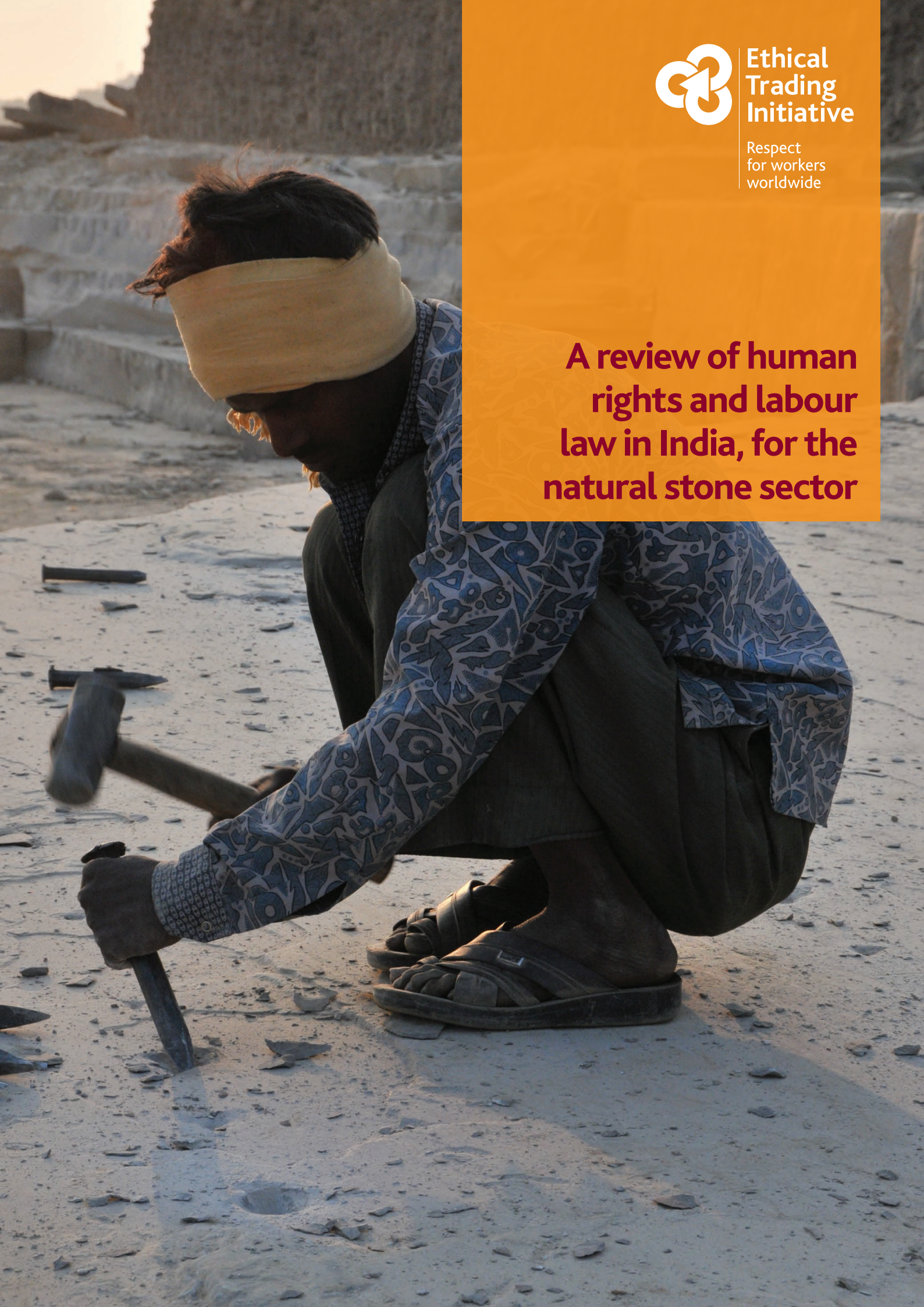




**Ethical  
Trading  
Initiative**

Respect  
for workers  
worldwide

**A review of human  
rights and labour  
law in India, for the  
natural stone sector**



**A review of human rights and labour law in India,  
with specific reference to sandstone mining and  
processing workers in Rajasthan**

*Report by Stirling Smith*

*June 2014*

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## Abbreviations

CEACR	The Committee of Experts on the Application of Conventions and Recommendations
CFA	Committee on Freedom of Association
CLPRA	Child Labour (Prohibition and Regulation) Act, 1986
CRC	Convention on the Rights of the Child
DGFASLI	Directorate General of Factory Advice Services and Labour Institutes
DWCPS	Decent Work Country Programmes
ETI	Ethical Trading Initiative
GOI	Government of India
GOR	Government of Rajasthan
GUF	Global Union Federation
ICLS	International Conference of Labour Statisticians
ITUC	International Trade Union Confederation
ILC	International Labour Conference
ILO	International Labour Organization
ILSs	International Labour Standards
IPC	Indian Penal Code
OSH	Occupational Safety and Health
NGO	Non-governmental organization
NHRC	Indian National Human Rights Commission

RHRC

Rajasthan State Human Rights Commission

SC/ST

Scheduled Castes/Scheduled Tribes



## Introduction

This report is a comparative study of human rights at work, sometimes known as labour rights, with regards to current labour law in India.

The sources of human rights examined in this study are those set out in the Indian constitution and in international labour standards (ILSs). As explained in the body of the report, India has been a member of the International Labour Organisation (ILO) since its foundation in 1919 and is one of its leading members

International labour standards create obligations upon governments that ratify conventions. The Ethical Trading Initiative Base Code transposes ILSs from the language of international law into a format that creates voluntary commitments from its corporate members who then seek to apply them through their supply chain.

This report does not claim to be a definitive interpretation of Indian law, for which the enforcement agencies and the courts of India are responsible.

## Structure of the report

An overview of the legal framework explains the division of powers between the central and state governments and what impacts this has upon labour laws. The application of the Mines Act and Factories Act to the Rajasthan stone sector is discussed.

This is followed by a lengthy explanation of the system of international labour standards. The justification for this is twofold. Firstly, ILSs are universal. They are not the application of standards suitable for developed industrialised countries onto less developed countries. They are developed over a substantial period of time, within a minimum of two years, with tripartite involvement and such represent a global minimum consensus.

Secondly, India has been a member of the ILO since 1919; India had independent representation at the Paris peace conference and signed the treaty of Versailles which established the ILO. ILSs have had an enormous impact on Indian labour law since then.

The report then considers in turn, the human rights of workers guaranteed by different sources - the Constitution of India, and Indian laws, international labour standards and the ETI Base Code. Each section corresponds to one clause of the ETI Base Code.

Each of these sections is structured as followed:

- A brief overview of key facts.

- Relevant clauses of the constitution are presented.
- Information on ILO standards that underpin the ETI provisions is presented, and a note on India's ratification.
- The ETI Base Code wording is provided for reference
- Relevant national legislation is outlined. Summaries of the law are not intended to be a substitute for the full texts and any interpretation is not authoritative - that is the mandate of the Indian courts.
- A commentary is provided using a "Ruggie" framework - the United Nations (UN) Guiding Principles on Business and Human Rights. The commentary discusses the extent to which the state protects human rights of workers in the stone sector; how business exercises its responsibility to respect human rights; and how effective access to remedies by victims of human rights abuse could be made available. The "Protect, Respect and Remedy" framework is explained in more detail below.

## *An overview of the legal framework*

### **The relationship between the Centre and the states**

India has a quasi-federal system. The Constitution of India demarcates the separation of powers between central government and state administrations in terms of legislative items (such as labour welfare, policing, inter-state transport etc.) which may be legislated on either by central or regional government, or both. The “Union List” contains those items which may be legislated upon by the central government alone, the “State List” contains those items which each state may legislate upon, and the “Concurrent List” contains those items which may be legislated upon by central and state government.

While welfare of all workers is a subject of the concurrent list (Entry 23 and 24 of List III), entry 55 of the Union List gives the Central Government the duty of "Regulation of labour and safety in mines and oilfields." This means that states cannot legislate on any issue relating to the regulation of labour and safety in mines and oilfields and that only Central Government may make any decisions pertaining to such issues.

This is problematic as sometimes it is the State Government who is best placed to understand and regulate labour when conditions are endemic to the specific state.

Legislation therefore follows different patterns in India - some are enacted and enforced by the Central Government, others are enacted by the Central Government yet enforced by the State Government, or are enforced by both. Meanwhile the State Government may also enact legislation or pass notifications to enforce policy guidelines of the Central Government. This means that there is a variety in the implementation procedure of acts, as well as their coverage from state to state.

In total there are 44 or 47 central labour laws, depending on which authority is consulted and 200 state labour laws.<sup>1</sup>

As some scholars have commented, “the Indian system of labour laws is very extensive and dauntingly complex.”<sup>2</sup>

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<sup>1</sup> R. C. Datta & Milly Sil, *Contemporary Issues on Labour Law Reform in India, An Overview*, Mumbai, 2007 says 47; the background paper for the 45<sup>th</sup> Indian Labour Conference says 44.

<sup>2</sup> Richard Mitchell et al, Petra Mahy and Peter Gahan, *The Evolution of Labour Law in India: An Overview and Commentary on Regulatory Objectives and Development* July 2012, University of Monash, available at <http://www.buseco.monash.edu.au/blt/wclrg/working-papers.html>

Broadly, mining is covered by the Mines Act, 1952, which is a Central act; only the Central Government can pass secondary legislation under the act and is solely responsible for its enforcement.

Stone crushing and processing units fall under the Factories Act, 1948. State governments can issue secondary legislation and are responsible for enforcement through state factory inspectorates. The provisions of these two acts will appear throughout this document.

## Mines Act, 1952

The Mines Act [Section 2 (1)] defines a mine as “any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on and includes: (...) all open cast workings”. An open cast working is further defined as “a quarry, that is to say, an excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on, not being a shaft or an excavation which extends below superjacent ground”.<sup>3</sup>

Most of the Act *does not apply* [Section 3 (b)] to extraction of certain minerals including “boulder, building stone (slate), gravel, and limestone” where:

- it is an open cast working; and
- the depth does not exceed six metres; and
- less than 50 workers are employed; and
- explosives are not used.

However, the provisions for inspectors and the provisions regarding child labour do apply to those mines which are otherwise exempt.

The Mines Act is therefore applicable to sandstone quarries in Rajasthan. The act contains provision for the powers of inspectors, some generic provisions for safety; provisions for hours of work; the prohibition of child labour; leave and wages.

The responsibility for enforcement of safety and health provisions of the Mines Act lies with the Directorate General of Mines Safety (DGMS). The Inspectorate has a total sanctioned strength of 236 officers; for the last period for which data is available, only 122 of these posts were filled - for all mines across the whole of India. There is a list of DGMS offices and their geographical coverage on the DGMS website. There is an office based in Udaipur, but the list of districts covered by that office does not include the sandstone districts of Rajasthan.

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<sup>3</sup> “Superjacent” means “overlying” (Concise Oxford English Dictionary, 2011)

In the year 2009, the latest for which data is available, 185 stone mines submitted returns to DGMS. These will be the only stone mines for which DGMS has any information in order to make an inspection, even if it had the staff to do so.<sup>4</sup>

There is a plethora of rules and regulations made under the act (one compendium of mining laws consulted for this study is 1,450 pages long)<sup>5</sup> but many of these are specific to particular minerals such as coal and metal ores. The most important of these for the purposes of this study are the Mines Rules, 1955.

However, some of the provisions of the Mines Rules only apply to mines employing a minimum number of workers. For example, shelters need only be provided in mines where more than 50 persons are “ordinarily employed”, cooled drinking water where more than 100 persons are ordinarily employed, canteens where more than 250 persons are ordinarily employed and workmen’s inspectors and safety committee where more than 500 persons are ordinarily employed.

This inconsistency in establishing a clear threshold to trigger the operation of certain sections of the Mines Rules makes it difficult to establish which part of the law applies in a particular workplace. However in most cases quarries do not employ enough people, directly or indirectly, for many of these detailed provisions to be mandatory.

However, some of these health, safety and welfare provisions could be simplified and codified in a usable form as good practice for quarries to adopt, with the support of stone processing units and buyers.

Note: The Mines (Amendment) Bill, 2011 was introduced in the Rajya Sabha on March 23, 2011 by the Minister of Labour and Employment. The Bill amends the definition of “owner” of a mine from immediate occupier of the mine to a person having “ultimate control” over the affairs of the mine. The Bill makes it mandatory for the owner to appoint the prescribed number of qualified officials and agents for supervision of all matters related to the operation of the mines. The Bill increases the penalty payable for contravention of the law and seeks to place the burden of proof on the alleged defaulter.

Whether the new government will proceed with the bill is unknown.

## **Factories Act, 1948**

The Factories Act is applicable throughout India. This Act applies to those factories employing 10 or more workers (if using power) or employing 20 or more workers (if not using power) on any day of the preceding 12 months. Some processing units, for example

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<sup>4</sup> See DGMS website, <http://www.dgms.net>

<sup>5</sup> D Seth, *Seth’s Encyclopaedia of Mining Laws*, 3<sup>rd</sup> edition, Delhi, 1997

where stone dressing by hand takes place, and where power is not used, will therefore fall outside the scope of the Factories Act.

