

# Draft of the Proposed Amendments to the Kerala Shops & Commercial Establishments Act, 1960

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## List of Tables

<b>Table 1</b>	Changes in the Applicability of Kerala Shops and Commercial Establishments Welfare Fund Act, 2006	Page 12
<b>Table 2</b>	Exploring Possibility of Keeping Turnover, Number of Employees and Years in Operation of an Establishment to Determine Applicability of Compliance Procedures	Page 12
<b>Table 3</b>	Replacement of the Term Inspector in the Existing Act and Rules	Page 16
<b>Table 4</b>	Rules that need to be Amended corresponding to Change in Definition of Small, Medium and Big Establishments	Page 17
<b>Table 5</b>	Integrating Data of the State with ShramSuvidha Portal	Page 20
<b>Table 6</b>	Corresponding Changes to be made in the Rules, when Amendments are made in Section 5A of Kerala Shops and Establishments Act	Page 20
<b>Table 7</b>	Differences in the Provisions of Model Act, 2016, and Kerala Industrial Establishments (National and Festival Holidays) Act, 1958	Page 25
<b>Table 8</b>	Suggestions for Providing Transportation Facilities for Employees	Page 26
<b>Table 9</b>	Open Portal for Registration and Compliance Helpline	Page 28
<b>Table 10</b>	Exploring Novel Ways of Record Keeping other than Forms	Page 39

### List of Figures

<b>Figure 1</b>	How Online Portal Works	Page 30
<b>Figure 2</b>	How Compliance Helpline Works	Page 32
<b>Figure 3</b>	How Risk Index Value Works	Page 33
<b>Figure 4</b>	How the Suggested Penalty System Works	Page 37

### List of Appendices

<b>Appendix 1</b>	Court Judgments regarding the Ambiguity of Treating Hospitals as Commercial Establishments	Page 52
<b>Appendix 2</b>	ShramSuvidha Portal and Labour Identification Number	Page 52
<b>Appendix 3</b>	Convention No. 1 and Convention No. 30, ILO Standards Governing Working Time	Page 52
<b>Appendix 4</b>	Differences in the Provisions of Kerala Shops and Establishments Act, 1960, Model Act, 2016, and Minimum Wages Act, 1948	Page 53
<b>Appendix 5</b>	Comparison of Number of Paid Holidays as per Kerala Shops and Establishments Act, 1960, Model Act, 2016, and Kerala Industrial Establishments (National and Festival Holidays) Act, 1958	Page 54
<b>Appendix 6</b>	Steps to Improve Enforcement and Tackle Non-compliance: Practices Followed in the UK	Page 54
<b>Appendix 7</b>	Womenomics in Japan: A Bid to Boost Female Labour Force Participation Rate	Page 55
<b>Appendix 8</b>	Global Examples of Provisions for Childcare Services	Page 55

### List of Abbreviations

<b>MSE</b>	Micro and Small Enterprise
<b>MSME</b>	Micro Small and Medium Enterprise
<b>S&amp;E Act</b>	Shops and Commercial Establishments Act
<b>The existing Act</b>	Kerala Shops and Commercial Establishments Act, 1960
<b>The Model Act</b>	Model Shops and Commercial Establishments Act, 2016
<b>Welfare Fund Board</b>	Kerala Shops and Commercial Establishments Workers Welfare Fund Board
<b>USD</b>	United States Dollar
<b>LIN</b>	Labour Identification Number
<b>SSP</b>	ShramSuvidha Portal
<b>The existing Rules</b>	Kerala Shops and Commercial Establishments Rules, 1961
<b>LSG</b>	Local Self-Government
<b>NGO</b>	Non-Government Organisation
<b>GST</b>	Goods and Services Tax

## Contents

Introduction .....	9
1) Suggested Changes in the Applicability of S&E Act, 1960 .....	10
Existing Provision .....	10
Suggestion .....	10
Explanation .....	10
2) Proposed Amendments to the Section of Definitions of S&E Act, 1960 .....	15
2.1) Change in the Definition of Shop [Section 2(15)].....	15
Existing Definition .....	15
Suggestion.....	15
Explanation .....	15
2.2) Change in the Term Used for the Official who Conducts Inspection [Section 2(9)] .....	16
Existing Definition .....	16
Suggestion.....	16
Explanation .....	16
2.3) Change in the Definition of Big Establishment, Medium Establishment and Small Establishment in the Existing Act .....	16
Existing Definitions .....	16
Suggestion.....	17
2.4) Inclusion of Definition of Wages under the Section of Definitions .....	17
Existing Condition.....	17
Suggestion.....	17
Explanation .....	18
3) Proposed Amendments in Section 3: Exemptions.....	18
Existing Condition.....	18
Suggestion.....	18
Explanation .....	18
4) Amendments in Section 5: Registration of Establishments.....	19
Existing Condition.....	19
Suggestions.....	19

Explanation .....	19
5) Change in the Daily Working Hours and Overtime Allowed in a Quarter under Section 6 ...	21
Existing Condition .....	21
Suggestion.....	21
Explanation .....	21
6) Change in the Interval for Rest under Section 8.....	22
Existing Provision .....	22
Suggestion.....	23
Explanation .....	23
7) Amendment in Section 10: Opening and Closing Times of Establishments.....	23
Existing Condition.....	23
Suggestion.....	23
Explanation .....	23
8) Amendment in Closing of Shops and Grant of Weekly Holidays under Section 11 .....	24
Existing Provision .....	24
Suggestion.....	24
Explanation .....	24
9) Change in the Title of Section 20 and Provision to Allow Women to Work on Night Shifts..	25
Existing Title.....	25
Suggestion.....	25
Explanation .....	26
10) Changes in the Process of Inspection .....	25
Existing Condition .....	27
Suggestion .....	27
Explanation.....	27
11) Amendments to Section 26: Powers and Duties of Inspectors.....	34
Existing Condition.....	34
Suggestion.....	34
Explanation .....	34
12) Amendments to Section 29: Penalties .....	35
Existing Condition.....	35
Suggestions.....	35
Explanation .....	37



12.1) Proposed Amendments to Section 29(3)(b): Power of Facilitator to Lodge Complaints at Courts .....	38
Existing Condition .....	38
Suggestion .....	38
Explanation .....	38
13) Proposed Amendments to Section 30: Maintenance of Registers .....	38
Existing Condition .....	38
Suggestion .....	39
Explanation .....	39
14) Proposed Amendments to Kerala Shops and Commercial Establishments Rules, 1961 .....	40
14.1) Amendments to Rule (10): Maintenance of Forms .....	40
Existing Condition .....	40
Suggestion .....	40
Explanation .....	40
14.2) Amendments to Rule (12): Submission of Returns .....	40
Existing Condition .....	40
Suggestion .....	40
Explanation .....	40
14.3) Amendments to Rule 6(D): Crèches .....	41
Existing Condition .....	41
Suggestion .....	41
Explanation .....	42
15) Summary of Provisions in Kerala Shops and Commercial Establishments Act, 1960, and Model Shops and Establishments Act, 2016, and Suggestions given by CPPR .....	43

## Introduction

The Kerala Shops and Commercial Establishments Act, 1960, envisaged the regulation of conditions of work and employment in shops and commercial establishments. The Act was adequate in addressing the employment concerns and working conditions of the previous century. However, with employment practices and related socioeconomic structures undergoing a vast overhaul, the Act, as envisaged in 1960, proves inadequate in addressing the employment concerns of the 21st century.

Moreover, many employers have dubbed the provisions of the Act as rigid. The Act, which regulates labour, has inadvertently obstructed the operations of shops and establishments in keeping with modern public demand, thereby hindering ease of business and generation of employment.

