Schemes
8.	Kerala	On Welfare Schemes
9.	Madhya Pradesh	Presently, the Board is dissolved
10.	Karnataka	Relating to agenda item as In point (iii) above

(v) Do these decisions relate to meeting basic welfare needs of construction workers?

S.No.	Name of the Board	Response
1.	Jharkhand	Yes
2.	Uttarakhand	Yes
3.	Haryana	Yes
4.	Punjab	Yes
5.	Gujarat	No comments
6.	Bihar	Yes
7.	Rajasthan	Yes
8.	Kerala	Yes
9.	Madhya Pradesh	Presently, the Board is dissolved
10.	Karnataka	Yes

7. Functions of the Board

(i) Whether the decisions of the Boards are implemented promptly? If not, for what reasons?

S.No.	Name of the Board	Response
1.	Jharkhand	Yes
2.	Uttarakhand	Yes
3.	Haryana	Yes
4.	Punjab	Yes
5.	Gujarat	Yes
6.	Bihar	Yes
7.	Rajasthan	Yes
8.	Kerala	Yes
9.	Madhya Pradesh	Yes
10.	Karnataka	No information provided

(ii) Whether the Board has notified any scheme under BOCW Act?

S.No.	Name of the Board	Response
1.	Jharkhand	No
2.	Uttarakhand	All the Welfare Schemes are notified
3.	Haryana	11 Schemes have been notified
4.	Punjab	No. Prior approval of the Government is taken before getting the Scheme approved from the Board.
5.	Gujarat	Yes
6.	Bihar	No
7.	Rajasthan	Yes
8.	Kerala	Yes
9.	Madhya Pradesh	Yes, 22 schemes are being run by the Board.
10.	Karnataka	No information provided

8. Building and other Construction Workers' Welfare Fund and its application

- (i) Whether the entire amount of cess from the construction establishments has been collected? If, not, what is the backlog amount?

S.No.	Name of the Board	Response
1.	Jharkhand	No, but not estimated
2.	Uttarakhand	No definite information available
3.	Punjab	Punjab Government has already notified officials of Labour Department and of other departments such as irrigation, P.W.D., Local authorities, Housing and Urban Development, Public Health and Rural Development etc. as Cess collectors and assessing authorities. Practically the officials of other department are not performing well.
4.	Gujarat	Yes
5.	Bihar	Can't say
6.	Rajasthan	Very difficult to comment
7.	Kerala	Details of backlog amount is not available
8.	Madhya Pradesh	Collection of Cess is a continuous process. All efforts are done to collect the same. RRC are being issued by Cess collecting Authority.
9.	Karnataka	No information provided

- (ii) Is the provision of 5% as administrative cost practical?

S.No.	Name of the Board	Response
1.	Jharkhand	Yes
2.	Uttarakhand	5% of total Cess collected or other wise 10% of the expenditure.
3.	Haryana	5% needs to be reviewed.
4.	Punjab	It is a good provision.
5.	Gujarat	No
6.	Bihar	Yes
7.	Rajasthan	Not for initial period
8.	Kerala	No
9.	Madhya Pradesh	No
10.	Karnataka	No information provided

- (iii) If not, what is your considered view about what should be a reasonable percentage?

S.No.	Name of the Board	Response
1.	Jharkhand	-
2.	Uttarakhand	5% of total Cess collected or other wise

		10% of the expenditure.
3.	Haryana	-
4.	Punjab	Not applicable
5.	Gujarat	10%
6.	Bihar	Percentage is upto the mark
7.	Rajasthan	-
8.	Kerala	10%
9.	Madhya Pradesh	At least 15%
10.	Karnataka	No information provided

(iv) How is the cost of modernization, technological up gradation met?

S.No.	Name of the Board	Response
1.	Jharkhand	Within the 5% amount of total Cess collected
2.	Uttarakhand	Through administrative expenses
3.	Haryana	-
4.	Punjab	Cess is applicable on construction component only
5.	Gujarat	20%
6.	Bihar	Nothing has been done
7.	Rajasthan	-
8.	Kerala	The cost of modernization, technological up gradation is met from the amount reserved for administrative expenses.
9.	Madhya Pradesh	Through administrative expenses
10.	Karnataka	No information provided

(v) How the fund is being utilized?

S.No.	Name of the Board	Response
1.	Jharkhand	Mainly in Welfare Schemes
2.	Uttarakhand	Welfare Schemes
3.	Haryana	On Welfare Schemes
4.	Punjab	The Board is utilizing the Cess fund as per provisions of Section 24 of the BOCW Act, 1996.
5.	Gujarat	For the welfare activities of construction workers
6.	Bihar	Only in Welfare Schemes
7.	Rajasthan	On Welfare Schemes
8.	Kerala	On Welfare Schemes
9.	Madhya Pradesh	Fund is utilized in schemes and for meeting administrative expenses.
10.	Karnataka	No information provided

9. Publication of Report

(i) Annual Report/ Quarterly Report/ Any other Report

S. No.	Name of the Board	Report Published
1.	Jharkhand	No. Department of Labour prepares Annual report every year
2.	Uttarakhand	Annual Report
3.	Punjab	Annual and Quarterly Report
4.	Gujarat	Annual Report
5.	Bihar	No report. Only department's Annual Report published.
6.	Rajasthan	Annual Report
7.	Kerala	Annual Report
8.	Madhya Pradesh	Annual and Quarterly Report
9.	Karnataka	No information provided

(ii) Is the annual report prepared as provided in the Act? Please supply a copy of the last report.

S.No.	Name of the Board	Response
1.	Jharkhand	No
2.	Uttarakhand	Yes. Annual Report given for 2014-15
3.	Haryana	No Separate Annual report is being published
4.	Punjab	Yes. Copy provided
5.	Gujarat	Yes
6.	Bihar	No. As covered under department Annual report.
7.	Rajasthan	Yes. Copies provided
8.	Kerala	Yes
9.	Madhya Pradesh	Yes
10.	Karnataka	No information provided

10. Total Cess collection(Amount in Lakhs)

S.No.	Name of the Board	2015-16	2014-15	2013-14	2012-13	2011-12
1.	Jharkhand	5329	6180	4456	4469	2672
2.	Uttarakhand	5523.83	2950.14	1580.28	1493.06	802.56
3.	Punjab	14261.71	14538.02	12051.77	12202.75	11263.47
4.	Gujarat	33203	26282	21945	16097	11966
5.	Bihar	21533	14519	11983	25450	No information
6.	Rajasthan	32245	27875	25195	17387	15401
7.	Kerala	19223	17530	13638	14214	10248

8.	Madhya Pradesh	28644	30358	26449	22576	13639
9.	Karnataka	66591	66521	47739	46758	32520
10.	Delhi	20807	25300	18182	15722	14891

11. Funds collected from Construction Workers(Amount in Lakhs)

S.No.	Name of the Board	2015-16	2014-15	2013-14	2012-13	2011-12
1.	Jharkhand	NIL	NIL	NIL	NIL	NIL
2.	Uttarakhand	5.26	9.67	2.33	0.78	0.21
3.	Punjab	312.71	190.06	159.85	86.69	08.99
4.	Gujarat	NIL	NIL	NIL	NIL	NIL
5.	Bihar	No information	No information	No information	No information	No information
6.	Rajasthan	226	161	202	100	30
7.	Kerala	2578	2503	2634	2437	2655
8.	Karnataka	Included in the Cess collection				
9.	Delhi	No information provided	No information provided	49	16	11