Many sections give powers to the Central Government or State Governments to make more detailed rules. It is normal practice for model rules to be produced by the Directorate General of Factory Advice Services and Labour Institutes (DGFASLI), in conjunction with chief inspectors of factories. Each state is responsible for the licensing and inspection of factories within its jurisdiction.

The Act contains provisions regarding health; safety; welfare; hours of work; employment of young persons; and annual leave. Detail is provided in the relevant section.

According to World Bank research, two thirds of factories that should register under the act, do not do so.<sup>6</sup>

## Social security legislation

In the “organized sector” of larger workplaces, the main social security programmes include the Workmen's Compensation Act, 1923, for accidents in the place of work, Employees' State Insurance Act, 1948, for health benefits, Maternity Benefit Act, 1961, for expectant female workers and the Payment of Gratuity Act, 1972, and Employees' Provident Fund Act, 1952 for retirement benefits.

These schemes only cover approximately 6% of the total labour force in India as 94% of workers are in the “unorganised sector”. In the section in this study about Regular Employment, recent initiatives to provide social security for the vast majority workers in the informal economy are discussed. At this point, we can note that the legislation for “organised sector” varies in its application depending on wage ceilings, number of employees in an establishment, type of establishment, etc. For example, the Employees State Insurance Act, 1948 (ESI) which provides insurance to certain categories of employees, does not apply to mines, so quarry workers would not be covered by ESI.

## Other legislation

The Mines Act, 1952 and Factories Act, 1948 are the two acts which are fundamental to the Rajasthan stone sector.

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<sup>6</sup> Chatterjee, Urmila and Kanbur, Ravi, *Regulation and noncompliance: magnitudes and patterns for India's Factories Act*, World Bank, Policy Research Working paper No 6755, January 2014

They are supplemented by provisions given in various other inter-related acts (such as the Mine Rescue Rules), welfare boards, State notifications etc. read together, they provide an understanding of the extent of legal protection of workmen rights, the onus on businesses to guarantee the same, as well as any mechanism of redress.

Thus it is necessary to flip through multiple labour legislation and to determine whether workers in specific units, let alone the entire industry, fall under any welfare legislation. There is no simple umbrella provision covering all types of mines. In fact, there are numerous State Government notifications which apply to the mining of different kinds of stones.

There is also a difference in protection granted to labourers based on the kind of stone that is under process. Examples can be seen in the State Government notifications on marble and granite where most provisions are identical, yet some are missing.

## **International Labour Standards**

International labour standards are legal instruments drawn up by the ILO's tripartite constituents. The system of international labour standards takes the form of conventions and recommendations. They are adopted by the International Labour Conference, which meets every year in Geneva during the month of June. A tripartite committee will discuss the text line by line, normally over two years. When the committee agrees a text, which may be a Convention or Recommendation, it is sent to the entire conference for adoption.

International Labour Conventions are drawn up under international law. When a text is finally adopted by the International Labour Conference, countries can then choose to ratify it. Just because a country voted for the text of the convention, does not mean it is bound by it. Ratification of the convention is a separate and voluntary process. No country can be forced to ratify or sign a convention.

A minimum number of member states must ratify an ILO convention before it comes into force. For most conventions the number of ratifications required is two; normally, the convention comes into force 12 months after the minimum number of ratifications has been achieved. 'Coming into force' is a legal term which means that the convention is now a part of binding international law.

When a country ratifies a convention, it undertakes to apply the provisions, to adapt national law and practice to the requirements and to accept international supervision. Conventions are international treaties which are binding on the countries which ratify them.

Representations about alleged non-compliance may be made by the governments of other ratifying States or by employers or workers' organizations and procedures exist for investigation and action upon such complaints.

By the end of 2013, the International Labour Conference had adopted 189 Conventions and 202 Recommendations.

The Conventions had received a total of 7912 ratifications and around two-thirds of these ratifications have been made by the governments of emerging and developing countries.

Unlike Conventions, International Labour Recommendations are not international treaties.

They set non-binding guidelines which may orient national policy and practice.

Governments do not ratify Recommendations. Sometimes a Recommendation is adopted by the International Labour Conference as a supplementary to a Convention, to give more detailed guidance on how the provisions in the Convention can be applied. Other Recommendations are not linked to a Convention at all and are known as “autonomous” Recommendations.

## Fundamental labour standards

There is a group of ILO Conventions which are categorized as “fundamental”, as basic human rights. They are often referred to as the “core labour standards”.

A **Declaration on Fundamental Principles and Rights at Work** was adopted at the International Labour Conference in 1998. The Declaration says that all member states, by the very fact of their membership of the ILO, should abide by the rights and principles contained in the core conventions.

*The International Labour Conference,*

*1. Recalls:*

*(a) that in freely joining the ILO, all Members have endorsed the principles and rights set out in its Constitution and in the Declaration of Philadelphia, and have undertaken to work towards attaining the overall objectives of the Organization to the best of their resources and fully in line with their specific circumstances;*

*(b) that these principles and rights have been expressed and developed in the form of specific rights and obligations in Conventions recognized as fundamental both inside and outside the Organization.*

*2. Declares that all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely:*



- a) freedom of association and the effective recognition of the right to collective bargaining;*
- b) the elimination of all forms of forced or compulsory labour;*
- c) the effective abolition of child labour; and*
- d) the elimination of discrimination in respect of employment and occupation.*

These principles have been accepted by the international community and incorporated into the United Nations Global Compact.

## **ILO procedures**

An important part of the ILO standards setting system is a set of supervisory mechanisms. Once a country has ratified an ILO convention, it is obliged to report regularly on measures it has taken to implement it. Reports can also be requested for unratified conventions. These reports ask for information on national law and practice.

Governments are required to submit copies of their reports to employers' and workers' organizations. These organizations may comment on the governments' reports; they may also send comments on the application of conventions directly to the ILO.

### ***Committee of Experts***

The Committee of Experts on the Application of Conventions and Recommendations (CEACR) examines the government reports on ratified conventions. It was established in 1926 and is composed of 20 eminent lawyers appointed by the Governing Body. The Experts come from different geographic regions, legal systems and cultures. The Committee's role is to provide an impartial and technical evaluation of the state of application of international labour standards.

The CEACR makes two kinds of comments: observations and direct requests. Observations contain comments on questions raised by the application of a particular convention by a state. These observations are published in the Committee's annual report. Direct requests relate to more technical questions or requests for further information. They are not published in the report but are communicated directly to the governments concerned.

### ***Freedom of Association***

A special procedure exists for cases involving the right to organize. In 1951 the ILO set up the Committee on Freedom of Association (CFA) for the purpose of examining complaints about violations of freedom of association

Under this special procedure, governments or organizations of workers and of employers can submit complaints concerning violations of trade union rights by States (irrespective of

whether they are members of the ILO, or members of the United Nations without being members of the ILO). The procedure can be applied even when the conventions on Freedom of Association and Collective Bargaining have not been ratified.

The CFA is a Governing Body committee, and tripartite. It is composed of an independent chairperson and three representatives each of governments, employers, and workers. If it decides to “receive” the case, it establishes the facts in dialogue with the government concerned. If it finds that there has been a violation of freedom of association standards or principles, it issues a report through the Governing Body and makes recommendations on how the situation could be remedied.

## **UN Guiding Principles on Business and Human Rights**

The UN Guiding Principles on Business and Human Rights recognise that the activities of business enterprises may have a negative impact on human rights. This has resulted in the "Protect, Respect and Remedy" framework in 2008 which outlines the duties and responsibilities of states and businesses to address business-related human rights abuses.

The UN Guiding Principles on Business and Human Rights were unanimously endorsed in June 2011 by the UN Human Rights Council, and have three pillars.<sup>7</sup>

The first pillar is the State's duty to protect against human rights abuses by third parties, including business enterprises, through appropriate policies, regulation and adjudication.

The second pillar is the responsibility of businesses to respect human rights; they should “avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.”

The third pillar is the provision of more effective access to remedies for the victims of human rights abuse.

## **Indian national initiatives**

The Government of India has responded to the debate on business and human rights in a number of ways.

Firstly, the Ministry of Corporate Affairs has produced National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business, which were released in 2011.<sup>8</sup> There are

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[http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.31\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.31_en.pdf)

nine principles and one of these concerns the responsibility to respect and promote human rights. This references the UN Guiding Principles on Business and Human Rights.

However, the Guidelines are "not prescriptive in nature" and offer best practices that may be adapted in the Indian context.

The Companies Act was amended in 2013 to include an obligation that two percent of a company's profit should be spent on CSR activities.<sup>9</sup>

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[http://www.mca.gov.in/Ministry/latestnews/National\\_Voluntary\\_Guidelines\\_2011\\_12jul2011.pdf](http://www.mca.gov.in/Ministry/latestnews/National_Voluntary_Guidelines_2011_12jul2011.pdf)

<sup>9</sup> Where the company's turnover is above 1,000 crore and net profit is above five crore. This means about 16,000 companies will be brought within the new requirement, about 1.6 per cent of the total registered companies in India. "Evening the score", *Frontline*, 30 May 2014. One crore = ten million.

### ***A note on terminology***

In this document, the words quarry and mines have been used interchangeably as quarries are governed by the Mines Act 1952. Similarly, the words mineworkers, workers and labourers have been used interchangeably.

In India 94% of the workforce are engaged in the unorganised sector. The terms informal and unorganised have been used interchangeably in this document. This means that a large section of mineworkers working in mines and quarries belong to this unorganised workforce. Typically they are workers with no access to social security, job security and access to legal remedies in absence of documentary evidence or employment proof or employment contract.

# 1. Employment is freely chosen

## ***Key points***

Forced labour was illegal under older laws, however these were ineffective.

The Constitution (Section 23) clearly outlawed forced and bonded labour.

India has ratified the two ILO Fundamental Conventions dealing with forced labour.

Comprehensive legislation, the Bonded Labour System (Abolition) Act of 1976 exists, although there are problems with implementation.

## 1.1 Constitutional provisions

The Fundamental Rights section of the Constitution prohibits forced labour:

23. (1) Traffic in human beings and *begar* and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

(2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

## 1.2 Relevant ILO standards

### ***Forced Labour Convention, 1930 (No. 29)***

Prohibits all forms of forced or compulsory labour, which is defined as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily." The convention also requires that the illegal extraction of forced or compulsory labour be punishable as a penal offence, and that ratifying states ensure that the relevant penalties imposed by law are adequate and strictly enforced.

### ***Abolition of Forced Labour Convention, 1957 (No. 105)***

Provides for the abolition of all forms of forced or compulsory labour as a means of political coercion or education; as sanctions against the free expressions of political and ideological opinions; as workforce mobilisation; as labour discipline; as a punishment for taking part in strikes; and as measure of racial, social, national or religious discrimination.

India has ratified both these conventions.

### 1.3 ETI Base Code

#### 1. EMPLOYMENT IS FREELY CHOSEN

1.1 There is no forced, bonded or involuntary prison labour.

1.2 Workers are not required to lodge "deposits" or their identity papers with their employer and are free to leave their employer after reasonable notice.

### 1.4 National legislation

The Indian Slavery Act, 1843, in theory abolished slavery in the possessions of the East India Company. The Indian Penal Code, 1860, Chapter XVI, contained provisions against forced labour, although the practice continued, most famously in the indigo growing regions. The Government of Rajasthan abolished bonded labour in the state through the Sagri System Abolition Act in 1961.

However, the up to date legislation is the Bonded Labour System (Abolition) Act 1976, which prohibits forced labour and also provides for the identification, rescue, and rehabilitation of bonded labour.

The Bonded Labour Abolition Act, 1976 defines bonded labour as occurring when a worker is in a position where he must:

- (1) render, by himself or through any member of his family, or any person dependent on him, labour or service to the creditor, or for the benefit of the creditor, for a specified period or for an unspecified period, either without wages or for nominal wages, or
- (2) forfeit the freedom of employment or other means of livelihood for a specified period or for an unspecified period, or
- (3) forfeit the right to move freely throughout the territory of India, or
- (4) forfeit the right to appropriate or sell at market value any of his property or product of his labour or the labour of a member of his family or any person dependent on him, and includes the system of forced, or partly forced, labour under which a surety for a debtor enters, or has, or is presumed to have, entered, into an

agreement with the creditor to the effect that in the event of the failure of the debtor to repay the debt, he would render the bonded labour on behalf of the debtor;

The crucial markers for bonded labour are the giving of a loan with the intention of bringing about bonded labour; deceit in the loan; and payment of less than the minimum wage.