The Model Shops and Establishments Act, 2016, as recommended by the Central Government identifies some of the issues arising from existing practices, and suggests alternatives to existing provisions. The Model Act aims to remove the rigidity in the opening and closing times of shops and establishments, encourage women's employment, ease registration and renewal processes, make inspections transparent, and make record keeping effortless. The Model Act is in tune with the contemporary demands of employers and employees because it recognises the positive and negative effects labour laws have on employment generation. However, in addressing some of the fundamental concerns of employees, employers and the labour department in Kerala, such as the costs associated with compliance, regulation and information, the Model Act falls short.

Centre for Public Policy Research (CPPR), in this draft, lays out the measures and means to address the employment and business concerns associated with shops and establishments in Kerala. CPPR has adopted from the Model Act those provisions that meet the socioeconomic demands of the contemporary scenario in Kerala.

### *Objectives of the Changes Suggested in the Existing Act*

- To reduce the compliance cost for small businesses
- To improve female workforce participation
- To improve Ease of Doing Business
- To provide flexibility in the operations of shops and establishments
- To employ technology to reduce the cost of information, regulation and compliance

## 1) Suggested Changes in the Applicability of S&E Act, 1960

### *Existing Provision*

The Kerala Shops and Commercial Establishments Act, 1960, is applicable to all establishments in Kerala.

### *Suggestion*

The Amended Act including the proposed changes would be applicable only to establishments with more than 10 employees.

### *Explanation*

Shops and establishments with less than 10 employees are exempted from the purview of the Amended Act. The criteria for the exclusion of a category of establishments vary with the intention of excluding these establishments and are dependent on various factors. The criteria used for excluding certain category of establishments and the intention for excluding them have been discussed here.

As per the ILO report<sup>1</sup>, the intentions and reasons leading to decisions regarding exclusion and non-exclusion of MSEs are as follows:

- a. MSEs are exempted largely due to non-feasibility in extending labour administration to cover them.
- b. MSEs are not exempted but labour administration remains weak and ineffectual. In such cases, laws are not enforced and it is equivalent to remaining exempted from the laws though laws are applicable to all establishments.
- c. MSEs are partially exempted in those areas that are not yet practical to cover with labour administration.

The above study raises the question of whether there should be universal coverage of all establishments under labour laws or should a class of establishments be excluded from its purview.

MSEs are usually excluded from the provisions of certain laws, assuming that it would help in the generation of employment and growth of small businesses. Recent literature suggests that the age of the firm is more important than the size of the firm, as younger firms exhibit

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<sup>1</sup> Joshi, Gopal, 2005, *Enabling Environment for MSEs - What roles do labour law play*, ILO Geneva

higher rates of net job creation. Studies<sup>2</sup> state that young establishments grow quicker than old establishments, large establishments exhibit more growth than small establishments and that higher employment growth happens in younger and larger enterprises. So the attempt here has been to encourage the beginners to have a hassle-free business environment and follow compliances, which help them expand into bigger establishments in the course of time.

In a report<sup>3</sup> for the Office of Advocacy of the US, as of 2008, small businesses (firms with less than 20 employees) face an annual regulatory cost of USD 10,585 per employee, which is 36 per cent higher than the regulatory cost for large firms (those with 500 or more employees). So as per this study small businesses face a larger per-employee cost of adhering to government regulations than big businesses in addition to the fixed cost associated with compliance with regulations.

There is apprehension that the exclusion of a category of establishments based on the number of employees can result in a growth trap as the establishments tend to remain small to evade the provisions of certain laws. The ILO report states that most microenterprises close down even before reaching the threshold limit provided by labour laws. This implies the difficulty of small enterprises to sustain themselves and that excluding them from labour laws based on number of employees has not resulted in a growth trap (a tendency to remain within the bracket of 'less than employees' to evade the applicability of labour laws). It also does not seem to have improved the business performance of the MSEs in creating productive, remunerative jobs. It implies that exclusion of establishments with less than 10 employees will not alone bring about a significant change without simultaneous changes in the simplification of other labour laws and factors influencing business environment such as access to finance and market, adoption of technology, and sector-wise regulatory ecosystem governing the business. In the same business ecosystem, small businesses incur more cost to operate and compete with big players in addition to compliance with multiple laws with various other factors relevant for their survival.

In the case of S&E Act in Kerala, though the existing Act stipulates that it is applicable to all establishments, many of the establishments with a few employees are not aware of it and have not registered. The effectiveness of the labour department in enforcing the laws to all

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<sup>2</sup>Martin, A; Nataraj, Shanthi; Harrison, Ann; 2014, *In with the big, out with the small: Removing small-scale reservations in India*, National Bureau of Economic Research

<sup>3</sup>Crain, V; Crain, W, 2010, *The Impact of Regulatory Costs on Small Firms*

categories of establishments and the practicality of small businesses to afford the cost of compliance with the provisions of the laws also needs to be considered while deciding the applicability of laws.

Considering the higher cost of compliance with laws for small businesses, complex and multiple labour laws of the Central and State Governments, and the practicability of effectively regulating small business, it is recommended that establishments with less than 10 employees be excluded from the purview of the Act.

#### Table 1: Changes in the Applicability of Kerala Shops and Commercial Establishments Welfare Fund Act, 2006

As per the suggestion given in the applicability of the S&E Act of Kerala, shops and establishments with less than 10 employees are not required to register under the Act. Hence, they will not come under the purview of the Kerala Shops and Commercial Establishments Welfare Fund Act. It is suggested that corresponding changes be made to the Kerala Shops and Commercial Establishments Welfare Fund Act, so that establishments with less than 10 employees will also be covered under the Act, though they are not registered under the S&E Act.

#### Table 2: Exploring the Possibility of Keeping Turnover, Number of Employees and Years in Operation of an Establishment to Determine Applicability of Compliance Procedures

Indian labour laws adopt a hawkish attitude towards entrepreneurs. The cost of compliance with multiple laws hinders the smooth functioning of the firm. For instance, recently the Minimum Wages (Kerala Amendment) Act, 2017, stipulated a steep increase in the penalties to be paid by employers for failure to follow the provisions of the Act. This complicates business processes. Since it is not affordable for many entrepreneurs to pay the stipulated minimum wages, they prefer to limit the number of employees and the scale of business.

The criteria for excluding a class of establishments can be in terms of capital invested, turnover, level of technology adopted or number of employees. Investment is dependent on the technology and operation in an establishment. The criteria used for classification vary

with the intention based on which the firms are classified. For example, startups have been given exemptions with the intention of creating more job opportunities and facilitating the growth of such entities. An important condition for an entity to be defined as a startup as per DIPP is that the annual turnover of the entity should not exceed Rs 25 crore in any preceding financial year. Another provision in the startup policy is that it should not have completed seven years.

Another aspect to be considered is whether number of employees alone can indicate the size of an establishment. MSMEs are classified based on capital investment in India. In the case of labour laws, the number of employees is commonly used as the criterion for deciding their applicability. But there is no conclusive justification to consider number of employees as the criteria to classify establishments as small or big.

Turnover is another criterion that can be considered along with the number of employees. Turnover varies with the type of business and it is difficult to purposefully limit it to evade labour laws. In cases where the number of employees is the sole criterion irrespective of turnover, there is the possibility of evading certain labour laws, though they can afford the cost of complying with the laws to ensure labour welfare.