12. Grants from State Government(Amount in Lakhs)

S.No.	Name of the Board	2015-16	2014-15	2013-14	2012-13	2011-12
1.	Jharkhand	NIL	NIL	NIL	NIL	NIL
2.	Uttarakhand	NIL	NIL	NIL	NIL	NIL
3.	Punjab	NIL	NIL	NIL	NIL	NIL
4.	Gujarat	34652	29343	1057	626	316
5.	Bihar	NIL	NIL	NIL	NIL	NIL
6.	Rajasthan	NIL	NIL	NIL	NIL	NIL
7.	Kerala	NIL	NIL	NIL	NIL	NIL
8.	Madhya Pradesh	NIL	NIL	NIL	NIL	NIL
9.	Karnataka	NIL	NIL	NIL	NIL	NIL
10.	Delhi	No information provided	No information provided	No information provided	No information provided	No information provided

13. Grants from Central Government(Amount in Lakhs)

S.No.	Name of the Board	2015-16	2014-15	2013-14	2012-13	2011-12
1.	Jharkhand	NIL	NIL	NIL	NIL	NIL
2.	Uttarakhand	NIL	NIL	NIL	NIL	NIL

3.	Punjab	NIL	NIL	NIL	NIL	NIL
4.	Gujarat	NIL	NIL	NIL	NIL	NIL
5.	Bihar	NIL	NIL	NIL	NIL	NIL
6.	Rajasthan	NIL	NIL	NIL	NIL	NIL
7.	Kerala	NIL	NIL	NIL	NIL	NIL
8.	Madhya Pradesh	NIL	NIL	NIL	NIL	NIL
9.	Karnataka	NIL	NIL	NIL	NIL	NIL
10.	Delhi	No information provided	No information provided	No information provided	No information provided	No information provided

14. Funds Utilization

A. Welfare of Construction Workers(Amount in Lakhs)

S.No.	Name of the Board	2015-16	2014-15	2013-14	2012-13	2011-12
1.	Jharkhand	3884	2712	2527	1051	230
2.	Uttarakhand	1318.60	85.20	2.92	1.79	NIL
3.	Punjab	12178.64	6139.43	7879.66	86.24	29.16
4.	Gujarat	104967	55401	8677	10750	10615
5.	Bihar	No information	No information	No information	No information	No information
6.	Rajasthan	16223.76	3057.59	23394.15	732.35	93.81
7.	Madhya Pradesh	10124	5859	10504	11564	8150
8.	Karnataka	7646	3441	8008	1269	831
9.	Delhi	2399	350	26	75	165

B. Salary of Staff including Honorarium to members(Amount in Lakhs)

S.No.	Name of the Board	2015-16	2014-15	2013-14	2012-13	2011-12
1.	Jharkhand	No information	No information	No information	No information	No information
2.	Uttarakhand	5.36	No information	0.80	3.75	0.72
3.	Punjab	327.90	279.01	224.96	119.73	108.82
4.	Gujarat	79	11	21	13	6
5.	Bihar	10.75	7.25	6.00	No information	No information
6.	Rajasthan	47.78	44.34	32.88	30.09	9.59
7.	Madhya Pradesh	477	441	503	336	271
8.	Karnataka	No information provided	No information provided	No information provided	No information provided	No information provided
9.	Delhi	184	182	180	145	79

C. Administrative Expenses(Amount in Lakhs)

S.No.	Name of the Board	2015-16	2014-15	2013-14	2012-13	2011-12
1.	Jharkhand	No information	No information	No information	No information	No information
2.	Uttarakhand	3.09	0.39	0.84	0.25	0.25
3.	Punjab	67.33	32.70	29.52	13.98	13.31
4.	Gujarat	16	25	32	19	11
5.	Bihar	No information	No information	No information	No information	No information
6.	Rajasthan	141.08	102.83	80.14	66.77	32.39
7.	Madhya Pradesh	No information	No information	No information	No information	No information
8.	Karnataka	No information provided	No information provided	No information provided	No information provided	No information provided
9.	Delhi	33	31	44	16	46

D. Technology/ Modernization(Amount in Lakhs)

S.No.	Name of the Board	2015-16	2014-15	2013-14	2012-13	2011-12
1.	Jharkhand	No information	No information	No information	No information	No information
2.	Uttarakhand	13.01	NIL	NIL	NIL	NIL
3.	Punjab	5.34	31.39	5.84	0.51	1.41
4.	Gujarat	No information	No information	No information	No information	No information
5.	Bihar	No information	No information	No information	No information	No information
6.	Rajasthan	No information	No information	No information	No information	No information
7.	Madhya Pradesh	No information	No information	No information	No information	No information
8.	Karnataka	No information provided	No information provided	No information provided	No information provided	No information provided
9.	Delhi	No information provided	No information provided	No information provided	No information provided	No information provided

E. Total(Amount in Lakhs)

S.No.	Name of the Board	2015-16	2014-15	2013-14	2012-13	2011-12
1.	Jharkhand	No information	No information	No information	No information	No information
2.	Uttarakhand	1371.03	88.21	6.24	8.18	2.47
3.	Punjab	12679.73	6516.04	8178.41	257.72	194.03
4.	Gujarat	24064	36375	55223	55618	19572
5.	Bihar	No information	No information	No information	No information	No information
6.	Rajasthan	16550.24	3220.48	23644.59	1147.02	28.08
7.	Madhya Pradesh	10601	6300	11007	11900	8421
8.	Karnataka	7646	3441	8008	1269	831
9.	Delhi	No information provided	No information provided	No information provided	No information provided	No information provided

15. Estimates of Construction Workers in the State from other States

S.No.	Name of the Board	Source	Number of Construction Workers	Year of estimation	Methodology used for data collection
1.	Jharkhand	No estimation done	No estimation done	No estimation done	No estimation done
2.	Uttarakhand	NIL	NIL	NIL	NIL
3.	Punjab	No comments	No comments	No comments	No comments
4.	Gujarat	Not available	Not available	Not available	Not available
5.	Bihar	No estimation done	No estimation done	No estimation done	No estimation done
6.	Rajasthan	No comments	No comments	No comments	No comments
7.	Madhya Pradesh	No estimation done	No estimation done	No estimation done	No estimation done
8.	Karnataka	No information provided	No information provided	No information provided	No information provided

9.	Delhi	No information provided	No information provided	No information provided	No information provided
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16. Total number of Construction Workers registered and Identity cards issued till 31st March, 2016

S.No.	Name of the Board	Construction Workers registered	Identity cards issued
1.	Jharkhand	523448	17431
2.	Uttarakhand	89754	89754
3.	Punjab	418535	418535
4.	Gujarat	272135	272135
5.	Bihar	7.75 Lakhs	7.75 Lakhs
6.	Rajasthan	900114	No comments
7.	Kerala	1552960	1552960
8.	Madhya Pradesh	2481926	2481926
9.	Karnataka	1010660	1010660
10.	Delhi	395101	395101

17. Number of Construction Workers registered during the last 3 years

S.No.	Name of the Board	2015-16	2014-15	2013-14
1.	Jharkhand	122302	138848	100970
2.	Uttarakhand	61937	17729	5322
3.	Punjab	115871	90443	107786
4.	Gujarat	183887	17324	953
5.	Bihar	293000	174908	66719

6.	Rajasthan	285946	142259	238796
7.	Madhya Pradesh	115382	57077	168225
8.	Karnataka	246350	239031	220909
9.	Delhi	85770	73275	66038

18. Number of Construction Workers renewed during the last 3 years

S.No.	Name of the Board	2015-16	2014-15	2013-14
1.	Jharkhand	Not available but almost negligible	Not available but almost negligible	Not available but almost negligible
2.	Uttarakhand	676	801	276
3.	Punjab	No comments	No comments	No comments
4.	Gujarat	Not available	Not available	Not available
5.	Bihar	No information	No information	No information
6.	Rajasthan	No comments	No comments	No comments
7.	Madhya Pradesh	No information	No information	No information
8.	Karnataka	No information provided	No information provided	No information provided
9.	Delhi	No information provided	No information provided	No information provided

19. Accounts and Audit

(i) Are the Accounts being audited by CAG as per provision of Sec. 27 of BOCW Act.?