The Supreme Court has also noted that “it is a settled law that an employee cannot be termed as a slave, he has a right to abandon the service any time voluntarily by submitting his resignation and alternatively, not joining the duty and remaining absent for long.”<sup>10</sup>

## 1.5 Commentary

### ***The State duty to protect against human rights abuses by third parties, including business.***

Forced Labour is more than just low wages, or unpleasant working conditions. As the ILO points out;

the mere fact of being in a vulnerable position, for example, lacking alternative livelihood options, does not necessarily lead a person into forced labour. It is when an employer takes advantage of a worker’s vulnerable position, for example, to impose excessive working hours or to withhold wages, that a forced labour situation may arise. Forced labour is also more likely in cases of multiple dependency on the employer, such as when the worker depends on the employer not only for his or her job but also for housing, food and for work for his or her relatives.<sup>11</sup>

Srivastava (2005), in an overview of bonded labour in India prepared for the ILO, concluded that

... in more recent years, few academics or others have investigated the issue in a systematic way, and official statistics may indeed not cover all aspects of the situation. ILO supervisory bodies have for example referred on many occasions to the urgent need to compile accurate statistics of the number of persons who

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<sup>10</sup> In the case of Sathaye v. Indian Airlines Ltd. & others, in a judgement made on 6<sup>th</sup> September 2013

<sup>11</sup> ILO, *Indicators of forced labour*, Geneva 2012

continue to suffer under bonded labour, using a valid statistical methodology, with a view to identification and release of bonded labourers.<sup>12</sup>

The situation remains unchanged. There are two main global estimates of the number of workers in a forced labour situation. The ILO estimates are not dis-aggregated by country; the Global Slavery Index estimates 13,300,000 – 14,700,000 in India. There is very limited data on the numbers by sector or state.

In 2011, Indian National Human Rights Commission (NHRC), which is mandated by the Supreme Court to monitor the implementation of the Act, established a Core Group on Bonded Labour. The Core Group is chaired by NHRC and brings together government and non-government actors working to end bonded labour to review laws and policies, identify best practice, and coordinate the country's response. It seems the core group has only met once. Its functions are supposed to be:

- A national seminar on the elimination of bonded labour;
- Workshops in every state known to be particularly affected by the problem;
- Surprise visits by NHRC teams to bonded labour-prone areas, with the assistance of social action groups;
- Meetings with the State/UT Governments to review the functioning of the Laws that prohibit bonded labour;
- Developing an 'Instruction Manual' for the States, detailing a comprehensive check-list for the identification, release and rehabilitation of bonded labourers; issues of release certificates to freed bonded labourers; module for sensitizing District Magistrates, Vigilance Committees (blocks, sub-divisions and districts), civil society functionaries and labour law enforcement machinery;
- Designing of a simple format in which the factual position on bonded labour can be reported and monitored in districts;
- Reviewing existing schemes of the Central and State Governments on bonded labour and suggesting modifications to make them more practical and relevant to the current situation, including a recommendation for the creation of a non-lapsable fund in each district for the rehabilitation of freed bonded labourers;
- Year-wise details of orientation/training programmes organized by the States in their respective bonded labour-prone districts to sensitize the field functionaries

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<sup>12</sup> *Bonded Labour in India: Its Incidence and Pattern*, Ravi S. Srivastava, Jawaharlal Nehru University, ILO InFocus Programme on Promoting the Declaration on Fundamental Principles and Rights at Work, 2005



of labour law enforcement agencies and members of Vigilance Committees at sub-division and district levels;

- Keeping track of the constitution of State-level monitoring and coordination committees and calling for and reviewing their reports every six months.

On 15 October 2012, the Supreme Court issued a judgment, requiring all states to carry out surveys to identify and release those in bonded labour.

None of these initiatives appears to have resulted in credible surveys in Rajasthan. There is no robust evidence of forced labour in the sandstone sector, although anecdotal reports do appear in the press from time to time.<sup>13</sup>

Enforcement of the law, which is the responsibility of state governments, varies from state to state. A key part of the system for implementation of the law is the establishment by the relevant government, which in the case of the Rajasthan sandstone cluster would be the Rajasthan state government, of a Vigilance Committee at district level. The NHRC carried out regular visits to states to assess the bonded labour situation up till 2010. The 2007 visit to Rajasthan, carried out by a former national Ministry of Labour official, who had also worked for the ILO, provides the most recent overview of forced labour in the state. The report concluded that the Committees were not collecting data and indeed, were not active in the field at all.<sup>14</sup>

### ***The responsibility of business enterprise to respect human rights.***

It is generally acknowledged that the problem of forced labour is greatest amongst people drawn from the Scheduled Caste and Scheduled Tribes (SC/ST) communities and amongst migrant workers – who are often drawn from the SC/ST.

A significant number of interstate migrant workers in the sector are from the Jhabua region of Madhya Pradesh and these workers take advances. Giving an advance does not automatically lead to a forced labour situation. Indeed in some parts of India, and this may include Rajasthan, an advance is regarded by many workers as a benefit which they expect as part of the recruitment process. These interest-free loans occur widely in stone working clusters in South India, according to recent ethical audits undertaken by the same ETI member company.

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<sup>13</sup> <http://www.thehindu.com/news/national/other-states/debt-crushes-bonded-labourers-in-kotas-quarries/article4431741.ece>

<sup>14</sup> Report of review of activities pertaining to implementation of The Bonded Labour System (Abolition) Act of 1976, and the Child Labour (Prohibition & Regulation) Act 1986 for the state of Rajasthan by from 31st of January 2007 to 3 February 2007 by Dr Lakshmidhar Mishra, Special Rapporteur, NHRC

The state government seems unable or unwilling to undertake the necessary surveys, and this does leave the entire sandstone sector in a difficult situation as stone quarries are commonly associated with forced labour.<sup>15</sup>

***The need for more effective access to remedies by victims of human rights abuse.***

Currently those workers in a bonded Labour situation could approach the government machinery to take action, although in many cases action is initiated by an NGO.

## **2. Freedom of Association**

### ***Key points***

The Constitution clearly protects the right to join trade unions.

India has not ratified the two ILO Fundamental Conventions dealing with Freedom of Association.

Legislation, the Trade Union Act, 1926, provides a reasonable procedure for union registration, but 2011 amendments have created some obstacles.

In practice, the organisation of trade unions is difficult.

There is no procedure leading to recognition by employers of a union, or establishing rights to representation.

### **2.1 Constitutional provisions**

The Constitution states “19. (1) All citizens shall have the right (...) to form associations or unions.”

However, the State may impose “reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.”

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<sup>15</sup> A section of the NHRC website provides details of several cases.  
<http://nhrc.nic.in/LabourCases.htm>

## 2.2 Relevant ILO standards

There are two fundamental conventions:

### ***Freedom of Association and Protection of the Right to Organize, 1948 (no 87)***

Guarantees the removal of acts of discrimination against Trade unions; the protection of employers' and workers' organizations against mutual interference; and calls for measures to promote collective bargaining.

### ***Right to Organize and Collective bargaining, 1949 (No 98)***

Protects workers who are exercising the right to organize; upholds the principle of non-interference between workers and employers organizations; and promotes voluntary collective bargaining.

Other relevant conventions include:

### ***Workers' Representatives Convention, 1971 (No. 135)***

Workers' representatives in an undertaking shall enjoy protection against discrimination including dismissal and shall enjoy facilities to enable them to carry out their functions.

### ***Collective Bargaining Convention, 1981 (No. 154)***

Defines collective bargaining and calls for its promotion in all branches of economic activity.

India has not ratified any of these conventions. It has ratified the Rural Workers' Organisations Convention, 1975 (No. 141), which specifically establishes the right of all categories of rural workers, including the self-employed, to freedom of Association. However, this is not relevant to the Rajasthan stone sector.

In October 2013, an official of the Ministry of Labour and Employment informed a meeting of trade unions convened by the ILO that "the Government of India was in the process of exploring ways to ratify the conventions and as a result the respect for the fundamental principles and the ratification of core labour standards was now included as one of the priority areas of the current Decent Work Country Programme (DWCP) 2013 to 2017 for India."

## 2.3 ETI Base Code

2. FREEDOM OF ASSOCIATION AND THE RIGHT TO COLLECTIVE BARGAINING ARE RESPECTED

- 2.1 Workers, without distinction, have the right to join or form trade unions of their own choosing and to bargain collectively.
- 2.2 The employer adopts an open attitude towards the activities of trade unions and their organisational activities.
- 2.3 Workers representatives are not discriminated against and have access to carry out their representative functions in the workplace.
- 2.4 Where the right to freedom of association and collective bargaining is restricted under law, the employer facilitates, and does not hinder, the development of parallel means for independent and free association and bargaining.

## 2.4 National legislation

The Trade Union Act, 1926, amended by Trade Unions (Amendment) Act, 2001 provides for the registration of a trade union by the state. A trade union has to represent at least 100 workers or 10 per cent of the workforce, whichever is less, compared to a minimum of seven workers previously. In practice, the government seems to maintain that in order to be registered, a trade union needs to have a minimum of 100 members.<sup>16</sup>

Registration does not lead to recognition, rights to represent workers or to collective bargaining, as it could do in the UK, for example.

The Industrial Disputes Act, 1947, sets out the framework for industrial relations. There is a highly legalised framework that governs disputes and failure to follow the stages can result in a strike or lockout been declared illegal. The practical result of the law is to make it extremely difficult for trade unions to take any industrial action within the law. The level of state intervention in the actual industrial relations process, and the emphasis given to the maintenance of 'industrial peace' effectively circumscribes the possibility that collective bargaining has developed as the primary form of industrial relations in India.<sup>17</sup>

Section 3 of the Industrial Disputes Act provides for the establishment of a Works Committee. Where a trade union exists, provision is made for the trade union to our membership on the Works Committee. Otherwise it would provide a forum for social dialogue. The provision in the act applies to establishments where more than 100 workers are employed and a number of larger stone processing units in Rajasthan would qualify.

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<sup>16</sup> ILO, Committee on Freedom of Association, Case 2991.  
[http://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002\\_COMPLAINT\\_TEXT\\_ID:3128211](http://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:3128211)

<sup>17</sup> See Richard Mitchell et al, op. cit, footnote 2,

## 2.5 Commentary

### ***The State duty to protect against human rights abuses by third parties, including business.***

Although it has not ratified the relevant conventions, India - in common with all members of the ILO - is subject to the procedure on Freedom of Association. Representations made to the ILO supervisory machinery indicate an attitude hostile to trade union organisation. This is certainly the view of the national and international trade union organisations.<sup>18</sup>

By international standards and practice, the requirement of 100 workers to register a trade union is excessive: the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has criticised countries which put in place the even lower minimum requirement of 50 persons to form a trade union.

There is no legislation to prevent an employer discriminating against trade unionists, or from dismissing a worker for trying to organise a trade union.

### ***The responsibility of business enterprise to respect human rights.***

In the public sector and in areas where trade unions have been well established for a long time, employers respect trade unions and engage in collective bargaining. Elsewhere, a negative attitude is common.

In the Rajasthan sandstone sector, the workforce in quarries is widely scattered, small-scale, at individual sites and often seasonal. Given this background, it would be unusual to find any trade union presence in the quarries. However, a trade union presence does appear to exist in the Udaipur marble mines, and a strike took place as recently as February 2014, although the outcome is not known.<sup>19</sup>

In stone processing factories, where there is a reasonably stable workforce, it is more possible that trade unions might emerge, although there are no reports of such organisations.

A proxy method to ascertain the openness of the sector would be the existence of Works Committees which are a legal requirement. Works committees would be an appropriate forum for worker voice in the absence of trade unions, and training in the

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<sup>18</sup> ITUC, *Internationally recognised core labour standards in India, 2011*. <http://www.ituc-csi.org/internationally-recognised-core,9698.html>. Accessed 16 April 2014

<sup>19</sup> <http://timesofindia.indiatimes.com/city/jaipur/Tribal-miners-likely-to-go-on-indefinite-strike-in-Rishabdeo/articleshow/29323171.cms?referral=PM>

establishment and operation of Works Committees, and particularly for the elected worker members, might be an appropriate measure of support.

***The need for more effective access to remedies by victims of human rights abuse.***

The state makes no provision for a remedy for workers who are victimised for trade union activity, of the type that is available to a worker in the UK for example. Trade unions are collectively able to approach the courts to compel a registrar to register a trade union. Trade unions are also able, through national or international intermediaries, to approach the ILO supervisory machinery. But this does not in itself provide redress.

### **3. Working conditions are safe and hygienic**

***Key points***

The Constitution has a provision to protect “the health and strength of workers”.

India has not ratified the relevant up to date ILO conventions dealing with OSH.

Both major pieces of legislation are many decades old and in need of revision. They do provide some protection if followed although treatment of occupational diseases is weak. The Factories Act contains general duties, a more modern and dynamic approach to OSH, but understanding of this is very limited.

In practice, government resources for enforcement are limited.

As there is no trade union presence, there is no worker involvement in OSH.

#### **3.1 Constitutional provisions**

39 (e) That the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

42. The State shall make provision for securing just and humane conditions of work and for maternity relief.

These sections are in Part IV (Directive Principles of State Policy) and these provisions “shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.”

### **3.2 Relevant ILO standards**

#### ***Occupational Safety and Health Convention, 1981 (No. 155)***

The convention provides for the adoption of a coherent national occupational safety and health policy, as well as action to be taken by governments and within enterprises to promote occupational safety and health and to improve working conditions.

#### ***Occupational Health Services Convention, 1985 (No. 161)***

This convention provides for the establishment of enterprise-level occupational health services which are entrusted with essentially preventive functions and which are responsible for advising the employer, the workers and their representatives in the enterprise on maintaining a safe and healthy working environment.

#### ***Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)***

This Convention aims at promoting a preventative safety and health culture and progressively achieving a safe and healthy working environment [through] (...) a national policy, national system, and national programme on occupational safety and health.

#### ***Safety and Health in Mines Convention, 1995 (No. 176)***

This instrument regulates the various aspects of safety and health characteristic for work in mines, including inspection, special working devices, and special protective equipment of workers.