Smaller establishments incur a greater cost of compliance per employee than bigger establishments. The intention to exclude a category of establishments from regulation is to encourage entrepreneurship and boost employment generation. So a combination of these two criteria of turnover and number of employees would be more effective to determine the size of an establishment rather than keeping number of employees alone as the criterion.

If the establishment meets either a certain amount of turnover (say Rs 20 lakh as per the criteria for GST) at any point of time or any fixed number of employees, it needs to comply with the provisions of labour laws. The turnover of an establishment can change every year and this raises the question of whether applicability of laws will also change accordingly. However, the applicability of GST does not change even if the turnover becomes less than Rs 20 lakh in any year once the establishment attains the limit of Rs 20 lakh turnover. Composition Scheme has been introduced under the GST law, where those below a certain limit of turnover need to pay tax only at a minimum rate based on turnover. This is done to reduce the burden of compliance for small businesses. Similarly, such partial exemptions can be given for establishments, which attain the turnover limit in a year and continue to earn

less than Rs 20 lakh in successive years (say up to three years continuously).

Another concern regarding turnover is that it varies according to the type of business and across sectors. But irrespective of the type of business, the criterion of turnover is used to determine the applicability of GST.

The labour department can get information on the turnover of the establishments from the GST filings. In the first year of operation of an establishment, the applicability of the provisions of the laws can be determined based on the number of employees and from the next year onwards the information on turnover can also be considered. Further studies need to be done regarding this, but the criterion of turnover can be seriously considered to decide the applicability of labour laws in future. The ability and affordability of the employer to comply with regulations need to be considered along with the welfare of the labourers if employment generation and ease of doing businesses are the ultimate objectives.

The spontaneous growth potential of the enterprise is reflected in the turnover criterion, whereas the criterion of capital investment in MSME policies has resulted in growth traps. It also shows the progressive nature of the compliances to be followed by the entrepreneur.

The service sector contributes more than two-thirds to Kerala's GSDP. Kerala has very limited manufacturing units, thus employment generation is very limited in the secondary sector. CPPR conducted interactions and focus group discussions with various stakeholders in Kerala during the course of the draft preparation for the proposed amendments in the Kerala Shops and Establishments Act. Many suggested that the minimum number of employees in a shop to meet the compliance should be 15 instead of 10. They justified their suggestion by citing the average number of employees in shops in Kerala. Though there is no proper academic research on this number, it may be wise to consider their demand. It was suggested that shops in Kerala do not have a huge turnover, so the compliance cost by having 10 as a threshold along with other factors hindering ease of doing business, may not help employment generation.

Another suggestion was regarding the years in operation. As in the case of startups, it would be better to exempt new enterprises from any compliance in the inaugural year. The type of business and nature of operations may take one year to stabilise. Moreover, in the lower category, it has been witnessed that many new enterprises are shut down even before they

complete one year of operations. So the proposal is to give them breathing space to stabilise themselves before they meet the compliance criteria.

Summing up the above three suggestions, CPPR proposes the following;

***‘The Amended Act including the proposed changes would be applicable only to those establishments with more than 15 employees or with a turnover of Rs 20 lakh<sup>4</sup> and those that have completed at least one year of operations.’***

Further studies are recommended in this regard.

## 2) Proposed Amendments to the Section of Definitions of S&E Act, 1960

### 2.1) Change in the Definition of Shop [Section 2(15)]

#### *Existing Definition*

‘Shop’ means “any premises, where any trade or business is carried on or where services are rendered to customers, and includes offices, storerooms, go-downs or warehouses, whether in the same premises or otherwise, used in connection with such trade or business, but does not include a commercial establishment or a shop attached to a factory, where the persons employed in the shop are allowed the benefits provided for workers under the Factories Act, 1948 (Central Act 63 of 1948)” as defined in the Kerala Shops and Commercial Establishments Act, 1960.

#### *Suggestion*

Distribution, packaging and repackaging centres of finished goods can be included in the definition of shops. This is also proposed in the Model Act approved by the Central Government.

#### *Explanation*

Logistics is regarded as the backbone of an economy and is evolving rapidly in India. It is also one of the important sectors of growth and investment in Kerala. The rise of e-commerce and

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<sup>4</sup>Rs 20 lakh is suggested based on the existing provisions for the GST compliances. The turnover could be adjusted, according to the threshold decided by the GST council from time to time. GST threshold has been chosen in order to simplify and unify the proceedings in ease of doing business, which is one of the objectives of the proposed amendments in the Act.



increase in domestic consumption further complements the growth of the logistics sector. E-commerce retail shipments grew by an annual average of 40 per cent between<sup>5</sup> 2014 and 2016 in India. Nearly three-fourth of new work opportunities is in logistics and transport, where the wages of a worker with upper-primary school education can be 80 per cent higher than in agriculture. Warehousing and distribution centres play a pivotal role in efficient and timely delivery of services. However, restrictions on working hours often disrupt warehousing and distribution operations, thereby clogging up the supply chain. The inclusion of distribution, packaging and repackaging centres under the definition of shops will ease the process of setting up these centres and facilitate Ease of Doing Business.

## 2.2) Change in the Term Used for the Official who Conducts Inspection [Section 2(9)]

### *Existing Definition*

‘Inspector’ means an Inspector appointed under the existing Act.

### *Suggestion*

The term ‘Facilitator’ shall be used instead of ‘Inspector’, as proposed in the Model Act.

### Table 3: Replacement of the Term Inspector in the Existing Act and Rules

As per the Model Act, the Facilitator is expected to provide information to employers and workers, to facilitate compliance with the provisions of the Act. Subsequently, the term ‘Facilitator’ shall be used in lieu of ‘Inspector’ in the Kerala Shops and Establishments Act and Rules.

## 2.3) Change in the Definition of Big Establishment, Medium Establishment and Small Establishment in the Existing Act

### *Existing Definitions*

The establishments are categorised as small, medium and big, based on the number of employees. Small establishments are shops or commercial establishments with no employee or not more than five employees [Section 2(15(A)) of the existing Act]. Shops or establishments with six or more but less than 20 employees are medium establishments

<sup>5</sup>Woetzel, Jonathan; Madgavkar, Anu; Gupta, Shishir; 2017, *India’s Labour Market - A New Emphasis on Gainful Employment*, McKinsey Global Institute

[Section 2(10(A)) of the existing Act], and those using the services of 20 or more employees are big establishments [Section 2(1(A)) of the existing Act].

### *Suggestion*

Since the proposed Act is applicable to only those establishments with more than 10 employees, it becomes necessary to make subsequent changes in these definitions by either categorising establishments with less than 10 employees as small establishments or repealing the definitions of small, medium or big establishments.

#### Table 4: Rules that need to be Amended corresponding to Change in Definition of Small, Medium and Big Establishments

It is to be noted that the applicability of certain provisions in the existing Kerala Shops and Establishments Rules is based on the categorisation of establishments as small, medium and big establishments. Hence, the rules mentioned below need to be amended.

Rule 2-J: Issue of appointment letter

Rule 4A: Regarding the provision of latrine facilities

Rule 5A: Specifying the provision of restroom facilities

Rule 12B: Submission of annual welfare return

Since the existing Act is to be amended to exclude establishments with less than 10 employees, and definitions of small, medium and big establishments are to be changed or made redundant, subsequent changes need to be made in the above-mentioned rules regarding the applicability of these provisions.

## 2.4) Inclusion of Definition of Wages under the Section of Definitions

### *Existing Condition*

Definition of wages is not included in Section (2) of the existing Act.

### *Suggestion*

Definition of wages, as mentioned in the Model Act shall be included in Section (2).