S.No.	Name of the Board	Response
1.	Jharkhand	Not by CAG
2.	Uttarakhand	Yes

3.	Haryana	Yes
4.	Punjab	Yes
5.	Gujarat	Yes
6.	Bihar	Not by CAG
7.	Rajasthan	Yes
8.	Kerala	Yes
9.	Madhya Pradesh	Yes
10.	Karnataka	No information provided

(ii) Does the Board prepare an annual budget which is duly approved by it? Pl supply a copy of your last approved budget

S.No.	Name of the Board	Response
1.	Jharkhand	No
2.	Uttarakhand	Yes
3.	Haryana	Yes, for new Schemes
4.	Punjab	Yes. Copy provided.
5.	Gujarat	Yes
6.	Bihar	No
7.	Rajasthan	Yes
8.	Kerala	Yes
9.	Madhya Pradesh	Yes
10.	Karnataka	No information provided

20. Budget

(i) What is laid down procedure for budget preparation?

S.No.	Name of the Board	Response
1.	Jharkhand	No comments
2.	Uttarakhand	No specific laid down procedure. However, the normal procedure laid down is followed.
3.	Haryana	As per State Government Procedure
4.	Punjab	The budget is prepared annually taking into consideration of actual expenditure in the previous year and projections for the next year.
5.	Gujarat	Budget is prepared by Board office and sent to Government for approval in time limit.
6.	Bihar	No comments
7.	Rajasthan	No
8.	Kerala	The budget allocation is year marked based on the welfare activities. The budget proposal is prepared and sent to the Government for approval with the consent

		of the Board.
9.	Madhya Pradesh	The Board shall prepare and approve before 10 th March every year, its budget for the next financial year. The budget shall be prepared and after approval by the Board, shall be forwarded to the State and Central Governments so as to reach them by 20 th March.
10.	Karnataka	No information provided

(ii) What is the time schedule for approval of the budget by the Board?

S.No.	Name of the Board	Response
1.	Jharkhand	No comments
2.	Uttarakhand	No fixed time schedule
3.	Haryana	Annually
4.	Punjab	The budget is approved by the Board before the commencement of next financial year
5.	Gujarat	Every year in the month of February-March.
6.	Bihar	No comments
7.	Rajasthan	Not approved upto 15 th March but by May or so.
8.	Kerala	The budget proposal is placed before the Board before the financial year ends.
9.	Madhya Pradesh	Before 10 th March (every year)
10.	Karnataka	No information provided

21. Court Cases pending

S.No.	Name of the Board	Number of Court Cases pending
1.	Jharkhand	1
2.	Uttarakhand	0
3.	Punjab	2
4.	Gujarat	4
5.	Bihar	No information
6.	Rajasthan	2
7.	Kerala	Yes (Relating to distribution of benefits and Cess collection)
8.	Madhya Pradesh	Yes, Regularization by different employee

9.	Karnataka	No information provided
10.	Delhi	5

B. Questionnaire Response Collation

Responses received on the pre-set questionnaire by our field survey teams are listed as follows:-

1. Section 2 of the Act – Definition

The Act does not define the word construction worker but it defines a "building worker", and in defining the terminology it goes on to say that a person who is engaged in the affairs of construction is a building worker. Does it create confusion? If so, how do you think this deficiency may be overcome?

Reponses of various Boards (State- wise) are provided as under:

a. Punjab

Section 2 (e) of the Act defines building worker as "employed to do building or other construction work". Board is registering beneficiaries as per the definition and there is no confusion.

Suggestion:

Our suggestion is that the title of definition of 'building worker' should be changed to "building & other construction worker".

b. Gujarat

There is no confusion in regard to definition.

c. Rajasthan

The State Board has notified the various activities to be considered for registering the workers as Building Workers.

d. Kerala

The definition of Building worker results some confusion and the definition shall be construed broadly with more clarity.

e. Karnataka

Construction and construction related workers should include even the truck/ lorry drivers of construction materials transportation.

Further, as per the information gathered following Boards had no confusion with regards to the definition provided under section 2 of the Act:

- Jharkhand
- Haryana
- Uttarakhand
- Bihar
- Madhya Pradesh

2. Section 12 - Registration of building workers as beneficiaries

(i) What is the minimum period for registration of a worker as a beneficiary?

S.No.	Name of the Board	Response
1.	Jharkhand	90 days
2.	Uttarakhand	90 days
3.	Haryana	90 days
4.	Punjab	15 days
5.	Gujarat	3 years
6.	Bihar	90 days
7.	Rajasthan	90 days
8.	Madhya Pradesh	Different schemes have different minimum period for registration for getting benefit.
9.	Karnataka	90 days

(ii) How do you identify a worker as a construction worker?

S.No.	Name of the Board	Response
1.	Jharkhand	Trade Union/ Self – declaration/ Any other viable proof
2.	Uttarakhand	Personal Affidavit/ registration at the site
3.	Haryana	Trade Unions, employers
4.	Punjab	Employer/ Village Mukhiya/ Municipal Counselor etc.
5.	Gujarat	Workers self certification
6.	Bihar	Trade Unions/ Self – declaration
7.	Rajasthan	90% are identified by Trade Unions

8.	Madhya Pradesh	Self certification
9.	Karnataka	Referring by Trade Unions/ Builders/ Contractors (rarely)

(iii) What is the process of weeding out non-construction workers?

S.No.	Name of the Board	Response
1.	Jharkhand	Those who are not listed as construction workers
2.	Uttarakhand	No specific verification mechanism / process
3.	Haryana	Through personal interaction. The Board is also considering the proposal of on-line registration
4.	Punjab	No such mechanism exists. Action is taken on receipt of any compliant
5.	Gujarat	Not applicable
6.	Bihar	Construction workers already identified
7.	Rajasthan	No process
8.	Kerala	Details are collected from site inspections carried out by DEO/ ADEO. Department of Labour has developed a software viz., AJJS to duplicate the membership of the Building workers who has taken membership in various welfare Boards. The Board has adopted the software and carrying out the deduplication process.
9.	Madhya Pradesh	The Board is now registering workers through online portal which is linked with population register which automatically weeds out the persons having other occupation.
10.	Karnataka	Inspection by the Labour inspector at both work spots / residence of the workers.

(iv) How the safety, health of construction workers with less than 90 days service is protected?

S.No.	Name of the Board	Response
1.	Jharkhand	Coverage under Contract Labour Act, 1970
2.	Uttarakhand	No benefits for such construction workers
3.	Haryana	In the event of death of worker on construction site with less than 90 days service, worker is registered and given the financial assistance of Rs. 2.5 Lakhs.
4.	Punjab	Board does not cover these cases
5.	Gujarat	No comments
6.	Bihar	They are all covered by contract labour and Abolition Act, 1970
7.	Rajasthan	There is no system

8.	Kerala	Inspection of work site entrusted with Labour Department. Information may be called from Labour Department.
9.	Madhya Pradesh	The officers of Directorate of Industrial Health and Safety inspect the construction sites and ensure safety of all workers.
10.	Karnataka	No information provided

(v) How do you ensure submission of due returns by the employers?