India has not ratified any of these conventions.

### **3.3 ETI Base Code**

#### **3. WORKING CONDITIONS ARE SAFE AND HYGIENIC**

3.1 A safe and hygienic working environment shall be provided, bearing in mind the prevailing knowledge of the industry and of any specific hazards. Adequate steps shall be taken to prevent accidents and injury to health arising out of, associated with, or occurring in the course of work, by minimising, so far as is reasonably practicable, the causes of hazards inherent in the working environment.

3.2 Workers shall receive regular and recorded health and safety training, and such training shall be repeated for new or reassigned workers.

3.3 Access to clean toilet facilities and to potable water, and, if appropriate, sanitary facilities for food storage shall be provided.

3.4 Accommodation, where provided, shall be clean, safe, and meet the basic needs of the workers.

3.5 The company observing the code shall assign responsibility for health and safety to a senior management representative.

### ***National legislation***

Mines Act, 1952 and Mines Rules, 1955

Factories Act, 1948, and State Rules

### ***Mines Act, 1952 and Mines Rules, 1955***

The Metalliferous Mines Regulations, 1961, made under the Mines Act, apply to all non-coalmines and therefore apply to sandstone quarries in Rajasthan. However most of the provisions of the regulations concern underground mines.

### ***Medical examination and reporting***

An initial medical examination should take place of every person employed in the mine, and annually - usually known as periodical medical examination, or PME. If a worker has been declared unfit for employment in mines, he/she may not continue to work there. The cost of medical examinations must be borne by the owner of the mine. (Chapter IV-A of the Mines Rules)

Section 23 of the Mines Act provides for the reporting of accidents, which must be recorded in a register.

Notified diseases must also be reported. The agent or manager of a mine as well as the attending medical practitioner must send notice to the Chief Inspector if a worker has contracted or suspected to have contracted a notified disease. A notified disease is one which is notified by the Act as a severe disease possibly contracted by engaging in mining. The central Government may appoint an individual to inquire into a case of contraction or suspected contraction of a notified disease. The Chief Inspector also has the power to conduct occupational health surveys.

### ***Notifications by the Government of Rajasthan***

The Government of Rajasthan has released notifications that reiterate the need for owners to provide health, sanitation, first-aid and medical appliances to the lease/licence granted



under this notification. When licensing mines, it requires licensees to enter into a covenant agreeing to report any accident causing death or serious bodily injury or serious injury to property or seriously affecting or endangering life or property which may occur in the course of the operations within 24 hours. This aims at ensuring the accountability of owners at the licensing stage itself.

### ***Factories Act, 1948***

The main requirements of the Factories Act for health and safety of workers are:

#### Health (sections 11 to 20)

- The factory premises must be kept clean
- Wastes and effluents must be disposed of
- There should be adequate ventilation and a reasonable temperature
- Dust and fumes should not be allowed to accumulate
- The workplace should not be overcrowded
- There should be sufficient lighting, drinking water and toilets

#### Safety (sections 21 to 41)

- Machinery should be guarded
- Workers should be protected when repairing machinery in motion
- Young persons should not work on dangerous machines
- Wastes unless be kept in good condition
- Measures must protect workers from injury to their eyes
- Workers must be protected from dangerous dusts, gases, fumes and vapours
- Fire precautions must be taken

#### Welfare (sections 42 to 50)

- Washing facilities should be provided
- Seating should be provided, where appropriate
- Facilities for storing clothes not worn during working hours should be provided
- First aid facilities must be provided
- Larger factories must have canteens rest rooms or lunch rooms

- A crèche should be provided where factories employ more than 30 women

When any worker in a factory contracts any disease specified in the third Schedule (which lists occupational diseases) the manager of the factory must send notice to the Chief Inspector. Section 91A provides for safety and occupational health surveys to be conducted by the Chief Inspector, or the Director General of Factory Advice Service and Labour Institutes, or the Director General of Health Services, to the Government of India, or such other officer as may be authorised in this behalf. Every worker shall, if required, present himself to undergo such medical examination.

### ***The 1987 amendments to the Factories Act***

The act is based upon older UK legislation, dating back to the 19<sup>th</sup> century. The previous British act was passed in 1937, and formed the basis of the 1948 Indian legislation. A factory is conceived as a large textile or engineering establishment. The requirements in these older forms of health and safety legislation are specific and detailed.

Following the Bhopal disaster of 1984, legislation was reviewed. Rather than introduce a general OSH law, covering all industries, all workers and all hazards, as the ILO recommended, the government chose to amend the Factories Act.

The 1987 amendments to the Act introduced "General Duties" for employers and these can be applied to any hazard.

"7a General duties of the occupier - (1) Every occupier shall ensure, so far as is reasonably practicable, the health, safety and welfare at work of all workers while they are at work in the factory."

Sub-section (2) goes into greater detail. The duties of the employer include:

- a) provision and maintenance of plant and systems of work in the factory that are safe and without risks to health;
- b) arrangements in the factory for ensuring safety and absence of risks to health in connection with the use, handling storage and transport of articles and substances;
- c) the provision of such information, instruction, training and supervision as are necessary to ensure the health and safety of all workers at work;
- d) the maintenance of all places of work in the factory in a condition that is safe and without risks to health and the provisions and maintenance of such means of access to an egress from, such places as are safe and without such risks;
- e) the provision, maintenance or monitoring of such working environment in the factory for the worker that is safe, without risks to health and adequate as regards facilities and arrangements for their welfare at work.

These are called the 'General Duties' of the employer, although the Act usually refers to the 'occupier' - the person who has the ultimate control over the affairs of the factory. This section is taken from the UK Health and Safety at Work Act, 1974. Many advanced economies introduced legislation of a similar type during the late 1960s/early 1970s. The implications of wide ranging general duties have not been understood or applied by any government agency or commentator on OSH in India.

Important rules have been made under Section 7A (3), 41B (2) and 112

Every 'occupier' must prepare a written statement of his policy in respect of health and safety of workers at work...

Where a factory uses power and has less than 50 workers; or

where the factory does not use power and has less than 100 workers; or

in any factory involving hazardous process as defined in the Factories Act, First Schedule.

This would cover many stone processing work places. It may be useful to quote the provisions *in extenso*. If factories developed a safety policy along the lines provided for in the law, this should lead to safer and healthier workplaces.

(4) The Health and Safety Policy should contain or deal with:

- a) declared intention and commitment of the top management to health, safety and environment and compliance with all the relevant statutory requirements;
- b) organisational set-up to carry out the declared policy clearly assigning the responsibility at different levels; and
- c) arrangements for making the policy effective.

(5) In particular, the Policy should specify the following:

- a) arrangements for involving the workers;
- b) intention of taking into account the health and safety performance of individuals at different levels while considering their career advancement;
- c) fixing the responsibility of the contractors, sub-contractors, transporters and other agencies entering the premises;
- d) providing a resume of health and safety performance of the factory in its Annual Report;
- e) relevant techniques and methods, such as safety audits and risk assessment for periodical assessment of the status on health, safety and environment and taking all the remedial measures;

f) stating its intentions to integrate health and safety, in all decisions including those dealing with purchase of plant, equipment, machinery and material as well as selection and placement of personnel;

g) arrangements for informing, educating and training and retraining its own employees at different levels and the public, wherever required.

(6) A copy of the declared Health and Safety Policy signed by the occupier shall be made available to the Inspector having jurisdiction over the factory and to the Chief Inspector;

(7) The policy shall be made widely known by-

a) making copies available to all workers including contract workers, apprentices, transport workers, suppliers, etc.

b) displaying copies of the policy at conspicuous places; and

c) any other means of communication; in a language understood by majority of workers.

The law provides for a Safety committee (Section 41 and 41 (G) of the Factories Act) but in restricted circumstances that may not include factories in the stone sector. However, it would be good practice for larger factories to introduce such committees.

The Factories Act refers explicitly to information and training.

Section 7(A) (2) c): the employer shall provide ... such information, instruction, training and supervision as are necessary to ensure the health and safety of all workers at work'.

Section 11A(ii): Every worker has the right to 'get trained within the factory wherever possible, or to get himself sponsored by the occupier for getting trained at a training centre or Institute, duly approved by the Chief Inspector, where training is imparted for workers' health and safety at work'.

Such centres or institutes do not seem to exist yet within Rajasthan (27 years after the Factories Act was amended). A possible intervention by the stakeholders in the sector would be to establish such an institute. This does not necessarily mean a physical building, but curricula, training materials and approved trainers within a quality assurance framework. This could also offer training assistance in developing safety policies.

### ***The Workmen's Compensation Act, 1923***

The Workmen's Compensation Act, aims to provide workmen and/or their dependents with relief in case of accidents arising out of and in the course of employment and causing either death or disablement of workers.

Every employee (including those employed through a contractor but excluding casual employees), who is engaged for the purposes of the employers business and who suffers an

injury in any accident arising out of and in the course of his employment, shall be entitled for compensation under the Act.

The Act does not apply when a worker is entitled to get compensation from the Employees State Insurance Act.

The employee must suffer an accident arising out of and in the course of his employment, resulting in (i) death, (ii) permanent total disablement, (iii) permanent partial disablement, or (iv) temporary disablement whether total or partial, or who has contracted an occupational disease.

A worker cannot contractually agree to give up or reduce compensation from the employer to pay compensation. The employee's fault is immaterial to the employer's duty to pay compensation. This compensation may be payable even if worker was careless.

In the last five years, there have been no recorded cases filed under the Act by mine workers in Rajasthan.

### ***The Employees' State Insurance Act, 1948***

This Act provides for certain benefits to employees in case of sickness, maternity and employment injury. An "employee" covered by this Act means any person employed in a factory who is directly employed by the principal employer, or who is employed through an intermediate employer or whose services are temporarily lent or lent on hire to the principal employer, on any work of, or incidental or preliminary to or connected with the work of, the factory or establishment.

The Act provides benefits such as periodical payments in case of sickness, sickness arising out of pregnancy, disablement as a result of an employment injury sustained as an employee under this Act, to dependants of a person who dies as a result of an employment injury sustained as an employee under this Act, etc.

The liability of the business owner is established when the incidence of sickness among insured employees is excessive by reasons of insanitary working conditions, neglect of the owner to observe any health etc. An employer cannot dismiss, discharge, or reduce or otherwise punish an employee during the period the employee is in receipt of sickness benefit or maternity benefit. He may not punish an employee during the period he is in receipt of disablement benefit for temporary disablement or is under medical treatment for sickness or is absent from work as a result of illness.

The provisions of the Act are administered by the Employees State Insurance Corporation. The Corporation promotes measures for the improvement of the health and welfare of insured persons and for the rehabilitation and re-employment of insured persons who have been disabled or injured. It comprises of members representing employees, employers, the central and state government, besides, representatives of parliament and medical

profession. The Act also establishes a Medical Benefit Council to advise on matters relating to medical benefit and its administration. Disputes are resolved through the Employees Insurance Court.

This act does not apply to quarries and mines covered under the Mines Act, 1952. Employees who are entitled to compensation under this Act are not covered by the Worker's Compensation Act, 1923.

### 3.4 Commentary

#### ***How serious is the problem?***

The stone industry creates many hazards including physical injury from stones, saws and machinery, explosions, as well as longer term health issues from noise and dust.

The official number of workers in mines registered with DGMS nationally is approximately 750,000. The number of workers in informal and small scale mining in Rajasthan alone has been calculated at 18 to 20 lakhs (1.8 - 2 million).<sup>20</sup> Assuming a fatality rate of only double that of the “formal sector”, which is reasonable (see the following technical note), we would arrive at an estimate of six hundred deaths per year in all quarries in Rajasthan, including sandstone.<sup>21</sup>

#### ***Two technical notes***

##### ***Safety implications of the use of non-regular workers***

The extensive use of contract workers and other forms of non-regular employment has safety implications. It is widely accepted that contract or agency workers experience higher risk of occupational accidents and disease than permanent employees. According to the Health & Safety Commission (HSC), the apex body in the UK which deals with safety:

workplace health and safety was negatively affected as a result of outsourcing with a recurrence of major health and safety episodes and the association of higher accident rates with the presence of contract labour.<sup>22</sup>

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<sup>20</sup> S M Mohnot, “Gouging out the desert’s heart”, in the Hindu newspaper annual *Survey of the Environment 1999*

<sup>21</sup> For details of the calculations, see Stirling Smith, *A Bhopal every month? Occupational safety and health in India*, mimeo, 2001.

<sup>22</sup> HSC, “Working together to manage health and safety in contracting and the supply chain”, 1999, London

A Swedish study found a similar problem.<sup>23</sup> In India, a study by a government mines inspector found that in one coalfield, all the fatal accidents occurred among contract labour, who only made up 50% of workforce.<sup>24</sup>

Although there are no statistics for injuries in stone quarries in Rajasthan, we can assume that lack of precautions combined with the widespread use of contract labour does lead to a considerable number of accidents.

### ***Silicosis***

Workers exposed to excessive dust for prolonged periods may suffer from occupational lung diseases, such as silicosis. Occupational diseases cannot be cured. The amount of silica in sandstone can be considerable and with sufficient exposure, can cause silicosis, a typical pneumoconiosis that develops after years of exposure. Exposure to silica is also associated with an increased risk of tuberculosis, lung cancer and some other diseases. There is a well-established link between occupational lung diseases, caused by dust, and TB (Charles Thackrah, the founder of industrial medicine in England, remarked on this link in the 1830s). A mine worker with a pneumoconiosis is much more vulnerable to TB<sup>25</sup>. Freshly fractured silica dust appears to be more reactive and more hazardous than old or stale dust.