### *Explanation*

Definition of wages is not included in the Kerala Shops and Establishments Act but it is mentioned in Section (17) that the provisions of the Payment of Wages Act, 1936, will be applicable to all establishments under the S&E Act. House rent allowance comes under the definition of wages in the Model Act, while it is not included under the definition of wages in the Payment of Wages Act. House rent allowance is also included in the definition of wages in the proposed Wage Code Bill. Therefore, it would be prudent to include the definition of wages under the section of definitions, as mentioned in the Model Act, to ensure uniformity.

## **3) Proposed Amendments in Section 3: Exemptions**

### *Existing Condition*

Section 3(1) of the existing Act stipulates the list of establishments that are totally exempt from the Act, i.e. exempt from all the provisions of the Act. Hospitals and other institutions for the treatment or care of the sick, the infirm, the destitute or the mentally unfit are not covered under Section 3(1) of the existing Act. These establishments are given an exemption only from Section 10<sup>6</sup> that refers to the opening and closing hours.

### *Suggestion*

Hospitals and other institutions for the treatment or care of the sick, the infirm, the destitute or the mentally unfit can be included in the category of totally exempted from all the provisions of the Act [Section 3(1)].

### *Explanation*

The Model Act suggests that institutions for the treatment or care of the sick and infirm be exempted from all the provisions of the Act. Hospitals and private clinics come under the purview of the Clinical Establishments Act, which stipulates the registration of such establishments under the Act, along with minimum standards of facilities and services that are required for such establishments to operate. For the regulation of labour conditions, other labour laws like the Maternity Benefits Act<sup>7</sup>, Minimum Wages Act, Payment of Wages Act, Payment of Gratuity, Payment of Bonus Act, ESI and EPF cover social security and aspects of wage protection and other incentives. Moreover, in 2015, the Bombay High Court in

<sup>6</sup> Section 10 of Kerala Shops and Establishments Act, 1960: Opening and Closing Hours

<sup>7</sup> Despite exemption from the provisions of Shop Act 2008 (11)LLJ774 (Ker.)D.B, private hospitals come under the purview of the Maternity Benefits Act.

Indian Medical Association vs State of Maharashtra has made the rule absolute that private practices set up by medical practitioners are not to be considered commercial establishments, as practice of a learned profession differs from the practice of commercial activities. For more information on the court judgment regarding the treatment of hospitals as commercial establishments, refer to Appendix 1.

#### 4) Amendments in Section 5: Registration of Establishments

##### *Existing Condition*

Registration is not completely online now and Labour Identification Number is not issued. The registration certificate is valid only for a year and needs to be renewed annually.

##### *Suggestions*

- a) Efforts need to be taken to facilitate the registration process completely online, including submission of documents and payment of fees. The provision of Section 5A(1) of the existing Act is to be modified accordingly. It is suggested that the process be made fully online within a span of one year.
- b) The Facilitator shall issue the registration certificate online and ensure that the certificate has the Labour Identification Number of the establishment, which could be used as an identifier of the establishment in future for other labour laws. Changes need to be made in the provision of Section 5A(4) accordingly.
- c) The validity of the registration certificate shall be extended to more than one year. The employer shall be allowed to decide the duration of the validity of the registration certificate, provided it falls within the limit of a maximum of 10 years. Changes need to be made in Section 5A(5) of the existing Act.

##### *Explanation*

- a) Online Registration and Issue of LIN

The Model Act proposes that the Facilitator needs to assign a Labour Identification Number (LIN) to every registered establishment. Though registration is done through an online portal in Kerala, the payment of fees and submission of documents is not yet done online. Additionally, the branches of a single establishment need to get registration certificates from different regional labour offices in the state, which is a cumbersome and time-consuming process for the employer. Online registration will ensure that the employers can avoid visiting

different regional labour offices to register many branches of the same establishment within the state. For more details regarding SSP and LIN, refer to Appendix 2.

**Table 5: Integrating Data of the State with ShramSuvudha Portal**

The Central Government's ShramSuvudha Portal (SSP) provides an online single window system and common registration under all the applicable central laws. The labour departments of states like Rajasthan, Maharashtra, Gujarat, Haryana, Delhi and Madhya Pradesh have integrated with SSP and shared data, which makes it possible for them to access any returns and inspection reports of the linked establishment. This brings in more transparency and reduces the interface between the employers and inspectors. It will also help the employers in better compliance, as they will be introduced to the laws that need to be complied in a single portal. The State Government needs to provide a portal for online registration under the Act, and the registered establishment with a LIN needs to be linked to SSP to provide access to employer and the state's labour department.

b) Extending the Validity of Registration Certificate

Based on interactions and focus group discussions with employers, it is known that they consider the renewal process to be time-consuming, as they need to collect relevant documents from various departments to renew their registration certificate under the Act every year. This is indeed an unwieldy process.

The Maharashtra Shops and Establishments Bill, 2017, gives the employer the choice to decide the duration of the validity of the registration certificate, provided it is subject to a maximum of 10 years. In Haryana, the validity of registration is three years, while Rajasthan allows the employer to choose the number of years for which renewal is required.

**Table 6: Corresponding Changes to be made in the Rules, when Amendments are made in Section 5A of Kerala Shops and Establishments Act**

Corresponding changes need to be made in Rule 2B by making the process online [Existing Rule 2 B(2) specifies that application for renewal is to be sent by registered post or delivered in person] and in Form B1, if the employer is given the choice to decide the duration of the validity of the renewed registration certificate.

Provisions shall be made available for online application process for the renewal of registration, which may be made by submitting Form B1 electronically, resulting in transparency and faster approvals.

## 5) Change in the Daily Working Hours and Overtime Allowed in a Quarter under Section 6

### *Existing Condition*

The working hours of an employee are eight hours a day and 48 hours a week. The maximum overtime allowed in a quarter is 50 hours. It is specified that the total working hours, including overtime, shall not exceed 10 hours in a day.

### *Suggestion*

- a) Daily working hours can be retained at eight hours or extended to nine hours, if there is a mutual understanding between the employer and the employee. The permissible weekly working hours will be 48 hours.
- b) The maximum overtime allowed in a quarter can be extended to 125 hours.

### *Explanation*

- a) Daily working hours can be retained at eight hours or extended to nine hours, if there is a mutual understanding between the employer and employee. The permissible weekly working hours will be 48 hours.

The permissible daily working hours could be left to the discretion of and mutual agreement between the employer and employee, depending on the nature of work. This condition needs to be specified in such forms (Form A, Form B for register of employment and Form C for daily periods of work of persons employed).

Since the weekly working hours are retained at 48 hours, it is suggested that the daily working hours of eight hours in the existing Act need not be changed or can be extended to nine hours, depending on the agreement between the employer and employee and the nature of job. However, the number of hours beyond which it will be treated as overtime can be fixed at eight hours.

b) The maximum overtime allowed in a quarter can be extended to 125 hours.

Since it is suggested that daily working hours can be extended to nine hours only if there is a mutual agreement between the employer and employee, working beyond the specified nine hours will be treated as overtime. Otherwise, any hour beyond eight hours needs to be treated as overtime.

The Model Act suggests that daily working hours can be extended from eight hours to nine hours. Any work done beyond nine hours shall be treated as overtime. As per the Model Act, the maximum overtime allowed in a quarter is 125 hours.

Overtime<sup>8</sup> as a temporary exception is regulated by Convention No. 1 and Convention No. 30 of the ILO Standards governing working time. Convention No. 30 permits exceptions in shops and other establishments, where the nature of work or the size of the population or the number of persons employed causes the normal limits of eight hours per day and 48 hours per week to be inapplicable.