S.No.	Name of the Board	Response
1.	Jharkhand	No system
2.	Uttarakhand	No system
3.	Haryana	No comments
4.	Punjab	The inspectorate staff is supposed to ensure submissions of the returns by the employers.
5.	Gujarat	No comments
6.	Bihar	No system prescribed
7.	Rajasthan	Provision not practical.
8.	Kerala	Registration of employers is entrusted with Labour Department. Information may be called from Labour Department.
9.	Madhya Pradesh	Officers of Labour Department are the regularization authority under the Act and through regular inspection.
10.	Karnataka	No information provided

3. Identity cards

(i) Whether employers are entering in the identity cards the details of the building or other construction work done by the beneficiary and authenticate the same?

S.No.	Name of the Board	Response
1.	Jharkhand	No
2.	Uttarakhand	The smart cards are being issued.
3.	Haryana	Yes
4.	Punjab	Not much progress on this account
5.	Gujarat	No
6.	Bihar	Provide only dependent's name
7.	Rajasthan	ID cards are being issued but its genuineness

		cannot be confirmed
8.	Kerala	The detail of the work done by the beneficiary is entered in the application form submitted on the occasion of registration.
9.	Madhya Pradesh	Self-certification of employment
10.	Karnataka	No information provided

4. Cessation as a beneficiary

(i) How does the Board oversee cessation of membership?

S.No.	Name of the Board	Response
1.	Jharkhand	After 60 days on expiry of the first year of membership.
2.	Uttarakhand	Primary membership is for 3 years and thereafter renewal along with form and affidavit.
3.	Haryana	Membership is renewed after 1 year with grace period of 1 year with fine.
4.	Punjab	Board has empowered the officers of the Labour department in this regard
5.	Gujarat	Time limit of 3 years of a member, then he ceases to be a member
6.	Bihar	After 60 years
7.	Rajasthan	Verified at the time of claiming the benefit.
8.	Madhya Pradesh	Online registration is done which automatically ceases the membership on attaining the age of 60 years, or if beneficiary does not renew his registration within stipulated time.
9.	Karnataka	No information provided

(ii) What is the method of renewal of membership?

S.No.	Name of the Board	Response
1.	Jharkhand	Prescribed format
2.	Uttarakhand	After 3 years along with form and affidavit.
3.	Haryana	Renewal after 1 year on submitting a certificate of construction for 90 days
4.	Punjab	As and when the beneficiary approaches, the requisite action is taken.
5.	Gujarat	By issuing order by the Government
6.	Bihar	Apply in a prescribed format
7.	Rajasthan	Verified at the time of claiming the benefit.
8.	Madhya Pradesh	Power of registration and renewal of membership is assigned to Municipal Commissioner/ CMO/ CEO Janpad Panchayat after due verification renewal is done through online portal.

9.	Karnataka	Once in 3 years, the workers should produce the ID card for the renewals either directly or through union by paying the respective fee.
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(iii) What is the policy of your Board in respect of a migrant worker's welfare?

S.No.	Name of the Board	Response
1.	Jharkhand	No comments
2.	Uttarakhand	Smart cards are issued which contains the information of his membership
3.	Haryana	Under process. Suggestion being taken.
4.	Punjab	Board has not framed any migrant worker's specific Policy
5.	Gujarat	There is no discrimination between the workers
6.	Bihar	No Policy
7.	Rajasthan	Verified at the time of claiming the benefit.
8.	Kerala	In Kerala, a separate welfare scheme for migrant workers has already been formulated.
9.	Madhya Pradesh	Migrant workers are also registered if they fall under the category of construction workers and fulfill the essential criteria.
10.	Karnataka	No information provided

5. Contribution of building workers

(i) What is the amount of registration fee fixed by your Board?

S.No.	Name of the Board	Response
1.	Jharkhand	Rs. 20
2.	Uttarakhand	No registration fees
3.	Haryana	Rs. 25
4.	Punjab	Rs. 25
5.	Gujarat	No registration fees
6.	Bihar	Rs. 20
7.	Rajasthan	Rs. 25
8.	Madhya Pradesh	Rs.5
9.	Karnataka	Rs. 25

6. Effect of non-payment of contribution

(i) What is the time period for renewal of registration?

S.No.	Name of the Board	Response
1.	Jharkhand	1 year
2.	Uttarakhand	After 3 years
3.	Haryana	1 year or 3 years
4.	Punjab	1 year grace period
5.	Gujarat	3 years
6.	Bihar	After 1 year
7.	Rajasthan	5 years
8.	Madhya Pradesh	5 years
9.	Karnataka	Without fine/ penalty upto 1 year from the expiry date and with penalty of Rs 2 per month upto 3 years.

(ii) Is there a laid down process for declaring a worker defaulter?

S.No.	Name of the Board	Response
1.	Jharkhand	Not implemented
2.	Uttarakhand	No laid down procedure.
3.	Haryana	In suspected cases enquiry is held.
4.	Punjab	There is no such laid down procedure
5.	Gujarat	No
6.	Bihar	Yes, but not effected
7.	Rajasthan	No
8.	Madhya Pradesh	No information
9.	Karnataka	No information provided

(iii) Does the Board notify any defaulters' list?

S.No.	Name of the Board	Response
1.	Jharkhand	No
2.	Uttarakhand	No
3.	Haryana	No
4.	Punjab	-
5.	Gujarat	No
6.	Bihar	No
7.	Rajasthan	No
8.	Kerala	No
9.	Madhya Pradesh	No
10.	Karnataka	No information provided

(vi) Whether any drive has been launched for the registration of construction workers?

S.No.	Name of the Board	Response
1.	Jharkhand	Yes, with special drive
2.	Uttarakhand	Mobile Vans periodically visit the construction sites and enroll the construction workers
3.	Haryana	Yes, special camps have been organised
4.	Punjab	Yes. Special campaign since September, 2015 onwards by ways holding camps
5.	Gujarat	No comments
6.	Bihar	Yes, in camp mode
7.	Rajasthan	No comments
8.	Kerala	No need of any special drive. The Board has an on-going procedure for registration of construction workers.
9.	Madhya Pradesh	No information
10.	Karnataka	No information provided

(vii) If so, what is the outcome of the drive?

S.No.	Name of the Board	Response
1.	Jharkhand	Success in more registration of workers
2.	Uttarakhand	Very Good
3.	Haryana	A large number of workers (2.5 Lakhs) have been registered
4.	Punjab	Yes, 1.62 Lakhs registration has increased.
5.	Gujarat	No comments
6.	Bihar	Success in getting more registration
7.	Rajasthan	No comments
8.	Kerala	Not applicable in view of reply in point (vi).
9.	Madhya Pradesh	No information
10.	Karnataka	No information provided

7. Canteens, etc.

(i) Do the employers provide canteen facility to the site workers as the cost of food is booked as project cost and money so spent is recovered as project cost?.

S.No.	Name of the Board	Response
1.	Jharkhand	Only at big site
2.	Uttarakhand	Not always
3.	Haryana	Yes
4.	Punjab	There is no definition of project cost in the BOCW Act or Cess Act.

5.	Gujarat	Yes
6.	Bihar	Only at big site
7.	Rajasthan	Function of Government
8.	Kerala	Inspection of work site entrusted with Labour Department. Information may be called from Labour Department.
9.	Madhya Pradesh	No information
10.	Karnataka	No information provided

(ii) Do they provide crèche facility at site as per the Act?

S.No.	Name of the Board	Response
1.	Jharkhand	Only at big site
2.	Uttarakhand	Available at big construction sites
3.	Haryana	Board has provided 19 creches.
4.	Punjab	Punjab Government has notified field officials as inspectors under the BOCW Act. These inspectors are required to ensure the facility at the construction site.
5.	Gujarat	Yes
6.	Bihar	Only at big site
7.	Rajasthan	Function of Government
8.	Kerala	Inspection of work site entrusted with Labour Department. Information may be called from Labour Department.
9.	Madhya Pradesh	No information
10.	Karnataka	No information provided

(iii) Do they provide toilet facility at sites?