The National Human Rights Commission has paid particular attention to silicosis and has regarded it as a priority human rights question for the country. Silicosis is a notifiable disease under both the Mines Act and Factories Act.

A 2011 report by the NHRC singles out Rajasthan as one of the few states that has actually taken the question seriously. It may be that stakeholders in the Rajasthan sandstone sector could collaborate with the NHRC and the RHRC to investigate the issue further.<sup>26</sup>

### ***The State duty to protect against human rights abuses by third parties, including business.***

Both major pieces of legislation are many decades old and in need of revision. They do provide some protection if followed, although treatment of occupational diseases is weak. The Factories Act contains general duties, a more modern and dynamic approach to OSH, but understanding of this is very limited. Resources for enforcement are limited, and

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<sup>23</sup> V L G Blank et al, "Hidden accident rates and patterns in the Swedish mining industry due to involvement of contractor workers" *Safety Science* 21 (1995) 23-35

<sup>24</sup> Unpublished paper by Mr K C Choudhury, Director of Mines Safety for Mahandi Coal Fields Ltd; data for 1996/97

<sup>25</sup> Donald Hunter, *Health in Industry*, Penguin, 1959

<sup>26</sup> NHRC, Special Report to Parliament of India on Silicosis, 2011

inspections confined to formal enterprises that have chosen to register (two thirds of enterprise that should register, do not).

***The responsibility of business enterprise to respect human rights.***

In general, awareness of basic health and safety concepts such as hazard and risk, acute and chronic effects, the hierarchy of control, and latency periods, is low in India. Those running businesses lack understanding of basic concepts and take a fatalistic view of OSH. Social auditors tend to lack any in depth knowledge of the topic. There is a tendency to rely on recommending Personal Protective Equipment (PPE) as the solution to any OSH issue.

It would not be realistic to expect quarries or factories in Rajasthan to achieve conditions that prevail in the UK. However, simple low cost OSH measures can be introduced. These need to become “industry standard” and promoted by employers’ associations in the industry, importers and suppliers.

***The need for more effective access to remedies by victims of human rights abuse.***

Trade unions would normally provide some protection for workers, and some redress in the case of injuries and disease, through winning compensation. The absence of a union voice means that this access to redress is not available.



## 4. No child labour shall be used

### **Key points**

There are clear constitutional provisions against child labour.

India has not ratified the two ILO fundamental conventions on child labour, but has ratified several older conventions specific to industry and mines.

Both the Mines Act and Factories Act have clear provisions against child labour, although with different age levels set. The Child Labour (Prohibition and Regulation) Act, 1986 prohibits child labour (under 15 years) in certain industries and occupations, and permits child labour in other sectors, with safeguards.

### 4.1 Constitutional provisions

Several clauses of the Constitution are relevant:

24. *No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.*

39. *The State shall, in particular, direct its policy towards securing (...)*

(e) *that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;*

(f) *that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.*

### 4.2 Relevant ILO standards

There are two fundamental conventions, not ratified by India:

***Minimum Age Convention, 1973 (No 138)***

Applies to all sectors of economic activity; states must declare a national minimum age for admission to employment; all children are covered whether or not they are employed for wages; states must pursue a national policy to ensure the effective abolition of child labour; the minimum age for entry into work shall not less than the completion of compulsory schooling, although a lower age than 14 years may be adopted for light work, for countries which are less developed; an age level of 18 is set for hazardous work.

***Prohibition and Immediate Elimination of the Worst Forms of Child Labour Convention, 1999 (No 182)***

States to draw up a time bound programme for the elimination of the worst forms of child labour; while the convention itself gives a list, states shall also draw up their own list of the worst forms.

There are some older relevant conventions, which have been ratified by India:

Minimum Age (Industry) Convention, 1919 (No. 5)

Night Work of Young Persons (Industry) Convention, 1919 (No. 6)

Night Work of Young Persons (Industry) Convention (Revised), 1948 (No. 90)

Minimum Age (Underground Work) Convention, 1965 (No. 123) - Minimum age specified: 18 years

### **4.3 ETI Base Code**

#### **4. CHILD LABOUR SHALL NOT BE USED**

4.1 There shall be no new recruitment of child labour.

4.2 Companies shall develop or participate in and contribute to policies and programmes which provide for the transition of any child found to be performing child labour to enable her or him to attend and remain in quality education until no longer a child; "child" and "child labour" being defined in the appendices.

4.3 Children and young persons under 18 shall not be employed at night or in hazardous conditions.

4.4 These policies and procedures shall conform to the provisions of the relevant ILO standards.

## ***Definitions (in the appendix to the base code)***

### ***Child***

Any person less than 15 years of age unless local minimum age law stipulates a higher age for work or mandatory schooling, in which case the higher age shall apply. If however, local minimum age law is set at 14 years of age in accordance with developing country exceptions under ILO Convention No. 138, the lower will apply.

### ***Young person***

Any worker over the age of a child as defined above and under the age of 18.

### ***Child labour***

Any work by a child or young person younger than the age(s) specified in the above definitions, which does not comply with the provisions of the relevant ILO standards, and any work that is likely to be hazardous or to interfere with the child's or young person's education, or to be harmful to the child's or young person's health or physical, mental, spiritual, moral or social development.

## **4.4 National legislation**

The Mines Act Section 40 prohibits the employment of any individual below the age of 18, in “any mine or part thereof”, which would include above or below ground, the latter in line with the Minimum Age (Underground Work) Convention, 1965 (No. 123).

Section 45 prohibits the presence of persons below 18 years of age in a mine. It states “no person below 18 years of age shall be allowed to be present in part of a mine above ground where any operation connected with or incidental to any mining operation is being carried on”.

This might appear to be repetition of the prohibition of child labour created by section 40. However, another reading of this section would be that no children should be allowed in the vicinity of a quarry. Sometimes young people are found near a quarry and concerns are raised about child labour; and the answer is given “but they are not working, they have just come after school”. Section 45 of the Mines Act would seem to rule out this response completely.

### ***Factories Act***

Section 67 of the act prohibits a child who has “not completed his 14<sup>th</sup> year” from working in a factory.

Sections 68 to 77 sets out the conditions under which adolescents (defined in section 2 of the act as “a person who has completed his 15<sup>th</sup> year of age but has not completed his 18<sup>th</sup> year”) are allowed to work. They must have a certificate of fitness issued by a certifying surgeon and must carry a token to this effect.

However, no female adolescent or a male adolescent who has not attained the age of seventeen years shall be allowed to work in any factory except between 6 A.M. and 7 PM unless specifically provided otherwise by the State Government.

A register must be maintained of child workers employed in the factory.

### ***The Child Labour (Prohibition and Regulation) Act, 1986***

The Child Labour (Prohibition and Regulation) Act, 1986 (CLPRA) defines a child as any person who has not completed his fourteenth year of age. The act prohibits the engagement of children, as defined, in certain occupations and regulates the conditions of work of children in certain sectors.

The act prohibits children from working in any occupation or process listed in a Schedule, and these include mines (underground and under water) and collieries; stone breaking and stone crushing.

## **4.5 Commentary**

### ***The State duty to protect against human rights abuses by third parties, including business.***

The Mines Act contains a very clear prohibition of child labour in mining and follows international law.

The Factories Act and The Child Labour (Prohibition and Regulation) Act, 1986, (CLPRA) are not so clear cut. The Convention on the Rights of the Child (CRC) defines a child as below 18 years of age, and this is followed in ILO Convention No. 182. The Factories Act and the Child Labour (Prohibition and Regulation) Act, 1986 defines a child as any person who has not completed his fourteenth year of age.

The Factories Act does clearly prohibit children (under 15 years old) from working in a factory.

The CLPRA has the effect of legalizing work by children under the age of 15 in those occupations and industries not listed - with restrictions on working hours, and provisions for rest days etc. And CPLRA seems to legalise work for those aged 15 - 18 in the hazardous industries.

Rajasthan stone sector stakeholders should therefore not rely on the Child Labour (Prohibition and Regulation) Act, 1986.

Note - The Child Labour (Prohibition and Regulation) Amendment Bill, 2012 was introduced in Rajya Sabha on 4th December, 2012. This amends the 1986 act to prohibit all employment by children aged 14 or below. It will prohibit employment by adolescents (14 - 18 year olds) in hazardous industries. The current status of the bill is unknown.<sup>27</sup>

### ***The responsibility of business enterprise to respect human rights.***

The ETI base code requires that its provisions are interpreted in the light of ILO conventions, and most stakeholders believe that the employment of any person in the stone industry below 18 years of age is unacceptable. In the more formal part of the sector, this is easier to implement. Good practice requires factories to check more than one type of document to establish a worker's age (birth certificates are quite rare). In case of doubt, the law provides for a civil surgeon to examine the worker.

In quarries, where there is no culture of documentation, this is more difficult. And where families live on site, especially migrant families, there is a risk that children can be drawn into work.

The challenge for the sector here is to move beyond sticking up posters that say "No child labour here" and establish a robust system to ensure children below 18 are not employed.

### ***The need for more effective access to remedies by victims of human rights abuse.***

The ETI Code sets out the principle that where child labour is found, remediation takes the form of making quality education available. In the past, the problem has been that the quality and quantity of government schools was poor in the stone areas. The Right to Education Act has had an impact and schools are improving.<sup>28</sup>

Sector stakeholders can - and do - support schools through grants and equipment and a greater and more formal involvement might sustain improvements in state education. Stakeholders could meet and compare good practise, and formally approach the authorities to discuss planned support. Where free and compulsory education is established, the child labour problem tends to wither away.<sup>29</sup>

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<sup>27</sup> Fortieth report, Standing committee on Labour (2013-2014) (Fifteenth Lok Sabha) Ministry of Labour and Employment, The Child Labour (Prohibition and Regulation) amendment bill, 2012. Lok Sabha Secretariat, New Delhi, December, 2013

<sup>28</sup> The Right of Children to Free and Compulsory Education Act or Right to Education Act (RTE) was passed in 2009.

<sup>29</sup> Myron Weiner, *The Child and the State in India: Child Labor and Education Policy in Comparative Perspective*, 1991

## 5. Living wages are paid

### **Key points**

The constitution provides for a living wage.

India has not ratified the relevant ILO conventions, but the legislation provides protection in line with the standards.

In Rajasthan, the minimum wage has been revised annually for some years and the lowest rate is around 3 x the poverty line. It is about 8 per cent more than the benchmark NREGA rate.

Whether the rates are actually paid is another question.

### 5.1 Constitutional provisions

43. The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities (...)

### 5.2 Relevant ILO standards

#### ***Protection of Wages Convention, 1949 (No. 95)***

Wages shall be paid in legal tender at regular intervals; in cases where partial payment of wages is in kind, the value of such allowances should be fair and reasonable. Workers shall be free to dispose of their wages as they choose.

#### ***Minimum Wage Fixing Convention, 1970 (No. 131)***

Provides for minimum wage fixing machinery capable of determining and periodically reviewing and adjusting minimum wage rates.

India has not ratified these conventions.

### 5.3 ETI Base Code

#### 5. LIVING WAGES ARE PAID

5.1 Wages and benefits paid for a standard working week meet, at a minimum, national legal standards or industry benchmark standards, whichever is higher. In any event wages should always be enough to meet basic needs and to provide some discretionary income.

5.2 All workers shall be provided with written and understandable information about their employment conditions in respect to wages before they enter employment and about the particulars of their wages for the pay period concerned each time that they are paid.

5.3 Deductions from wages as a disciplinary measure shall not be permitted nor shall any deductions from wages not provided for by national law be permitted without the expressed permission of the worker concerned. All disciplinary measures should be recorded.

### 5.4 National legislation

#### ***The Minimum Wages Act, 1948***

Provides a framework within which each state government is responsible for fixing and enforcing minimum wages for different industries. In this case the appropriate government is the government of the state of Rajasthan. Wages have been revised annually for several years.

#### ***Mineral Concession Rules, 1960***

Obliges every licensee to pay no less than the minimum wages prescribed under the Minimum Wages Act, 1948.

#### ***Rajasthan Minerals [Prevention of Illegal Mining, Transportation and Storage] Rules, 2007***

This legislation was enacted to prevent illegal mining and applies to the whole of State of Rajasthan and applies to all minerals except minor minerals. It is relevant to this study as it obliges every mine owner (section 8(4)) as well as every dealer [section 8 (5)] to maintain a regular register of wages paid for all employees.

#### ***The Payment of Wages Act, 1936***

This Act applies to all workers in factories and mines. A wages period must be set - such as a week or month. While the employer may decide the wage period, this may not exceed one month. It also specifies that the wages of every person employed in a factory or industrial or other establishment upon or in which less than 1000 persons are employed, shall be paid before the expiry of the 7th day after the last day of the wage-period in respect of which the wages are payable. When there are more than 1000 people employed, it shall be paid before the expiry of the 10th day. Wages must be paid in cash or, by agreement of the worker it can be paid by cheque or directly into his or her bank account.