Temporary exceptions are applicable in commercial establishments to prevent the loss of perishable goods, avoid endangering the technical results of their work or in cases of stocktaking. Though Convention No. 1 and Convention No. 30 do not provide for specific limits to the number of additional hours that are authorised, the Committee of Experts points out that such a limit must be reasonable. It is specified that the limits need to be reasonable so that the principle of limiting the working hours will not be compromised. The details of the applicability of Convention No. 1 and Convention No. 30 are given in Appendix 3.

## 6) Change in the Interval for Rest under Section 8

### *Existing Provision*

No worker shall work continuously for more than four hours without a rest period of one hour.

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<sup>8</sup>2011, *Working Time in the 21<sup>st</sup> Century*, International Labour Organisation, Geneva

### *Suggestion*

It is suggested that the rest period shall be regulated in such a way that no employee shall work for more than five successive hours without rest, and the rest period following that shall not be less than an hour.

### *Explanation*

The employer can decide on implementing rest period in a day. The employees need to be aware of these provisions, when they join the establishment. The rest period can be given even after four hours but it is mandatory that an employee should be provided rest after five successive hours of work. The rest period will not be considered under the daily working hours. The Model Act specifies that no worker shall be asked to work for more than five hours continuously without providing a break of not less than half an hour.

## **7) Amendment in Section 10: Opening and Closing Times of Establishments**

### *Existing Condition*

The State Government decides the opening and closing times of various classes of establishments.

### *Suggestion*

Employers of all establishments, irrespective of the number of employees, shall be allowed to decide the opening and closing times of their establishments. If there is a change in the number of shifts or employees, then it needs to be updated in the prescribed forms on the online web portal though no prior approval is required. Prescribed forms are Form A and Form B- details of number of shifts and working hours in each shift can also be specified.

### *Explanation*

Increase in the working hours of shops and establishments would imply increase in the number of shifts and hence increase in job opportunities. This also means that there will be an increase in business operations, which will aid the growth of the economy in terms of increased revenue. The Model Act suggests this proposal intending to increase employment opportunities in the country. The Act also intends to create a level-playing field for brick and mortar retail outlets by allowing them to operate in the night in order to become competent in the emerging market conditions.



Changing lifestyles and careers lead to increasing demand for entertainment and other activities during night, which needs to be met. It will also provide part-time job opportunities for those who are willing to work extra hours. The main intention of the restriction on the timings of shops and establishments was to ensure the safety of establishments and people at night. This is not relevant to the 21st century, where economic and leisure activities at night can pave the way for branding cities, making them attractive for tourists and investments.

The proposal hints that regulation need not always be restrictive and there are other alternatives to combat the greater problems of safety. Allowing shops and establishments to operate in the night will also lead to more employment opportunities in other sectors like transportation, tourism etc. It would indeed be a boost to the economy bringing increased revenue to the state.

## 8) Amendment in Closing of Shops and Grant of Weekly Holidays under Section 11

### *Existing Provision*

Section 11(1) of the existing Act states that shops and establishments need to remain closed one day of the week.

### *Suggestion*

It is suggested that shops and establishments should be allowed to remain open every day. However, employees need to be given a rest day of 24 hours on any day in a week. This provision needs to be fixed ahead and employees need to be notified about it.

### *Explanation*

As per the Model Act, if a worker is denied a weekly holiday, then compensatory leave needs to be given within two months of the missed weekly holiday. The Minimum Wages Act, 1948, states that nothing should result in an employee working consecutively for 10 days without a holiday for a whole day. The Model Act proposes that an employee needs to be paid double the rate of his/her daily wage, if he/she has worked on a rest day, whereas the Minimum Wages Act states that an employee needs to be paid wages equal to his/her average daily wages during the week he/she has last worked.

*It is suggested that the employee shall be recompensed with a compensatory leave within one month of working on a rest day or be paid double the rate of his/her wages for working on a rest day.*

The employee will have the choice to work on a rest day at either double the wage rate without a compensatory leave or normal wage with a compensatory leave. At present, the condition for providing compensatory leave is explained in the Minimum Wages Act and not in the S&E Act. It is recommended that this provision has to be explained in the existing Act, while amending it. Changes need to be made in the provisions of the Minimum Wages Act, 1948, upon the adoption of the suggested changes in the existing Act.

Appendix 4 provides the differences in certain provisions of the Model Act and the Minimum Wages Act, 1948.

#### Table 7: Differences in the Provisions of Model Act, 2016, and Kerala Industrial Establishments (National and Festival Holidays) Act, 1958

As per the Kerala Industrial Establishments (National and Festival Holidays) Act, 1958, 13 paid festival holidays are allowed, including four national holidays (August 15th, January 26th, October 2nd and May 1st) and nine festival holidays. There is a decrease in the number of holidays in the proposals of the Model Act. A comparison of the number of paid holidays as per the Model Act and the Kerala Industrial Establishments (National and Festival Holidays) Act, 1958, is given in Appendix 5. In the context of Kerala, it is suggested that the number of festival and national holidays be maintained at 13.

## 9) Change in the Title of Section 20 and Provision to Allow Women to Work on Night Shifts

### *Existing Title*

Prohibition of employment of women and persons below seventeen

### *Suggestion*

The title of the Section shall not imply any gender-based restriction on the timings of work of the employees. The work timings of women need not be restricted citing safety reasons and it

could be specified in a new Section other than Section 20, as it does not explain the conditions of employment of persons below 17 years of age.

### *Explanation*

As per the existing Act, women are allowed to work only till 7 pm. This has been extended to 9 pm in the Model Act. It is suggested that women should be allowed to work even beyond 9 pm, if they are willing to work. The law should not restrict the working hours of women, citing safety concerns. The Model Act proposes that an employer should provide transportation facilities to women employees, if they are required to work between 9 pm and 6 am. However, ensuring the safety of the citizens, irrespective of gender, is the duty of the state.

### **Table 8: Suggestions for Providing Transportation Facilities for Employees**

Stakeholders had a few concerns regarding the provision of transportation facilities for women employees. The provision of transportation should not be restricted to female employees but should include male employees too. Since public transportation is erratic at night, commutation will be an issue for both male and female employees. The Model Act proposes that the employer should take responsibility of providing transportation facilities to women employees. However, it does not seem fair to hold the employer responsible for the safety of employees outside the workplace.

An alternative suggestion is that if a significant number of establishments operate at night in a particular area, then the employers in that area can come together and provide transportation facilities for the employees or the LSG can take a proactive role in providing transportation by associating with the representative bodies of employers.

Another suggestion is that the Shops and Establishments Welfare Fund Board can provide funds for transportation facilities. It could be done by creating a database of the establishments, where employees need transportation facilities. The welfare fund board can enter into a contract with private companies. This would give more opportunities to private players.

Technological advancements can also be explored to ensure the safety of the employees. Private players are responsible for conducting a background check of the driver, while the employer should have the identity and address proof of the driver.

Relevant documents should be provided to the welfare fund board. In this case, the provision of transportation will be the joint responsibility of the Welfare Fund Board, private players and employers, rendering service on a mutual agreement.

## 10) Changes in the Process of Inspection

### *Existing Condition*

Currently, inspections are mostly judgmental in nature, which allows the inspector to use his/her discretion in choosing an establishment for inspection. This does not ensure the compliance of labour laws.

### *Suggestion*

The system of web-based inspection can be implemented as proposed in the Model Act within a span of one year.