S.No.	Name of the Board	Response
1.	Jharkhand	Only at big site
2.	Uttarakhand	Yes
3.	Haryana	Board has provided the facility at 21 places.
4.	Punjab	Punjab Government has notified field officials as inspectors under the BOCW Act. These inspectors are required to ensure the facility at the construction site.
5.	Gujarat	Yes
6.	Bihar	Only at big site
7.	Rajasthan	Function of Government

8.	Kerala	Inspection of work site entrusted with Labour Department. Information may be called from Labour Department.
9.	Madhya Pradesh	No information
10.	Karnataka	No information provided

(iv) How do you ensure effective arrangement for supply of drinking water?

S.No.	Name of the Board	Response
1.	Jharkhand	By physical checking
2.	Uttarakhand	Through regular inspections
3.	Haryana	No comments
4.	Punjab	Punjab Government has notified field officials as inspectors under the BOCW Act. These inspectors are required to ensure the facility at the construction site.
5.	Gujarat	Strict vigil is kept regarding this.
6.	Bihar	By physical verification
7.	Rajasthan	Function of Government
8.	Kerala	Inspection of work site entrusted with Labour Department. Information may be called from Labour Department.
9.	Madhya Pradesh	Regular inspection are being done by regularization authority.
10.	Karnataka	No information provided

(v) Do they provide First Aid Box at the site?

S.No.	Name of the Board	Response
1.	Jharkhand	At most of the sites
2.	Uttarakhand	Yes
3.	Haryana	Mobile Medical Vans are being used for providing First Aid.
4.	Punjab	Punjab Government has notified field officials as inspectors under the BOCW Act. These inspectors are required to ensure the facility at the construction site.
5.	Gujarat	Yes
6.	Bihar	Yes
7.	Rajasthan	No comments
8.	Kerala	Inspection of work site entrusted with Labour Department. Information may be called from Labour Department.

9.	Madhya Pradesh	Yes
10.	Karnataka	No information provided

(vi) **Do they provide accommodation as laid down in the Act& remove the same as soon as construction work finishes?**

S.No.	Name of the Board	Response
1.	Jharkhand	Only at big site
2.	Uttarakhand	Yes, temporary arrangement are made
3.	Haryana	No comments
4.	Punjab	Punjab Government has notified field officials as inspectors under the BOCW Act. These inspectors are required to ensure the facility at the construction site.
5.	Gujarat	Yes
6.	Bihar	Only at big construction site
7.	Rajasthan	No comments
8.	Kerala	Inspection of work site entrusted with Labour Department. Information may be called from Labour Department.
9.	Madhya Pradesh	Yes
10.	Karnataka	No information provided

8. Misc.

A. **What is your opinion about the role of State Government, Central Government, Employers Association, Trade Unions, and NGOs in the implementation of the Act in your State.**

S.No.	Name of the Board	Response
1.	Jharkhand	No comments
2.	Uttarakhand	1 Trade Union is giving full assistance for registration of workers
3.	Haryana	No comments
4.	Punjab	All these organizations are playing very important roles respectively for the implementation of the Act.

5.	Gujarat	Implementation is done properly
6.	Bihar	No comments
7.	Rajasthan	No comments
8.	Kerala	The department of Labour alone involved in the implementation of the Act. No contribution comes from the part of other agencies.
9.	Madhya Pradesh	No information
10.	Karnataka	No information provided

B. Compliance as per the Direction u/s 60 dated 8 Sept & 23 Sept 2015

(i) What actions have been taken to ensure coverage of construction workers under PF/ESIC by your Board?

S.No.	Name of the Board	Response
1.	Jharkhand	No
2.	Uttarakhand	No comments
3.	Haryana	No comments
4.	Punjab	Board has requested PF/ ESIC department to cover the construction workers
5.	Gujarat	Not applicable
6.	Bihar	No
7.	Rajasthan	Information with EPF and ESIC
8.	Kerala	The Board has decided to constitute a sub-committee to study the possibilities for implementation of Central Schemes to the members registered under Kerala building and other construction workers' welfare Board.
9.	Madhya Pradesh	No information
10.	Karnataka	No information provided

(ii) **How many workers have been covered under PF/ESIC/RSBY since Oct 2015 up to 31.7.16?**

S.No.	Name of the Board	Response
1.	Jharkhand	Covered under RSBY
2.	Uttarakhand	The Schemes of the Board are better and being implemented
3.	Haryana	No comments
4.	Punjab	Board has requested PF/ ESIC department to cover the construction workers
5.	Gujarat	Under RBSY Scheme, 2493 construction workers have been covered up to 31.08.2016.
6.	Bihar	Covered under RSBY but smart cards has not been issued so far
7.	Rajasthan	RSBY has been discontinued
8.	Kerala	The Board has decided to constitute a sub-committee to study the possibilities for implementation of Central Schemes to the members registered under Kerala building and other construction workers' welfare Board.
9.	Madhya Pradesh	No information
10.	Karnataka	No information provided

(iii) **Have you enrolled construction workers under APY/PMJJY/PMJSY? If yes, please supply the number of those enrolled.**

S.No.	Name of the Board	Response
1.	Jharkhand	No
2.	Uttarakhand	No. The Schemes of the Board are better and being implemented.
3.	Haryana	No. Under consideration. The Board is providing better benefits.
4.	Punjab	After discussing all these schemes the Board opted for more beneficial Schemes because Board has enormous funds for the Schemes.
5.	Gujarat	Under APY – 49 PMJJY – 356 PMJSY – 1109 Construction workers have been

		enrolled
6.	Bihar	No
7.	Rajasthan	No comments
8.	Kerala	The Board has decided to constitute a sub-committee to study the possibilities for implementation of Central Schemes to the members registered under Kerala building and other construction workers' welfare Board.
9.	Madhya Pradesh	No information
10.	Karnataka	No information provided

(iv) Are the remaining workers covered under EPS or ESIS?

S.No.	Name of the Board	Response
1.	Jharkhand	No comments
2.	Uttarakhand	No comments
3.	Haryana	No comments
4.	Punjab	Board has requested PF/ESIC department to cover the construction workers.
5.	Gujarat	No comments
6.	Bihar	No comments
7.	Rajasthan	No comments
8.	Kerala	The Board has decided to constitute a sub-committee to study the possibilities for implementation of Central Schemes to the members registered under Kerala building and other construction workers' welfare Board.
9.	Madhya Pradesh	No information
10.	Karnataka	No information provided

(v) **How many scholarships have been sanctioned under AamAdmiBimaYojana?**

S.No.	Name of the Board	Response
1.	Jharkhand	Not applicable
2.	Uttarakhand	No comments
3.	Haryana	No comments
4.	Punjab	Board has adopted more practical and beneficial schemes for its beneficiaries in which scholarship amount ranging from 3000/- per year from the 1st class to Rs. 70,000/- per year for higher education is available and during this part of the financial year 21 crores have been distributed as scholarship for the wards of 20385 construction workers.
5.	Gujarat	Rs.100 per student studying 9 to 11 standard (up to 2 children)
6.	Bihar	AABY is not being implemented.
7.	Rajasthan	NIL
8.	Kerala	The Board has decided to constitute a sub-committee to study the possibilities for implementation of Central Schemes to the members registered under Kerala building and other construction workers' welfare Board.
9.	Madhya Pradesh	No information
10.	Karnataka	No information provided

CHAPTER 6

FINDINGS

1. Constitution of the Boards

The Boards have been constituted with representation from State Government, workers representatives, employer's representatives and a representative from Central Government. The Madhya Pradesh Board was constituted initially in April, 2003 but was dissolved in December, 2013. The Board is yet to be constituted after its dissolution in December, 2013. It is, however, seen that excepting Madhya Pradesh, the State Governments have notified the constitution of the Boards from time to time.