Where the employment of any person is terminated by or on behalf of the employer, the wages, earned by him shall be paid before the expiry of the 2nd working day from the day on which his employment is terminated.

Wages may be deducted from only in certain situations, including fines, for absence from duty; deductions for damage to or loss of goods expressly entrusted to the employed person for custody, or for loss of money for which he is required to account, where such damage or loss is directly attributable to his neglect or default; deductions for house-accommodation supplied by the employer or by government or any housing board set up under any law for the time being in force; or for deductions for amenities and services supplied by the employer.

This act enforces penalties on employers who fail to maintain records, or obstructs an inspector discharging his duty under the Act.

### ***Payment of Gratuity Act, 1972***

The Act provides for a scheme for the payment of gratuity to employees engaged in factories, mines, oilfields or other establishments. Gratuity is a lump sum payment made by an employer as a mark of recognition of the service rendered by the employee at the end of service or retirement. Every employee irrespective of his wages is entitled to receive gratuity if he has rendered continuous service of 5 years or more than 5 years.

### ***Employees Provident Fund Act, 1952***

This Act aims to provide for the institution of provident funds, pension funds and a deposit linked insurance fund and applies to factories and other establishments in which 20 or more are employed.

Clearly, this is unlikely to apply to the vast majority of quarries, but would apply to many stone processing units. The employee has to pay contributions towards the fund. The employer also pays an equal contribution. The employee gets a lump sum amount when he retires.



### ***Payment of Bonus Act, 1965***

“The object of the Act is to maintain peace and harmony between labour and capital by allowing the employees to share the prosperity of the establishment reflected by the profits earned by the contributions made by capital, management and labour.”

The Act is applicable to (a) every factory; and (b) every other establishment employing 20 or more persons. Every employee who is drawing a salary or wage up to INR 10,000 per month and who has worked for minimum period of 30 days in a year is entitled to be paid a bonus. For the purpose of calculation of bonus a salary or wage includes a basic salary or wage and dearness allowance but does not include other allowances, nor overtime payments.

The employer is bound to pay to his employees every year a minimum bonus of 8.33% of the salary or wage and the maximum bonus payable by the employer to his employees is 20% of the salary or wage

Thus many workers in the processing part of the stone sector would qualify for bonus payments, effectively an extra month's salary.

## **5.5 Commentary**

### ***The State duty to protect against human rights abuses by third parties, including business.***

Remuneration has been defined by the ILO as a wider concept than wages. It can include the basic wage or salary, and any additional emoluments whatsoever payable, either in cash or in kind, to a person employed in respect of employment or work done in such employment, if the terms of the contract of employment, express or implied, were fulfilled. This is similar the ETI's "wages and benefits".

The standards in this area are not only concerned with the amount of wages, but the protection of wages - such as being paid in "coin of the realm"; regular payment intervals and no unauthorised deductions.

The legislation in India follows the relevant ILCs closely and provides for a minimum wages; payment of overtime at a good premium; and a reasonable level of protection of wages.

India has also legislated for additional wage related benefits, such as the bonus and gratuity acts.

Whether the legislation is followed or not requires more investigation. It is widely believed that contract workers are not paid a premium for overtime and can also suffer arbitrary

deductions. There is no evidence or information about activities by any inspectorate on the implementation of the laws on wages.

### ***The responsibility of business enterprise to respect human rights.***

Business has a basic responsibility to ensure that at least minimum wages are paid - on a 48 hour working week. In the more formal part of the stone sector, it should be simple to establish if this is happening. Going beyond this, business needs to move towards the payment of a living wage. The first step would be to agree some comparative benchmarks.

Given the possibilities of workers in quarries working in excess of the legally mandated maximum hours, it is possible that some workers are paid below the minimum wage rate. Data for quarries is very poor, with informal arrangements universal.

### ***The living wage***

A key issue is whether the wages offered in Rajasthan stone sector meet the ETI standard of a living wage.

The Government of India set up a tripartite Committee on Fair Wages in 1948.<sup>30</sup> The Committee defined three different levels of wages:

- (I) Living wage
- (ii) Fair wage
- (iii) Minimum Wage

### ***Living Wage***

The living wage, according to the Committee, represented the highest level of the wage which should enable the worker to provide for himself and his family not merely the basic essentials of food, clothing and shelter but a measure of comfort including education for children, protection against ill health, requirements of essential social needs and a measure of insurance against more important misfortunes including old age. But the Committee felt that when such a wage is to be determined, the considerations of national income and the capacity to pay of the industry concerned has to be taken into account, so the living wage had to be the ultimate goal or the target.

### ***Fair Wage***

The Committee observed: "the objective is not merely to determine wages which are fair in the abstract, but to see that employment at existing levels is not only maintained, but if possible increased. From this point of view, it will be clear that the levels of the wages

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<sup>30</sup> See the annual report of the Ministry of Labour on *The Working of the Minimum Wages Act, 1948 for the Year 2012*

should enable the industry to maintain production with efficiency. The capacity of industry to pay should, therefore, be assessed by the Wage Boards in the light of this very important consideration."

On the recommendations of the Committee on Fair Wages, a bill was introduced in the Parliament in August 1950, known as Fair Wages Bill. It aimed at fixing fair wages for workers employed in the first instance, in factories and mines. It contained various other useful provisions also. But the bill lapsed.

The Committee recommended that it should be above the minimum wage and below the living wage.

### **Minimum Wage**

The Committee was of the view that a minimum wage must provide for not merely the bare sustenance of life, but for the preservation of the efficiency of the worker. For this purpose, the minimum wage should provide for some measure of education, medical requirements and amenities.

### **A wages ladder for Rajasthan stone**

As no progress has been made on either the Living or Fair wage by the GoI, there is an absence of data on what these figures might be. One useful tool developed in recent years is a "wages ladder".

*The idea is that ladders can be a comparative tool to promote discussion about moving forward incrementally rather than getting bogged down in polarised debates about what exactly constitutes a living wage level.<sup>31</sup>*

A tentative wages ladder for the Rajasthan stone sector is offered here.

<b>Rate</b>	<b>Amount (Indian rupees)</b>
Living Wage	No agreed figure
Fair Wage	No agreed figure
Indian trade unions have developed a joint demand for a national monthly minimum wage. Also in the 2014 General Election manifesto of some parties.	10,000 per month = 384 per day.  NB: The Industrial Disputes Act amendments in 2010 fixed INR 10,000 as a cut of point for the definition of "workmen" - any worker earning below this is classified as a workman.

<sup>31</sup> <http://www.ethicaltrade.org/news-and-events/blog/stuart-bell/climbing-the-wage-ladder>

Minimum wage set by Government of Rajasthan from January 1, 2014 to June 30, 2014. <sup>32</sup>	Unskilled 189 Semi-skilled 199 Skilled 209 Highly-Skilled 259 Per day
NREGS daily wage (See Technical note below)	163 from 1 <sup>st</sup> April 2014
Poverty line as defined by GOI (See Technical note below)	29; or 35.10 - 66.10.

The industry could promote and advertise the minimum wage rates as soon as they are revised. This would put pressure on employers to pay the new rates.

**Technical notes:**

NREGS - Workers employed on the Mahatma Gandhi National Rural Employment Guarantee Scheme (MGNREGS) in Rajasthan should receive INR 163 per day from 1<sup>st</sup> April 2014. The scheme provides for 100 days work a year for one member of each qualifying family. They would not get any other benefits. There are allegations about misuse of the scheme, including contractors and officials skimming off funds. But it provides a useful benchmark. It is generally accepted to have had an impact in reducing distress migration and pushing up wages.

Poverty line - an important concept in India is “below poverty line” (BPL). It is a poverty threshold used by the GOI to indicate economic disadvantage and to identify individuals and households in need of government assistance and aid, such as a ration card. A GOI committee computed the poverty lines for 2004-05 at a level that was equivalent, in purchasing power parity (PPP) terms, to one US\$ per person per day, which was the internationally accepted poverty line at that time.

In 2013, this was updated to INR 29 per person per day by the Planning Commission. This was equivalent, in PPP terms, to the new internationally accepted poverty line of \$1.25.<sup>33</sup>

Figures based on the national sample survey for 2009-10, using average monthly consumption expenditure, provide a different benchmark of what an individual needs to

<sup>32</sup> <http://www.paycheck.in/main/salary/minimumwages/rajasthan>

<sup>33</sup> See <http://www.thehindu.com/opinion/lead/understanding-the-poverty-line/article4989045.ece>

survive; this sets the poverty line at INR 66.10 for urban areas and INR 35.10 for rural regions; on this basis, approximately 65% of the population would be BPL.<sup>34</sup>

***The need for more effective access to remedies by victims of human rights abuse.***

Individual workers who are paid less than the prevailing minimum wage do not seem to have any redress mechanism. It is theoretically possible that a worker could take action in the civil courts where a prosecution has been made in the criminal courts against an employer for failing to pay the minimum wage.

## **6. Working hours are not excessive**

### ***Key points***

The constitution seems to be silent on this issue. India has ratified two of the main ILO Conventions.

The legislation provides for a higher level of protection than found in the conventions (and ETI Code), by limiting overtime, though awareness of this seems very low - not least among social auditors.

A particular problem seems to be that many workers do not take their rest day.

### **6.1 Constitutional provisions**

None seem directly relevant.

### **6.2 Relevant ILO standards**

#### ***Hours of Work (Industry) Convention, 1919 (No.1)***

#### ***Hours of Work (Commerce and Offices) Convention, 1930 (No.30)***

Sets the basic requirement of a 48-hour week with a maximum of eight hours per day. 12 hours overtime.

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<sup>34</sup> <http://timesofindia.indiatimes.com/india/Govt-study-fixes-poverty-line-at-Rs-66-for-cities-and-Rs-35-for-villages/articleshow/12917525.cms>

### ***Weekly Rest (Industry) Convention, 1921 (No.14)***

### ***Weekly Rest (Commerce and Offices) Convention, 1957 (No.106)***

Set the general standard that workers shall enjoy a rest period of at least 24 consecutive hours every seven days

### ***Forty hour week convention, 1939 (No. 47)***

### ***Recommendation 116 (Reduction of hours of work)***

Set at the principle of a 40 hour work week.

India has ratified Conventions No.1 and No.14 <sup>35</sup>

## **6.3 ETI Base Code**

NB - this is the revised wording introduced in April 2014.

### **6. WORKING HOURS ARE NOT EXCESSIVE**

6.1 Working hours must comply with national laws, collective agreements, and the provisions of 6.2 to 6.6 below, whichever affords the greater protection for workers. 6.2 to 6.6 are based on international labour standards.

6.2 Working hours, excluding overtime, shall be defined by contract, and shall not exceed 48 hours per week\*

6.3 All overtime shall be voluntary. Overtime shall be used responsibly, taking into account all the following: the extent, frequency and hours worked by individual workers and the workforce as a whole. It shall not be used to replace regular employment. Overtime shall always be compensated at a premium rate, which is recommended to be not less than 125% of the regular rate of pay.

6.4 The total hours worked in any 7 day period shall not exceed 60 hours, except where covered by clause 6.5 below.

6.5 Working hours may exceed 60 hours in any 7 day period only in exceptional circumstances where all of the following are met:

    this is allowed by national law;

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<sup>35</sup> Convention No. 1 had a separate article dealing with “British India” which permitted a 60 hour week for factories, mines and railways. However this derogation from the 48-hour principle has been superseded by post-independence legislation. The GOI has asked the ILO to remove the article.

this is allowed by a collective agreement freely negotiated with a workers' organisation representing a significant portion of the workforce;

appropriate safeguards are taken to protect the workers' health and safety; and

the employer can demonstrate that exceptional circumstances apply such as unexpected production peaks, accidents or emergencies.

6.6 Workers shall be provided with at least one day off in every 7 day period or, where allowed by national law, 2 days off in every 14 day period.\*

\*International standards recommend the progressive reduction of normal hours of work, when appropriate, to 40 hours per week, without any reduction in workers' wages as hours are reduced.

## 6.4 National Legislation

### ***Mines Act, 1952***

Section 28 states that no person shall be allowed to work in a mine more than six days in any one week. In case a person works on a rest day, there is provision to take compensatory days within two months.

Section 30 limits working hours for mining work above ground to 48 hours per week and nine hours in any one day. There must be a rest period for half an hour after five hours work.

Section 33 provides for a premium rate payment of double the ordinary rate of wages for overtime worked above the hours mentioned in section 31. However there does not seem to be any limit placed on the hours of overtime working. Section 31 seems to provide for an absolute limit of 48 hours in any week, although the Chief Inspector can permit an extension beyond this figure in order to facilitate the change of shifts.

Section 36 requires that a notice shall be posted outside the office of the mine stating the working hours.

### ***Factories Act, 1948***

Working hours are laid down in the Factories Act. 48 hours is the maximum working hours (Sec 51 Factories Act). Overtime is allowed, but restricted to 50 hours in a quarter. Section 59 of the act has an identical requirement to Section 33 of the Mines Act, to pay double wages for any work beyond nine hours in one day or 48 hours in any week. A day of rest is compulsory. Workers cannot be employed for more than 9 hours in a day and at least half an hour rest should be provided after 5 hours.