### *Explanation*

In the case of web-based inspections, the system generates the schedule for inspection by random sampling. Risk-based parameters, based on which an inspection is scheduled, should be made available online. This will lead to less discretionary power for inspectors, thus ensuring better compliance. The number of genuine complaints received against a shop/establishment, number of instances of repetition of an offence, and the degree of violation are a few critical parameters that can be considered for deciding the frequency of inspections.

Weightage can be given to these parameters to decide the Risk Index of any establishment. For example, more weightage will be given for a repeated offence. Establishments with a higher risk value considering these parameters will face mandatory inspections, and the frequency of inspections will be more for them than those with a relatively less risk value. Web-based inspections will bring in more transparency in the system. Risk-based parameters for deciding the inspection schedule will ensure compliance, save time and provide employers the incentives to comply with the provisions and to refrain from repeating an offence.

**Table 9: Open Portal for Registration and Compliance Helpline**

*Context*

Employers are required to produce B1 application form, property tax receipt, rental agreement, details of employees and trade licence (not required for service sector) for registering under the Kerala Shops and Commercial Establishments Act, 1960. The registration process is not completely online. The online portal proposed here shall act as an auxiliary system, providing information regarding labour laws which are applicable for establishments and as a platform for online registration under S&E Act.

*Objective*

The state labour department shall create an online portal for the process of registration of shops and establishments and verification of data provided by the employer, while also serving as a portal enabling access to information for employers and employees.

*Procedure*

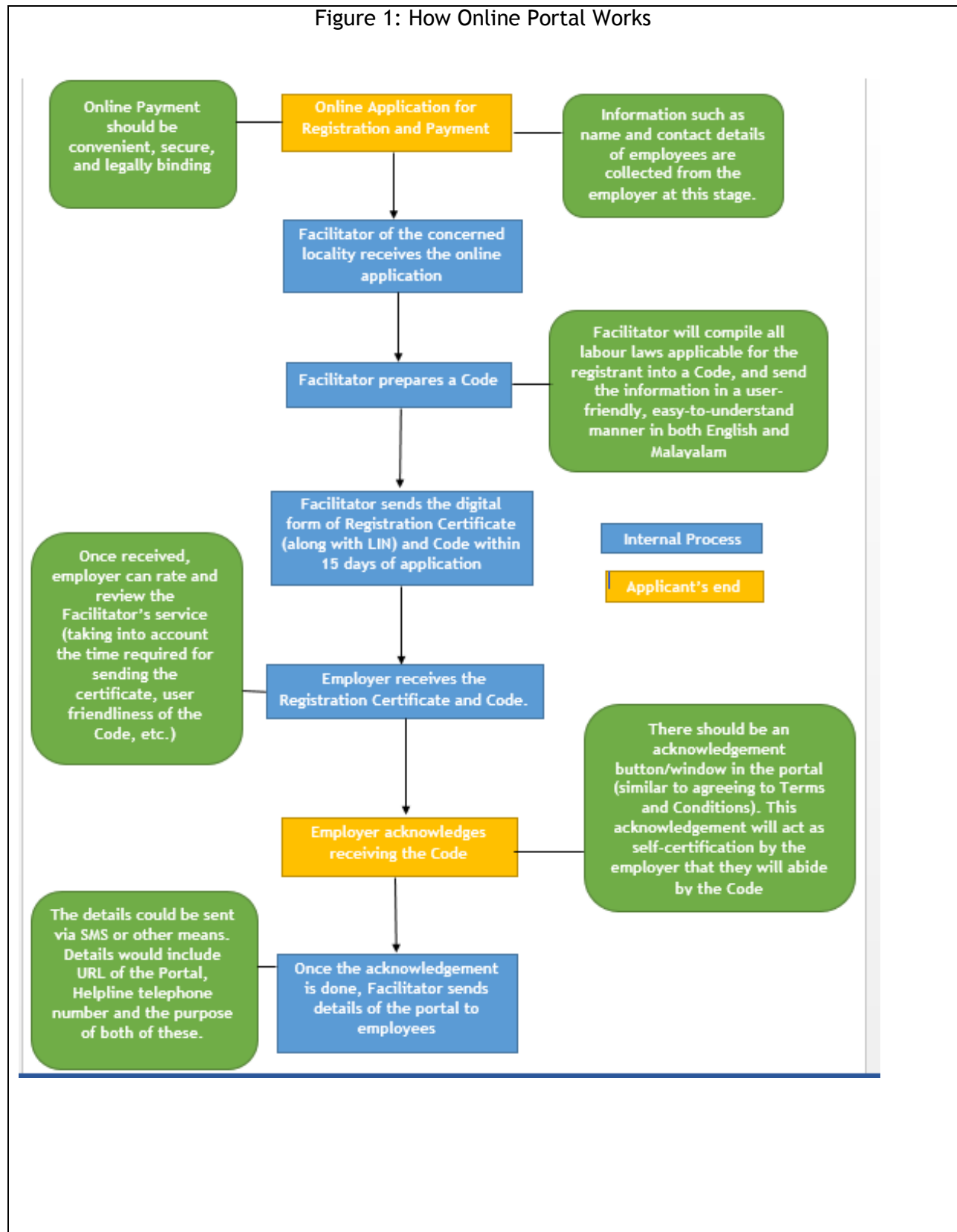
Employers can register their shops or establishments through the portal.

- a) Once the online application process is complete, employer can make the payment for registration online. The registration certificate with the LIN shall be emailed to the employer.
- b) The labour department shall complete the due process of granting registration within 15 days, during which the Facilitator of the area concerned will have to prepare a Code, explaining the updated statutes on working conditions that pertain to all labour laws applicable to the shop or establishment. The Code must be user-friendly, so that the employer can understand the framework within which he/she shall operate. The Code has to be emailed to the employer along with the registration certificate and the employer's login details, like the user name and password, for the online portal. The employer should be able to view the status of his application and the details of the Facilitator and rate/review the Facilitator's service.
- c) Once the employer receives the registration certificate along with LIN, they will be required to login to the portal and acknowledge receipt of the Code prepared by the Facilitator. At this stage, the employer must be informed that the acknowledgement will serve as an affidavit by the employer that he/she will adhere to the Code, thus making the acknowledgement a novel form of self-certification.

- d) Employees of the shop/establishment shall also be informed about the portal. This could be done by the Facilitator via email, SMS or other contact details of the employee produced by the employer at the time of registration. Employees shall also be able to login to the portal to verify the information provided by the employer. Employee/Employer may also be able to make queries/file complaints anonymously to the Compliance Helpline (which will be private players), and the former should be able to review/rate the agency's service on the portal.
- e) The Compliance Helpline will help the employer comply with the provisions of various labour laws. If there is a lack of clarity in the provisions of the labour laws, the employer/employee can get it clarified through phone or online means by contacting the helpline. If the Compliance Helpline is unable to resolve the query, it will pass it on to the Facilitator in the respective zone.

When an employee files a complaint against his/her employer, the Compliance Helpline shall verify if the complaint is valid in terms of the particular provision of the relevant labour law. If the complaint is valid as per the labour law, then it will be forwarded to the Facilitator of the respective zone. The Facilitator is expected to inspect the establishment, based on the complaint, within a span of 10 days. The complaint against the establishment/employer will be stored on the portal's database and will be used as a factor to decide the Risk Index value of the establishment.

Figure 1: How Online Portal Works



### *Ratings instead of Targets*

The labour department shall measure the outcomes of its initiatives and the efficiency of this apparatus through the rating system. The Facilitators and Compliance Helpline shall be rated/reviewed by employees and employers, while receiving their services. The employer can also give feedback on an inspection. These ratings/reviews shall be published on the portal. Instead of mandating a certain number of targets, the Department may try to improve the average rating of the Facilitators and Compliance Helpline throughout the state. The Chief/Regional/Zonal Facilitators can assess the local-level Facilitators and Compliance Helpline. This will provide an incentive for the Facilitators and Compliance Helpline to improve their services.