The number of Board members varies from State to State. Rajasthan Board has part-time members which is not provided for in the Act.

Staffing of the Board

The Gujarat Board has a full time Secretary where as in other Boards the State Government, Labour Department officials have been given the additional duties of the Secretary of the Board.

Kerala Board has appointed 175 employees on its roll, followed by the Punjab Board with 164 employees as full time staff. Haryana Board has recently sanctioned 330 posts. Delhi Board has the least number of regular employees of 3 only. Other Boards are working with contractual staff which is also insufficient.

2. Meetings of the Board

The Boards are conducting the meetings at different intervals. Punjab Board has met less than four times during the year 2015-16. Some Boards are meeting at greater intervals. The study indicates the decisions taken in the Board meeting are implemented. Different Boards are conducting drive for the registration workers but no drive has been under for renewal of membership. Punjab Board has conducted a special campaign which resulted in additional registration of 1.62 lakhs workers. The Uttarakhand Board registered a large number of construction workers by sending special teams of officials on mobile vans to construction sites.

3. Functions of the Board

The decisions of the Board are being implemented. Some Boards have notified the welfare schemes framed under the Act. Punjab Board is taking prior approval of the State Government before getting the scheme approved from the Board. Punjab Board has not notified any scheme.

4. Building and other construction welfare fund and its application

No Board could give a definite answer to the query, whether the entire amount of Cess from the construction of establishment has been collected. The Boards are yet to put a system in place to identify the defaulters in cess payment and to take further action for recovery in accordance with the provisions of the Act. The fund is being utilized mainly for the welfare schemes and for staff salary. The Boards are yet to plan for the modernization/ technical up gradation of the systems.

5. Annual Report

Study shows that as a rule Boards have not been publishing any annual report as authorized in the Act. Bihar and Jharkhand have not published annual report under the pretext that annual report of the Labour Department include report on the functioning of the Board. This type of approach is not in conformity with the provision of sec 25 Of the Act.

6. Collection of Cess fund

The Boards are collecting statutory Cess from the employers and the total amount varies from Board to Board.

7. Contribution of building workers

(1) A building worker who has been registered as a beneficiary under this Act shall, until he attains the age of sixty years, contribute to the Fund at such rate per month, as may be specified by the State Government, by notification in the Official Gazette and different rates of contribution may be specified for different classes of building workers:
Provided that the Board may, if satisfied that a beneficiary is unable to pay his contribution due to any financial hardship, waive the payment of contribution for a period not exceeding three months at a time.

(2) A beneficiary may authorize his employer to deduct his contribution from his monthly wages and to remit the same, within fifteen days from such deduction, to the Board.

The provisions so made for realizing contribution from the members appears to be not followed in letter and spirit by the Boards. Some Boards have completely waived the contribution from the building workers in clear violation of the provision of the Act in this regard. There is no clear cut information available about collection of contributions from the members both new and the old ones to tally with the total membership of the Board. This eats into the health of the Welfare Fund which is a matter of concern.

8. Utilization of funds

All the Boards have formulated the welfare schemes for the building workers albeit the quantum of benefits given by each Board is different. Central Government may consider formulating guidelines for a minimum level of benefits to be given by each Board.

9. Estimates of Migrant workers in the State

We could not get any information from any of the Boards in this regard. It is well known that about 50% of the construction workers are migrants from other States. To protect their interest, a legislation was enacted as early as in 1979, called, The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 for protection of their interest. Our study reveals that in spite of the passage of that path-breaking legislation, none of the States has taken up the issues concerning well-being of the migrant workers with such seriousness as it deserves thus reducing the utility of Construction Boards infructuous to a great extent. No Board has cared to keep any information about the number of such workers working in their respective area.

10. Number of construction workers registered and identity cards issued

The Boards have given information in regard to registration and identity cards issued but the work is not complete in all respects.(Sec13)

11. Construction workers registered and renewed

The Boards have provided the information in regard to the workers registered but most of them could not provide any information in regard to the renewal process or the number of workers who have actually renewed their membership annually. No live register is maintained nor has any document to monitor the membership activities been brought to notice of the study group. Similarly, Contribution register to be maintained for this purpose (Sec16) is also done imperfectly. At the bottom of this problem is the difficulty of providing adequate managerial manpower for accomplishing this job.

12. Accounts and Audit

The accounts of the Boards are being audited by CAG as per provision of Section 27 of the Act.

13. Budget

The study reveals that the budget proposals are annually prepared and placed before the Board for approval. Normally, budget is approved before the commencement of the next financial year.

14. Court cases pending

The Boards have given the requisite information showing no unacceptable position of the matters.

15. Definition of the building worker

The Central Government has issued a circular identifying the various works/ activity which fall under the definition of building worker. Similarly, the State Governments have also issued circulars/ notifications identifying the various categories of works/ activities coming under this definition. Though by and large the Boards have found nothing wrong with the definition, the Punjab Board has suggested that the title in the definition of “building worker” should be changed to “building and other construction worker”.

16. Survey to assess the needs of the construction workers

The Boards have not conducted any survey to assess the needs of construction workers except that some Boards have taken feedback from the members of the Board and field officers to safeguard the interest of the construction workers. The Boards have formulated various schemes, such as, scholarship for education of the children of workers, financial help in the event of accidental death, financial assistance for marriage of children of workers etc.

17. Registration of building workers as beneficiaries

A. Minimum period for registration

The Punjab Board is registering a worker as beneficiary after fifteen days of work. Gujarat Board is registering a worker as beneficiary after three years. Other Boards are registering a worker as beneficiary after sixty days though Sec 12 Act of 1996 mandates ninety days as eligibility condition.

In view of the above position on ground and keeping in view the eligibility service condition in other labour lawsthere appears to be a good case for relook at the eligibility condition for registration of members...

B. Identification of a worker

The identification of a worker as a beneficiary is the primary function of the Board. The study indicates that most of the Boards have delegated the function of identifying building workers to self-certification/ certification by the trade unions/ or to village mukhiya etc. Such a policy has more loopholes to be a good system However the law position is as follows:-

Section 12 (2) reads as under

- An application for registration shall be made in such form, as may be prescribed, to the officer authorised by the Board in this behalf.

Section 13 (2)

Identity cards.-

Every employer shall enter in the identity card the details of the building or other construction work done by the beneficiary and authenticate the same and return it to the beneficiary.

Section 15:

Register of beneficiaries.

Every employer shall maintain a register in such form as may be prescribed showing the details of employment of beneficiaries employed in the building or other construction work undertaken by him and the same may be inspected without any prior notice by the Secretary of the Board or any other officer duly authorised by the Board in this behalf.

In view of the above provisions of the Act, the employer shall maintain a register showing the details of employment of beneficiaries employed in the building or other construction work undertaken by him. The employer is also required to enter in the identity card the details of the building or other construction work done by the beneficiary and authenticate the same and return it to the beneficiary. Thus entrusting the employers with the sole responsibility in this regard.

In that view of the matter, identification of the building workers by the trade unions/ village mukhiya etc. is not in accordance with the provisions of the Act. The identification of the building workers on the basis of self certification/ certificate of the trade unions/ village mukhiya etc. without any verification and certification by the employer may cause registration of ghost/ non-building and construction workers.

C. Process of weeding out non- construction workers

The study indicates that no mechanism exists in this regard clearly flouting the provision of Sec 14(1) of the Act.