No female adolescent or a male adolescent below the age of seventeen years apart from whom has been granted a certificate of fitness to work in a factory shall be allowed to work in any factory except between 6 A.M. and 7 PM, and only for the minimum hours specified in the Act, unless specifically provided otherwise by the State Government.

This Act has special provisions for employment of women. A woman worker cannot be employed beyond the hours 6.00am to 7.00pm. The state government can grant exemption to any factory or group or class of factories, but no woman can be permitted to work during 10 PM to 5 AM. If a factory employs more than 30 women it must provide a crèche.

## 6.5 Commentary

### ***The State duty to protect against human rights abuses by third parties, including business.***

The legislation conforms to the ILCs and even seems to exceed it, with certain limitations on overtime.

### ***The responsibility of commercial enterprises to respect human rights.***

In practice, many quarries seem to work seven days a week. Working hours in quarries will normally follow daylight hours with a longer break in the middle of the day to avoid the heat - the break becoming longer during the “hot weather”. So daily hours will probably be within the law, but the lack of an off day means many quarries will be in breach of the ETI Code, the law, and ILCs. In practice, workers accumulate rest days and take several days at one time to visit relatives, or for festivals. Workers are almost entirely paid on a piece rate basis or on a daily wage, so any day not spent working means day not getting paid.

In the larger stone processing units, a more regular fixed working pattern may be possible although here too, many workers prefer to take three or four days leave at a time, to return to their village, or attend a family function.

Given this well-established pattern, it is a challenge for the stone sector to comply with the standards. In the quarries particularly, the concept of fixed maximum working hours, and “overtime” would seem strange to many workers.

### ***The need for more effective access to remedies by victims of human rights abuse.***

No mechanism seems to exist for workers to apply to the courts in cases where working hours exceed the maximum provided for in the law.



## 7. No discrimination is practised

### *Key points*

Many categories of discrimination are recognised by the constitution, ILO convention No. 111, and the ETI, although rarely do the rights mentioned coincide.

The constitutional non-discrimination guarantee, for the most part, is available only in case of abuse by the State and those employed in the private sector do not have constitutional protection against discrimination.

There is some legal protection for women workers.

### 7.1 Constitutional provisions

Several clauses of the Constitution are relevant:

14. The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.
15. (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.
17. "Untouchability" is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of "Untouchability" shall be an offence punishable in accordance with law.
25. (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion
39. The State shall, in particular, direct its policy towards securing (...)
  - (d) that there is equal pay for equal work for both men and women;

### 7.2 Relevant ILO standards

There are two fundamental conventions, which have been ratified by India.

***Equal Remuneration Convention, 1951 (No. 100)***

Underscores the principle of equal pay between men and women for work of equal value.

***Discrimination (Employment and Occupation) Convention 1958 (No. 111)***

Provides for a national policy designed to eliminate, in respect of employment and occupation, all discrimination based on race, colour, sex, religion, political opinion, national extraction or social origin.

Some other conventions dealing with non-discrimination and equality, and women workers rights include:

***Workers with family responsibilities convention, 1981 (No. 156)***

Effective equality of opportunity and treatment for men and women workers with family responsibilities

***Maternity Protection Convention, 2000 (No. 183)***

Provides for 14 weeks of maternity benefit.

*Other Conventions affecting gender equality that India has ratified are:*

Night Work (Women) Convention, 1919 (No. 4)

Underground Work (Women), 1935 (No. 89)

Night Work (Women) Convention (Revised), 1948 (No. 45)

### **7.3 ETI Base Code**

#### **7. NO DISCRIMINATION IS PRACTISED**

7.1 There is no discrimination in hiring, compensation, access to training, promotion, termination or retirement based on race, caste, national origin, religion, age, disability, gender, marital status, sexual orientation, union membership or political affiliation.

### **7.4 National legislation**

There is no general law on non-discrimination in employment. There are a number of acts covering some of the grounds of discrimination covered in the ETI Base Code, but no specific law outlawing discrimination on grounds of gender, religion, disability, or race. Section 377 of the Indian Penal Code (IPC) criminalizes same sex adult consensual relationships and this was recently upheld by the Supreme Court. The court has also recognised the right to a transgender identity.

There have been calls for a general anti-racism law, specifically arising out of discrimination and violence against people from north-eastern states.<sup>36</sup>

### ***Equal Remuneration Act 1976***

Remuneration, whether payable in cash or in kind, has to be the same for female and male workers for the same work or work of a similar nature.

Regarding recruitment, the act makes it clear that no employer shall, while making recruitment for the same work or work of a similar nature, or in any condition of service subsequent to recruitment such as promotions, training or transfer, make any discrimination against women except where the employment of women in such work is prohibited or restricted by or under any law for the time being in force.

The CEACR commented in 2010 that the law did not fully reflect the protections provided for in Convention No. 100.

### ***Maternity Benefit Act, 1961***

The Act is applicable to mines, factories and other establishments employing ten or more persons, except employees covered under the Employees' State Insurance Act, 1948. The maximum period for which any woman shall be entitled to maternity benefit shall be twelve weeks, that is to say, six weeks up to and including the day of her delivery and six weeks immediately following that day.

### ***Mines Act, 1952 and Mines Rules, 1955***

Provides for separate (i) bathing facilities (ii) sanitary latrines and (iii) lockers for male and female coal mine workers.

### ***Mines Crèche Rules, 1966***

Provides that in any mine where any woman is employed, a crèche should be provided.

### ***Factories Act, 1948***

This Act has special provisions for employment of women. A woman worker cannot be employed beyond the hours 6 a.m. to 7.00 pm. The state government can grant exemption to any factory or group or class of factories, but no woman can be permitted to work during 10 PM to 5 AM. If a factory employs more than 30 women it must provide a crèche.

### ***Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989***

This act deals with "any offence under the Indian Penal Code (IPC) committed against people from Scheduled Castes and Tribes (SC/ST) by non-SC/ST persons. This is based on the

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<sup>36</sup> <http://www.ipsnews.net/2014/03/anger-rises-racist-india/>

assumption that “where the victims of crime are members of Scheduled Castes and the offenders do not belong to Scheduled Castes caste considerations are really the root cause of the crime, even though caste considerations may not be the vivid and minimum motive for the crime”

It does not create an explicit offence to discriminate against a person on the basis of their caste.

***The Persons with Disabilities Equal Opportunities, Protection of Rights and Full Participation Act, 1995***

It is difficult to find an employment focussed discussion of this legislation. The principal objective is to ensure that government institutions and government enterprises do not discriminate; it does not seem to lay any obligations on private sector enterprises.

India has ratified the United Nations Convention on the Rights of Persons with Disabilities, 2006.

In early 2014, the government introduced a draft *Rights of Persons with Disabilities Bill*, which is supposed to replace the 1995 act with legislation in line with the UN Convention. However, it has divided opinion within the disability community in India. For the purposes of this study, we can note that section 19 of the draft Bill prohibits discrimination in employment in general terms.

## 7.5 Commentary

### ***The State duty to protect against human rights abuses by third parties, including business.***

An ILO study of gender and social dialogue examined the issue of gender discrimination in employment and concluded:

The Indian Constitution guarantees equality to all persons within India; it also prohibits discrimination by the State on the grounds of sex. The equality guarantee is available to all persons within India (...). However, the constitutional non-discrimination guarantee, for the most part, is available only in case of abuse by the State. This lack of “horizontal effect” of the non-discrimination provision implies that those employed in the private (non-State) sector do not have constitutional protection against discrimination on the grounds of sex. Remedies under labour statutes, of course, remain available.<sup>37</sup>

This observation applies to all the categories of discrimination discussed in this section.

In the absence of a general law against discrimination on equality applicable in employment and services, it is legal in India for employers to discriminate on multiple grounds contrary to the ILO convention and the ETI Code.

Although India has ratified Convention No. 111, there has been no attempt to consider how the obligation to implement it systematically in law or practice - an obligation freely accepted by the act of ratification.

In the absence of clear laws, the courts have played a role in ruling on some issues such as sexual orientation but these have been contradictory - upholding the illegality of same sex acts in the IPC, but recognising transgender people

It may be helpful to set out the protection against discrimination provided by the ETI Base Code, ILSs, the constitution and law.

The table below refers to any legal provisos against discrimination. As explained above, the Indian constitution only protect against discriminatory acts by the state, so any protection does not apply in the workplace, unless specifically provided for.

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<sup>37</sup> Sankaran, Kamala; Madhav, Roopa, *Gender equality and social dialogue in India*, Geneva: ILO, 2010

Protection against discrimination: comparison of coverage available according to the ETI Base Code, International Labour Conventions, the Constitution of India and labour laws.

ETI Base Code	ILO	Constitution of India	Law
Race	C 111	S 15	
Caste	C 111 (social origin)	S 15	Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989. Not a direct anti-discrimination statute, not employment related.
National origin	C 111	S 15 (place of birth)	
Religion	C 111	S 15	
Age			There are no codified laws, national or local, in India that directly deal with the issue of age discrimination. <sup>38</sup>
Disability	C 159		Persons with Disabilities Act, 1995 has no employment provisions. Draft bill 2014 did have a clause.
Gender	C 111	S 15	
Marital status			
Sexual orientation			Transgender status recognised in law, but this does not imply protection against discrimination in employment.
Union membership	C 87 98		

<sup>38</sup> <http://www.agediscrimination.info/international/Pages/India.aspx>

Political affiliation	C 111		
	C 111 Colour		
	R 200 on HIV/AIDS		Code of Practice

***The responsibility of business enterprise to respect human rights.***

***Caste discrimination***

Caste discrimination, and particularly discrimination against Scheduled Castes and Scheduled Tribes, is a difficult phenomenon to identify without detailed knowledge of the local caste “map” - the ethnography even within Rajasthan will show immense varieties.

Normal social auditing is unlikely to find if there is a problem, as if there were systematic discrimination against a particular caste or sub-caste, this would not appear in interviews, as those groups would not be present.

As the Dalit Solidarity Network (DSN) have pointed out, scheduled castes are in general under-represented in the formal paid economy. There are many complex reasons for this; active discrimination against them *could* be one of them. But the problem is also about the educational levels and skills of the lower caste groups, and this is linked to historical long-term disadvantage such as poor school provision etc.

***The need for more effective access to remedies by victims of human rights abuse.***

There seems to be little scope in law to seek redress against discrimination in employment.

## 8. Regular Employment

### *Key points*

Human rights in this area are ill-defined by the ILO or the Constitution.

Indian law contains some detailed specific provisions - unique in some respects - but implementation is very poor indeed.

### 8.1 Constitutional provisions

None

### 8.2 Relevant ILO standards

#### ***Employment Relationship Recommendation, 2006 (No. 198)***

This autonomous recommendation<sup>39</sup> calls for member states to adopt national policy to provide guidance for the parties concerned, in particular employers and workers, on effectively establishing the existence of an employment relationship and on the distinction between employed and self-employed workers.

The ILC is due to discuss a possible standard on Informal Work in 2014 and 2015.

### 8.3 ETI Base Code

#### 8. REGULAR EMPLOYMENT IS PROVIDED

8.1 To every extent possible work performed must be on the basis of recognised employment relationship established through national law and practice.

8.2 Obligations to employees under labour or social security laws and regulations arising from the regular employment relationship shall not be avoided through the use of labour-only contracting, sub-contracting, or home-working arrangements, or through apprenticeship schemes where there is no real intent to impart skills or provide regular

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<sup>39</sup> An autonomous recommendation is a recommendation that is not linked to a convention.



employment, nor shall any such obligations be avoided through the excessive use of fixed-term contracts of employment.

## 8.4 National legislation

### ***Industrial Employment (Standing Orders) Act, 1946***

The purpose of the act is set out as "to require employers in industrial establishments to define with sufficient precision the conditions of employment under them and to make the said conditions known to workmen employed by them." The act is applicable to "Industrial Establishment" employing one hundred or more employees. The States have powers to make this Act applicable to "establishments" employing even lesser number of employees. The "Industrial Establishments" to which this Act applies can have their Standing Orders certified. The certification is done by the State Labour Commissioner or an Officer under him known as a certifying Officer. These Standing Orders are required to be in conformity with the Model Standing Orders framed by the respective State Governments.

The issues that must be included are:

- Classification of workmen, e.g., whether permanent, temporary, apprentices, probationers, or badlis.<sup>40</sup>
- Periods and hours of work, holidays, pay-days and wage rates.
- Shift working.
- Attendance and lateness.
- Conditions of, procedure in applying for, and the authority which may grant leave and holidays.
- Requirement to enter premises by certain gates, and liability to search.
- Closing and reporting of sections of the industrial establishment, temporary stoppages of work and the rights and liabilities of the employer and workmen arising there from.
- Termination of employment, and the notice thereof to be given by employer and workmen.
- Suspension or dismissal for misconduct, and acts or omissions which constitute misconduct.

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<sup>40</sup> Badli workers are substitute workers

- Means of redress for workmen against unfair treatment or wrongful exactions by the employer or his agents or servants.
- Any other matter which may be prescribed.

This is the only provision in Indian law regarding contract of employment.

### ***Contract Labour (Regulation and Abolition) Act, 1970***

The Act has two purposes. Firstly contract labour is prohibited for work of “a perennial nature”.