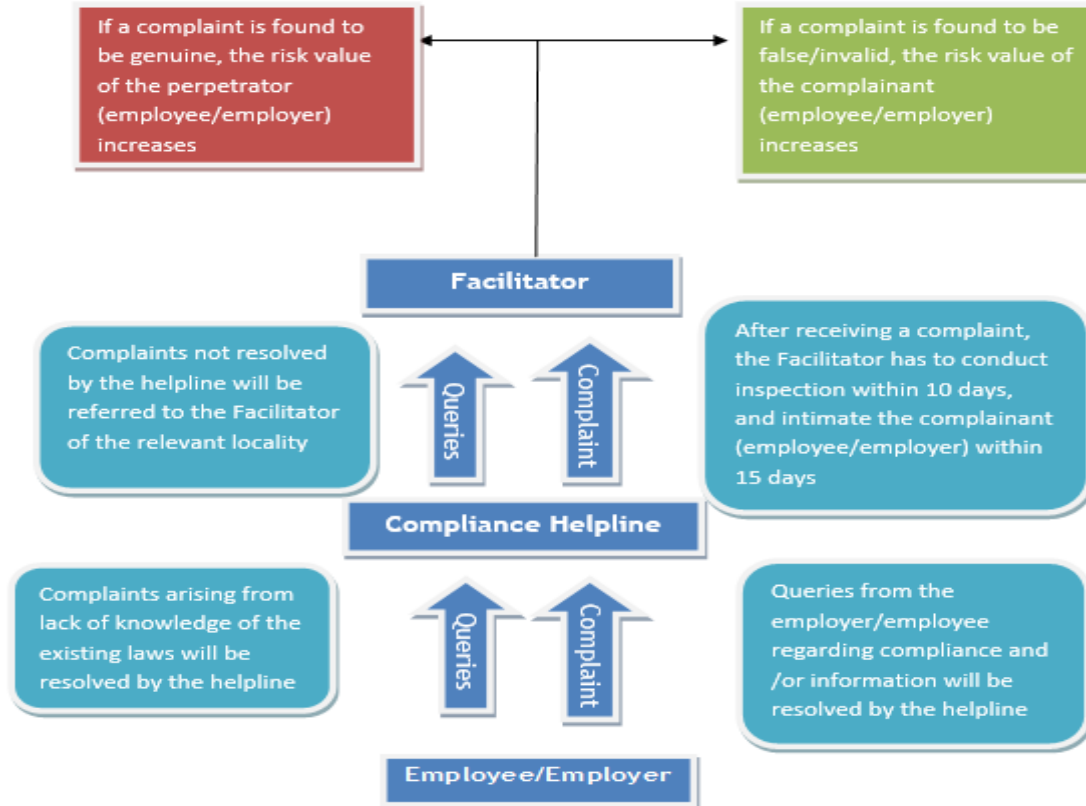
### *Compliance Helpline*

The objective of the Compliance Helpline is to help employers comply with the law by answering their queries, and direct genuine complaints to the Facilitator. This will help improve compliance, better enforcement and facilitate Ease of Doing Business. A Compliance Helpline can be set up in every district. The labour department will be responsible for the selection of the organisation that will handle the Compliance Helpline, and manage the funding and personnel training of the helpline.

The services of the Compliance Helpline shall also be made available through online 'chat' services on the portal. Appendix 6 will provide details of the helpline system followed in the UK to ensure compliance and improve enforcement.



**Figure 2: How Compliance Helpline Works**



The Compliance Helpline will conduct a quarterly review of the complaints filed with the helpline to identify any pattern of complaints and/or other issues not covered by the Act in place. The helpline shall take up the matter to Facilitators, who, in turn, can negotiate with industrial bodies like the Chamber of Commerce and Merchants' Union. Based on the inputs received during the discussions, Facilitators can help in formulating future notifications of the government based on labour laws.

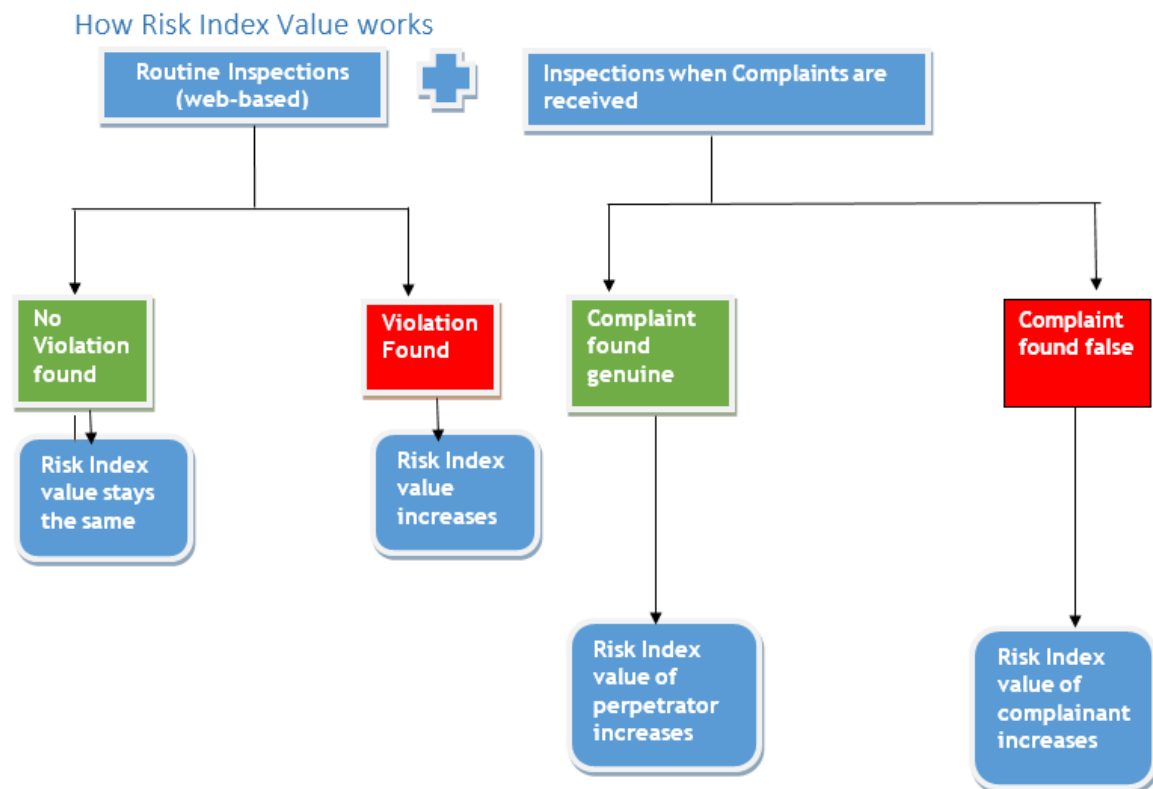
#### *Risk Profiling and Inspections*

The risk value of a shop/establishment may increase, based on complaints received against an employer. It is to be noted that only those complaints that are verified to be true after inspection will be considered a risk parameter. Similarly, if a complaint received against an employer is found to be false, the risk value of the employee may increase. If the risk value of an employee exceeds a threshold, further complaints made by the employee will be deemed void. This will lead to better practices among employees and provide a level-playing

field for employees and employers.