D. How the safety, health of construction workers with less than 90 days service is protected

The study reveals that the Boards have no irrefutable response in this regard. Haryana Board is giving financial assistance to the family of the deceased building worker having less than ninety days work experience in the event of death on construction site. This is a serious gap in management of the welfare of the construction workers which need to be bridged sooner than later.

E. Submission of return by the employers

The Boards have not given any specific response in this regard. The study team feels that a lot needs to be done in this regard by the Boards to make the provision of Sec44 effective and meaningful.

18. Cessation as a beneficiary

A. How the Board oversee the cessation of membership?

Section 14 of the Act reads as under:

“Cessation as a beneficiary

- A building worker who has been registered as a beneficiary under this Act shall cease to be as such when he attains the age of sixty years or when he is not engaged in building or other construction work for not less than ninety days in a year:
- Provided that in computing the period of ninety days under this sub-section, there shall be excluded any period of absence from the building or other construction work due to any personal injury caused to the building worker by accident arising out of and in the course of his employment.
- Notwithstanding anything contained in sub-section (1), if a person had been a beneficiary for at least three years continuously immediately before attaining the age of sixty years, he shall be eligible to get such benefits as may be prescribed.

Explanation.- For computing the period of three years as a beneficiary with a Board under this sub-section, there shall be added any period for which a person had been a beneficiary with any other Board immediately before his registration.”

In view of the above provisions of the Act, the basic conditions for cessation of membership is either when he attains the age of sixty years or when he is not engaged in building or other construction work for not less than ninety days in a year....”.

The other conditions of engagement in building or other construction work for not less than ninety days in a year can only be entered and certified by the employer. Since the registration of the workers in the various Boards is being done on the basis of self-certification etc. without verification by the employer, the cessation of beneficiary can only be implemented in the right manner if and only if the registration as well as renewal of membership of the worker as a beneficiary is done on the submission of returns by the employer as provided under Section 15 of the Act which reads as under:-

“Register of beneficiaries- Every employer shall maintain a register in such form as may be prescribed showing the details of employment of beneficiaries employed in the

building or other construction work undertaken by him and the same may be inspected without any prior notice by the Secretary of the Board or any other officer duly authorised by the Board in this behalf.”

In a nutshell, the process of cessation of membership of a workers requires not only involvement of the employers but also needs streamlining the process of keeping information about the service history in respect of each construction worker.

B. Method of renewal of membership

The Boards have not provided any information in regard to the renewed membership of the construction workers in the questionnaire. This indicates that the Boards are yet to develop a mechanism to provide information in this regard. The Boards at present are taking action for renewal of membership only when an beneficiary approaches them, this an ad-hoc system which should be formalized as soon as possible as pointed out earlier in the report.

19. Effect of non- payment of contribution

A. Time period of renewal of registration

Different Boards have fixed different time period for the renewal of registration according to their own accord. The Boards have also given a time period for renewal of membership beyond the grace period with penalty.

The study reveals that the Boards do not have any laid down process for declaring a worker as defaulter.

20. Provision of canteen/ toilet facility/ arrangement of supply of drinking water/ first aid box at the site/ temporary accommodation

The Boards have informed that regular inspections are conducting at the sites by the officials to ensure the providing of these facilities to the workers in accordance with the provisions of the Act.

21. Miscellaneous

A. What is your opinion about the role of State Government, Central Government, employers association, trade unions and NGOs in the implementation of the Act.

All these organizations are playing an important role for the implementation of the Act.

B. Directions of the Central Government under Section 60 of the Act

- i. Action taken to ensure coverage of construction workers under PF/ ESIC by the Board.**

The Boards are yet to take any concrete action/ steps in this regard. The Boards are of the opinion that PF/ ESIC departments should cover the construction workers on their own.

- ii. How many workers have been covered under PF/ ESIC/ RSBY since October, 2015 upto 31st July, 2016 .**

Gujarat Board has furnished the information in this regard whereas no other Board has furnished any information.

Have you enrolled construction workers under APY/ PMJJY/ PMJSY? If yes, please supply the number of those enrolled.

The Boards are of the view that the schemes introduced by them are more beneficial than the APY/ PMJJY/ PMJSY.

- iii. How many scholarships have been sanctioned under Aam Adami Bima Yojana?**

The Boards are of the view that the scholarships schemes introduced by them are more beneficial.

CHAPTER 7

Recommendations

We have carried out field study in as many as 15 States across the country. We have also carried out on the spot study of the conditions of the construction workers at sites seeking answers to the following questions:-

- Whether any survey has been made to assess the need of the construction worker?
- How the Board identifies a worker as a construction worker?
- The process of weeding out non-construction worker?
- How the Board ensures submission of due returns by the employers?
- Whether Identity Cards have been issued to all the registered construction workers?
- The process of cessation of membership.
- The process of renewal of membership.
- Constitution of the Board and its manpower.
- How welfare fund is utilised for the benefit of the construction workers?
- Preparation of annual report.
- Implementing directions issued by the Central Government under Section 60 of the Act during 2015.

1.2 All these issues have been discussed in detail in the previous Chapter as a part of our findings about the extent to which provisions of

the BOCW Act of 1996 and BOCWWC Act of 1996 have been implemented.

2. The field study reports were meticulously analysed leading to the findings as described in Chapter 6 of this report. Certain tentative conclusions were drawn which were further shared with the various stock-holders and social security experts before finalising the recommendations for improving the functioning of the Boards facing criticism from several quarters including the judiciary.

3. For this purpose, the Association conducted two seminars-one in Kolkata and the other in New Delhi on 9th December and 19th December, 2016, respectively. The Kolkata Seminar was presided over by Shri Raman Pandey, an eminent trade union leader and Janab Rasul Aziz, Addl. Labour Commissioner, Govt of West Bengal & CEO, WBOCWWB gracing the occasion as the Chief Guest. . The Delhi Seminar was inaugurated by Shri Rajit Punhani, Director General, Labour Welfare, Ministry of Labour & Employment, Government of India and presided over by Dr A. K. Balyan, President, SSAI. The findings of the Study and its draft recommendations were discussed in both of these seminars. During the discussions in these two seminars, not only the findings of the study were endorsed by one and all but we received valuable legal and administrative suggestions to set right the shortcomings in the functioning of the Boards. We also received unstinted support to the

tentative recommendations prepared by us. Suggestions for improvement centred around:-

- proper constitution and functioning of the Boards ;
- preparation of model rules/ guidelines in regard to the varieties of schemes and quantum of benefits for the beneficiaries to bring uniformity in this regard across all the Boards
- the existing laws to be attuned with present day needs
- ~~the~~ laws so framed should necessarily follow the objectives of the concerned legislation.

5. We are in full agreement with the suggestions made at these two seminars that there is no uniform application of the provisions of the Acts 1996 with regard to regulation of employment and conditions of service of construction workers- so vital in their interest and in the process defeating the objectives of these two path-breaking labour welfare legislations. The most important impediment in this regard appears to be the condition set under Section 12(1) of the BOCW Act, 1979 which sets eligibility condition of 90 days of working for enrolling a worker as member of the Board. Such eligibility condition of previous work experience was abolished altogether from 1991 for the PF members when the Central Government amended the relevant rule under the Act to provide that a worker would be entitled to PF benefit from day one of his service. And no such eligibility condition ever existed under the ESIC Scheme. We, therefore, strongly feel that same condition should be applied in respect of the construction workers and the condition of 90 days' work experience should be abrogated sooner than later to make not only the BOCW Act

equivalent with other social security legislations like, EPF and ESIC Acts but also to do away with the unnecessary irritant standing in the way of benefiting the construction workers.