Secondly, where contract work does take place, it is regulated and controlled. The principal employer must be registered and licensed to use a labour contractor. The contractor also needs to be licensed. The law requires the principal employer to ensure that the contractor pays the minimum wage, provides the necessary PPE, registers workers with the appropriate authorities for Provident Fund and ESI, and deducts contributions.

The Principal employer should nominate a representative to be present at the time of disbursement of wages by the contractor.

### ***Unorganized Workers' Social Security Act, 2008***

An 'Unorganized Sector Worker' is one who works for wages or income directly or through any agency or contractor, or who works on his own or her own account, or is self-employed and works in any place of work including his or her home, field or any public place. This worker is not eligible for benefits under the Employees State Insurance Act, Workmen's Compensation Act etc.

The Act provides some form of protection to those workers defined as unorganised which includes home-based and self-employed workers, but also include workers whose employers are too small to otherwise fall within the scope of the law.

Both the central and state governments can develop social security benefits such as health insurance, maternity benefit and pensions and should set up boards to administer the schemes. The District Administration is supposed to provide workers with identity cards. Without identity documents workers cannot access many welfare schemes.

### ***Inter State Migrant Workers Act (Regulation of Employment and Conditions of Service) Act, 1979***

The act applies to “every establishment in which five or more Inter-State migrant workmen (whether or not in addition to other workmen) are employed or who were employed

on any day of the preceding twelve months; and to every contractor who employs or who employed five or more Inter-State migrant workmen (whether or not in addition to other workmen) on any day of the preceding twelve months.”

It is therefore quite possible that the act will apply in many quarries in the Rajasthan sandstone sector.

“Inter-State migrant workman” means any person who is recruited by or through a contractor in one State under an agreement or other arrangement for employment in an establishment in another State.

The concept of principal employer is also fundamental to this act. No principal employer can engage interstate migrant workers without having first registered. Contractors must register as well.

The contractor must issue every worker with a pass book, with the following information:

- (i) the name and place of the establishment wherein the workman is to be employed;
- (ii) the period of employment;
- (iii) the proposed rates and modes of payment of wages;
- (iv) the displacement allowance payable;
- (v) the return fare payable to the workman on the expiry of the period of his employment and in such contingencies as may be prescribed and in such other contingencies as may be specified in the contract of employment; and
- (vi) deductions made;

The wage rates, holiday hours of work and other conditions of service of an inter-state migrant workman shall be the same or similar kind as those applicable to other workman. The Principal employer should nominate a representative to be present at the time of disbursement of wages by the contractor.

## 8.5 Commentary

The term in general use in India is the “unorganised sector”, while the ILO now uses the wider concept of the “informal economy”.

Increasingly, "informal sector" has been found to be an inadequate, if not misleading term, to reflect these dynamic, heterogeneous and complex aspects of a

phenomenon, which is not, in fact, a "sector" in the sense of a specific industry group or economic activity. The term "informal economy" has come to be widely used instead to encompass the expanding and increasingly diverse group of workers and enterprises in both rural and urban areas operating informally.<sup>41</sup>

Informality is the norm in India. In a study published in 2005, the ILO studied ten small manufacturing clusters in the north of India and found that 98% of workers were without a legally binding contract.<sup>42</sup>

The mode of fixing the conditions of employment was a verbal agreement between the employer and workers. Half of the workers surveyed indicated no preference for a contract since they did not see any benefit from having a legal contract. 40% of the respondents actually believed that it would be to their disadvantage to have a contract. Only 16% of the respondents saw any benefit in having a work contract, while another 18% felt that a formal contract provided job security.

The fact that no written contract exists does not mean that employers can do whatever they wish. There exist customary expectations and obligations on either sides, or "dustoor" as it sometimes known.

### ***The State duty to protect against human rights abuses by third parties, including business.***

The law relating to contracts in India is contained in Indian Contract Act, 1872. The Act was passed by British India and is based on the principles of English Common Law. In the British system a contract of employment is a relationship governed by express and implied conditions. A written contract may exist, but is subject to other influences such as collective agreements, the law or "custom and practice".

In theory, a worker could establish - in the absence of any written evidence - that a contract of employment existed between him or herself and an employer, but it does not seem to be an important issue for many workers. Given that the legal route to establishing and enforcing a contract would be the courts, and the Indian courts are notoriously slow and inaccessible even to the wealthy and powerful, that would not be a practical option.

There is no specific law requiring an employer to provide a worker with a written contract of employment. The Industrial Employment (Standing Orders) Act, 1946 implies that an employer must provide standing orders that provide for many of the issues that would be covered in a contract of employment.

### **Migrant Labour**

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<sup>41</sup> *Decent Work and the Informal Economy*, ILO 2002

<sup>42</sup> *The other India at work*, ILO, New Delhi, 2005

The Inter State Migrant Workers Act remains unknown and ineffective. The Standing Committee on Labour of the Lok Sabha, the lower house of the Indian parliament, examined the workings of the act in its 2010-2011 session.<sup>43</sup>

In Rajasthan, 11 principal employers were registered and seven contractors. In evidence to the committee, the Ministry of Labour and Employment admitted that there was no data on the number of interstate migrant workers, nor of the number of unlicensed contractors.

*The responsibility of business enterprise to respect human rights.*

### **Contract labour**

The Contract Labour (Regulation and Abolition) Act is highly controversial. The trade unions blame it for legitimising an expansion of contract labour and would like to see its provisions strengthened and more committed enforcement.

Employers who wish to expand the scope for contracting out would prefer to see the law scrapped altogether.

While the law is still in place, there remains both a legal and business case for ensuring that it is enforced in practice. Much of the literature from the critics of the act concentrate on abuses such as non-payment of the minimum wage, non-payment of overtime and non-registration on the workers with the social security schemes they do qualify for.

Larger processing units in factories could certainly develop a standard operating procedure to ensure that the legal provisions are carried out. In addition, the ETI Base Code could be attached to all contracts with labour contractors and they could be required to sign a commitment to follow it. Training about the Base Code could be provided to contractors and their contract labour could also be included in any training conducted by the principal employer.

### **Unorganized Workers' Social Security**

Information on the operation of the Unorganized Workers' Social Security Act does not seem to be widely available. In the state of Andhra Pradesh for example, four years after the act was passed, the state government had still not constituted the board.<sup>44</sup> There is no mention of the act on the website of the Department of Labour of Rajasthan. The implementation of this legalisation is outside the mandate of the employers in the stone sector. However, they could work together with the District administrations in Kota and Bundi to get workers registered, and to help workers access schemes.

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<sup>43</sup> *The inter-state migrant workmen (regulation of employment and conditions of service) amendment bill, 2011*, Twenty-third report, Lok Sabha Secretariat, New Delhi, 2011

<sup>44</sup> <http://www.thehindu.com/todays-paper/tp-national/tp-andhrapradesh/social-security-board-eludes-unorganised-sector/article3344037.ece>

### ***The need for more effective access to remedies by victims of human rights abuse.***

The Industrial Employment (Standing Orders) Act, and the Industrial Disputes Act together would enable a worker to make an application direct to the Labour Court or Tribunal for adjudication of a dispute “relating to or arising out of discharge, dismissal, retrenchment or termination”. This might provide a test of the existence of a contract between a worker and employer.

Trade unions have also applied to the courts for a ruling that would force a principal employer to take over directly the responsibility for a group of contract workers.

## **9. No harsh or inhumane treatment**

### ***Key points***

Few constitutional provision or ILS are relevant to this part of the EI Base Code, except the abolition of untouchability.

Some national legislation exists for this area, and particularly for sexual harassment in the workplace.

### **9.1 Constitutional provisions**

Section 17 abolishing untouchability would seem to protect SC groups from harassment.

### **9.2 Relevant ILO standards**

No specific standard exists.

### **9.3 ETI Base Code**

9. NO HARSH OR INHUMANE TREATMENT IS ALLOWED

9.1 Physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation shall be prohibited.

## 9.4 National legislation

### ***Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989***

This act deals with “any offence under the Indian Penal Code (IPC) committed against people from Scheduled Castes and Tribes (SC/ST) by non-SC/ST persons. This is based on the assumption that “where the victims of crime are members of Scheduled Castes and the offenders do not belong to Scheduled Castes caste considerations are really the root cause of the crime, even though caste considerations may not be the vivid and minimum motive for the crime”

### ***Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act 2013***

The definition of workplace is quite wide - and includes workers employed through labour contractors, so most workplaces in the Rajasthan stone sector will be covered by the law.

Every employer is required to constitute an Internal Complaints Committee This has to include a senior woman manager, and “one member from amongst non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment.” At least half the members have to be female.

An “aggrieved woman” in the words of the Act, can make a complaint to the committee which must investigate the case. If proved, the committee can recommend disciplinary action against the respondent, which the employer MUST implement within 60 days.

Employers must also “organise workshops and awareness programmes at regular intervals for sensitising the employees with the provisions of the Act and orientation programmes for the members of the Internal Committee in the manner as may be prescribed;”

Employers also must “treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct”. Service rules are a key document in Indian workplaces and set out contractual arrangements and define what conduct is expected. When an employer wants to initiate disciplinary action, they will follow “standing orders” - what we would call a disciplinary procedure in the UK. So these will need amending as well.

The law also provides for the establishment of a district level committee, which can act in those cases where there is not a committee of enterprise level.

## 9.5 Commentary

It would be a mistake to assume that the stone sector employs only men so that the law on sexual harassment does not apply. In fact, women workers constitute more than 16 percent of the workforce in mining and quarrying; as these will not be found in the larger formal mines, it is reasonable to assume that a substantial number of women are working in sandstone quarries although they may not be “visible”.<sup>45</sup> It is normal to see women involved in loading and unloading, particularly waste stone. They are commonly employed by a specialist contractor who operates a tractor and trailer. In these cases, the District Committee for sexual harassment could get involved.

***The State duty to protect against human rights abuses by third parties, including businesses.***

Even before the law was passed, the government of Rajasthan, in January 2013, amended the Rajasthan Industrial Employment (Standing Orders) Rules to mandate the inclusion of sexual harassment within the model standing orders or every enterprise are covered by the rules. So the state does seem to be active on the issue.

***The responsibility of business enterprise to respect human rights.***

Stakeholders in the Rajasthan stone sector could meet with the district administration to discuss the implementation of the act in the context where the vast majority workers are male, but a number of female workers in vulnerable and subordinate roles, are employed. A district level committee would be a sensible way forward.

As the women workers who may be the victims of harassment have no permanent employer of workplace, the provisos in law for employers to “organise workshops and awareness programmes at regular intervals for sensitising the employees with the provisions of the Act” is clearly not going to happen. The stakeholders could support a sector wide awareness programme aimed at these women - who are very vulnerable.

***The need for more effective access to remedies by victims of human rights abuse.***

The law does provide for a redress mechanism, which operates at the workplace

There is little point in training women workers in the stone sector, unless the redress machinery actually works - this cannot be left to the government administration alone.

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<sup>45</sup> Sankaran, Kamala; Madhav, Roopa, *Gender equality and social dialogue in India*, Geneva: ILO, 2010



## 10. Central Labour Acts

Central Labour Acts, according to the background paper prepared for the 45<sup>th</sup> Indian Labour Conference.

No.	Name of the Act
1	The Employees' State Insurance Act, 1948
2	The Employees' Provident Fund and Miscellaneous Provisions Act 1952
3	The Dock Workers (Safety, Health and Welfare) Act, 1986
4	The Mines Act, 1952
5	The Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare (Cess) Act, 1976
6	The Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Fund Act, 1976
7	The Mica Mines Labour Welfare Fund Act, 1946
8	The Beedi Workers Welfare Cess Act, 1976
9	The Limestone and Dolomite Mines Labour Welfare Fund Act, 1972
10	The Cine Workers Welfare (Cess) Act, 1981
11	The Beedi Workers Welfare Fund Act, 1976
12	The Cine Workers Welfare Fund Act, 1981
13	The Child Labour (Prohibition and Regulation) Act, 1986.
14	The Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996
15	The Contract Labour (Regulation and Abolition) Act, 1970.
16	The Equal Remuneration Act, 1976
17	The Industrial Disputes Act, 1947.

18	The Industrial Employment (Standing Orders) Act, 1946.
19	The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979.
20	The Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988
21	The Maternity Benefit Act, 1961
22	The Minimum Wages Act, 1948
23	The Payment of Bonus Act, 1965
24	The Payment of Gratuity Act, 1972
25	The Payment of Wages Act, 1936
26	The Cine Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981
27	The Building and Other Construction Workers Cess Act, 1996
28	The Apprentices Act, 1961
29	The Factories Act, 1948
30	The Motor Transport Act, 1961
31	The Personal injuries (Compensation Insurance) Act; 1963
32	The Personal Injuries (Emergency Provisions) Act, 1962
33	The Plantation Labour Act, 1951
34	The sales promotion Employees(Conditions of Service) Act; 1976
35	The Trade Unions Act, 1926
36	The Weekly Holidays Act, 1942
37	The Working Journalists and Other Newspapers Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955
38	The Children's (Pledging of Labour) Act, 1938

39	The Workmen's Compensation Act,1923
40	The Employment Exchange (Compulsory Notification Of Vacancies] Act, 1959
41	The Bonded Labour System (Abolition) Act, 1976
42	The Beedi and Cigar Workers (Conditions of Employment) Act, 1966
43	The Employees' Liability Act: 1938
44	The Unorganized Workers' Social Security Act, 2008