6. Our study has also revealed that the Boards are not able to utilise the proceeds of the cess fund for the benefits of the workers due to inherent contradiction in the control mechanism of the Board. Once a construction worker is registered under Sec. 14(1) that registration remains valid for until he reaches sixty years of age provided he renews his membership every year under Sec.16. It is also provided in Sec 17 of the Act that non- payment of annual contribution causes cessation of membership. Membership has to be renewed every year on payment of fee which varies from State to State, ranging from Rs.20 to Rs.25 as per the information collected by us. But as per the Act of 1996,there is no provision for waiving membership fee on permanent basis. But some Boards are following this practice which is in conflict with the provision of the Act and that needs to be stopped.

7.1 We also find that there is no laid down system of overseeing the renewal process. No Board maintains any live register of members. They also do not have dedicated staff to maintain such a register of live members or to watch timely renewal of membership by contacting the members from time to time. No system is in place to keep link with the members and, therefore, the entire concept of renewal of membership is an empty concept without any wherewithal to make it a reality. SSAI, therefore, strongly recommends to put in place an IT driven, Aadhar based system to capture entire data about the members to be able to keep a close

watch on their membership status and to be able to communicate with them as and when need arises. We are of the considered view that there is an urgent need to give serious attention to the management of the membership of the Board by adopting the following procedure as discussed in the succeeding paragraph. Until this is done, no benefit scheme can ever be properly administered and unintentional misuse of funds cannot be ruled out

7.2 We, in the circumstances, recommend introduction of live register where the particulars of each construction worker and his family may be incorporated. For this purpose, it is expedient to introduce Aadhar based card on IT platform for registration of each construction worker. This job may be delegated to the principal employer at construction sites in collaboration with CREDAI/Local Authorities to ensure that registration of workers takes place at every site by using Adhar Cards. Those of the workers who are already registered should also be covered under this Aadhar Card regime and no worker will get access into a work site without punching his card into the system. In other words, workers card will be a mobile file giving out the entire history about a construction worker's membership and chronological history of his employment as a construction worker. This Card should remain valid till he attains the age of 60. The details of this card is to be uploaded on 'as and when' basis into the server of the Construction Welfare Board so that the live register of members remains updated and the Board is well equipped to look after the welfare of its members as enshrined in these two Acts.

8.1 The administrative structure of the Board remains a matter of great concern. There is no gain saying the fact that without a dedicated group of personnel at

disposal, it is well nigh impossible for any Board to look after the needs and aspirations of lakhs of registered workers in a satisfactory manner. It is pertinent to recollect here the observation of Justice KrisnaIyer on the shortcoming of the Acts of 1996, "These Acts would fail to achieve the object by the reason of the absence of a suitable enforcing body with powers." These comments have remained true today also.

Our study has revealed that in most of the cases functions of the Board is being managed by deploying personnel of the concerned Labour Department in addition to their core duties. The villain of piece appears to be the provision made in Sec 24(3) of the Act putting a statutory limit of 5% of its total expenses on benefits in the relevant financial year as administrative expenses. This is not only hugely inadequate but impractical also. The system is cumbersome and counterproductive as our experience reveals.

8.2. We, therefore, recommend that Boards should have full financial power to incur expenditure for its proper functioning as enumerated in Sec 22 of the Act by modernising and digitizing its functions with links to all construction sites.

8.3. We are also of the view that each Board should have a full time CEO responsible for the management of the affairs of the Board being endowed with adequate financial and administrative powers under the rules.

9. It has also come to our notice that the Boards are not constituted strictly according to the provisions made in Sec18 of the Act of 1996. We have noticed some strange deviations in the composition of the Boards. Some of the State Boards are

calling some members as 'full time members' and some as 'part time' members. The Act does not prescribe any such terminology to describe Board members. Section 18(3) of the Act mandates as follows:-

“18(3) – The Board shall constitute of a Chairman, a person to be nominated by the Central Government and such number of other members, not exceeding 15 as may be appointed to it by the State Government.”

9.2 It, therefore, appears that in the composition of Board, some State Governments are not keeping the mandate of Section 18 in view which needs to be corrected immediately. This deviation should be rectified by the Union government.

10. We also strongly recommend that the recognised trade unions to be given a positive role in helping the Board in the matter of overseeing registration and renewal of membership of the workers.

11. National Campaign Committee for Central Legislation for Construction Labour has suggested that the State Construction Welfare Board as constituted by the statute should be rechristened on the lines of EPF Central Trust of Trustees or on the pattern of ESI Corporation which are duly constituted autonomous bodies under the relevant laws dealing with their affairs, independent of the Government, in the best interest of the workers. Under the law, Government only provides legislative support to these two organisations. As a result, these two organisations are capable of deciding what is best for the purpose of their members and can employ such functionaries as may be needed for smooth functioning of the Board. We fully support the demand of the National Campaign Committee for

Construction workers and would like to add that the Act also mandates that the Board should be a body corporate by providing as follows;-

“Sec 18(2) – The Board should be a body corporate by the name aforesaid, having perpetual succession and a common seal and shall by the said name sue and be sued.”

It strange that such a vital deviation in structuring of the Board has gone unnoticed for last two decades by all concerned to the detriment of the noble philosophy behind the said legislation. It, undoubtedly, calls for immediate legislation rectification.

12.It is a fact that cess collected by the Board and deposited in the cess fund are kept as part of Government revenue and most of the Boards are investing the fund proceeds in fixed deposits with the banks. On the other hand, for the funds managed by EPFO or ESIC, their Boards are competent to invest the fund according to the instructions issued by the Ministry of Finance, Govt. of India from time to time. As a result of that system, proceeds of those funds have been growing substantially allowing for more benefits to its members. They get tax exemptions on the income from deposits being trust funds We, therefore, recommend that the Cess Act of 1996 should be administered as provided for in Sec18(2) conferring statutory status to the respective State Building and Other Construction Workers Welfare Board with the Minister-in- charge of the Department of Labour of the respective State as Chairman. The Board should be constituted under the Indian Trust Act.1882 to make the Board members trustees under the Act. The Board will then have powers to invest the proceeds

of the cess fund as per the directive of the Central government and build up the fund to the best interest of the workers.

13. Our recommendations may be grouped under two categories-one involving administrative interventions and the other involving legislative action.

A. Involving administrative action:-

- creating an Aadhar based IT enabled platform for registration of workers linked to the Board website,
- creation of live register of workers & monitoring renewal of membership,
- registration of beneficiaries through e-returns submitted by the employers,
- e-filing of all returns by employers.
- e-filing of claims and disbursement of benefits to the beneficiaries,
- accessibility of IT enabled data to the Boards to take care of migrant workers' interest on "anywhere" basis for deriving Scheme benefits,
- Board to function as an autonomous body in terms of provision of Sec 18(2) of the Act,
- Model standing orders for the functioning of Boards,
- Full time CEO and staff for the Board as enshrined in the Act,

- Direction under Sec.60 to correct the deviations noticed in the matter of constitution, size, composition, holding meetings at regular in respect of some of the Boards,

B Involving Legislative Intervention-

- Section 2(e) of the Act in regard to the definition of ‘building workers’ may be amended by removing the exclusion of certain categories of employees;
- Board based definition of building worker;
- Removing eligibility condition of 90 days under Sec12(1) for registration of workers;
- Charging of fee from the workers in terms of Sec12 (3) may be done away with-such a provision may not pass the test of judicial scrutiny, violating the spirit of law - cess being not a tax but a fee. Consequently, Sec16 may also be revisited;
- Provision of Sec24 (3) calls for amendment to make the Board a body corporate as enshrined under Sec 18(2) of the Act.
- Need for overhauling of the BOCW(R&E) Act, 1996 to overcome the impediments in smooth working of the system.

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