Since violations will be of varying degrees, it is recommended that a Risk Index be prepared, where the risk value corresponds to the degree of the violation, number of genuine complaints received against an employer, and the number of instances of repeating an offence. If a shop/establishment exceeds a threshold value of risk, it shall be alerted of the same and the frequency of inspection will be increased.

**Figure 3: How Risk Index Value Works**



### ***Risk Index Value Calculation***

#### **Factors for Employers (in the order of weightage)**

1. Number of instances, where a provision is repeatedly violated
2. Degree of violation (for example, a minimum wage violation is greater in severity than a violation regarding maintenance of registers)
3. Number of complaints that are found to be true after inspection

### Factors for Employees (in the order of weightage)

1. Number of instances, where a complaint is found to be false after inspection

*For the purpose of compliance with other labour laws, those laws other than the existing Act can also be incorporated into the Risk Index Model.*

## 11) Amendments to Section 26: Powers and Duties of Inspectors

### *Existing Condition*

The Inspector's role is largely limited to inspection and related duties. The Inspector is also allowed to lodge complaints in a court of law not inferior to that of a Magistrate Court.

There exists no formal tripartite feedback machinery between employers, employees and the labour department.

### *Suggestion*

The change in the term from 'Inspector' to 'Facilitator' is also to be reflected in the duties. Providing employers with necessary information that will help them in compliance with the provisions will be equally fundamental as inspection. A clause may be added to Section 26, stating that a Facilitator so appointed may provide employers and employees such information for improving compliance, in a manner the State Government sees appropriate from time to time.

It is suggested that the labour department shall hold a tripartite meeting with employers' and employees' bodies on a quarterly basis.

### *Explanation*

It is observed that awareness of the provisions in the existing Act and of various notifications and orders passed from time to time is generally low among employees and employers. This could lead to violation of certain provisions and, in effect, make both parties vulnerable to penalties. In this regard, one of the fundamental duties of Facilitators would be to

disseminate updated information proactively in a regular manner through online or other means to employers and employees for improving compliance.

The tripartite meeting would help employers and employees to address their concerns or complaints about any existing provision. The minutes of such meetings along with the information from the Compliance Helpline shall serve as future references for Standing Orders or Notifications from the labour department.

## 12) Amendments to Section 29: Penalties

### *Existing Condition*

It is to be noted that the existing penalty amounts stipulated by the Kerala Shops and Commercial Establishments Act, 1960, are not enough to deter employers from violating the provisions. The maximum fine for contravention of a provision is Rs 5000, while Rs 250 per day will be fined in the case of continuous breach of the provision. The maximum fine for failure of compliance of the same provision is Rs 10,000.

### *Suggestions*

It is suggested that a few alternatives to imposing fines can be considered for ensuring compliance of law. An alternative to the existing penalty provision is given below.

#### **Step 1: Warnings and Compliance Programmes**

Contraventions may arise because of lack of awareness. Hence, a contravention shall be met with a warning for the first time, where a Facilitator will inform the employer of the breach. The employer may thereby be required to conduct a compliance programme for his/her employees and also provide a booklet stating employee benefits, provisions and other details such as emergency helpline and online details. Upon completion of the compliance programme, the employer shall intimate the Facilitator with proof of completion. The period between warning and commencement of the compliance programme will be one month.

#### **Step 2: Sanctions**

In the case of subsequent contravention, the Facilitator may impose economic and/or administrative sanctions that are enough to deter the employer from violation. Sanctions such

as limiting credit borrowings/transactions, advertisements, etc. will provide strong deterrence.

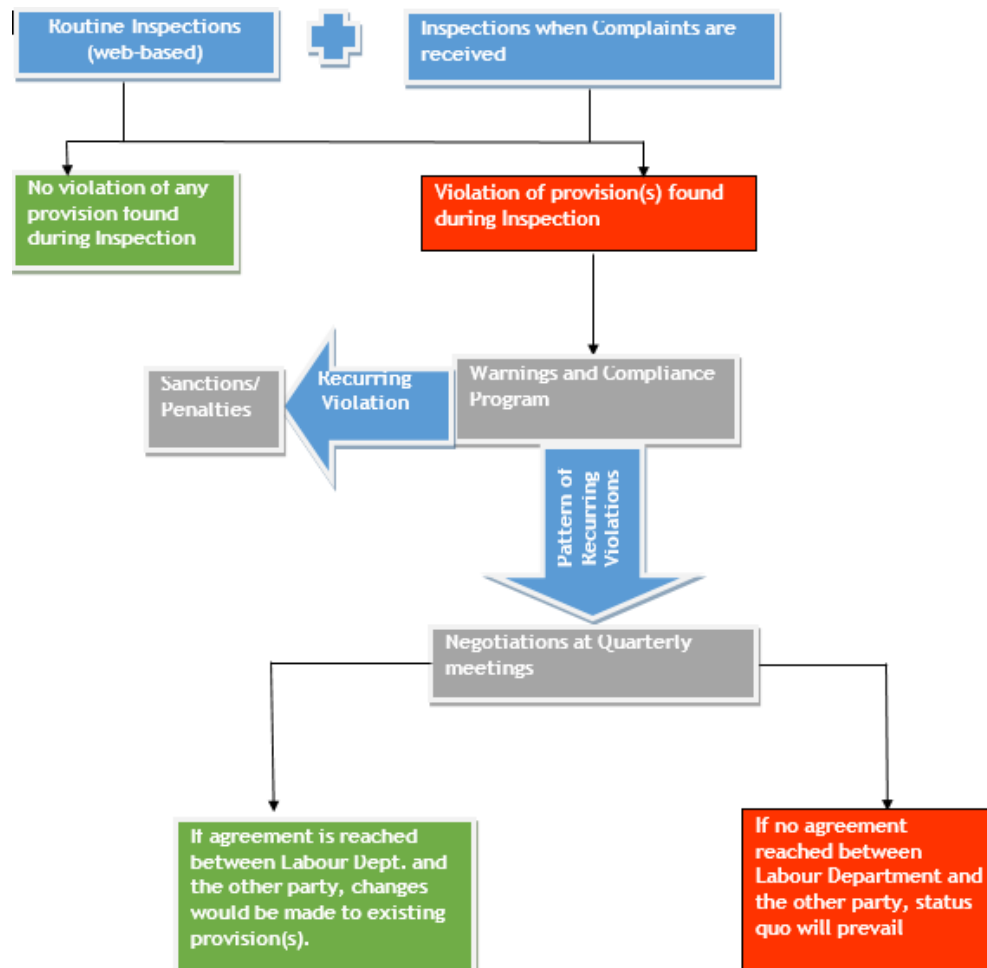
### **Step 3: Recurring Violations and Negotiations**

In case a certain pattern of violations emerges repeatedly among employers, the Compliance Helpline shall identify the same. The provisions of labour laws that are found to be frequently violated shall be brought up for discussions and negotiations with chambers, industrial bodies or a trading community, at the quarterly meetings suggested in Section 26 (Powers and Duties of Inspectors). During such negotiations, employers will get an opportunity to address their concerns in complying with the particular provisions. Details on such negotiations shall be disseminated among all employees via alerts through the portal. Based on such negotiations and feedback from the employees, the labour department shall judiciously decide whether to make changes to the provisions. If an agreement were reached between the labour department and the other party, then the labour department would have to make changes to the provisions.

The effect of such an agreement is presumably little different from a formal compliance order or injunction, leading to possible penalties in the event of further non-compliance. In order to implement this, the average risk value of all the shops and establishments related to the employers' body (only those pertaining to the changed provision) shall be calculated. If the risk value increases by 50 per cent or more before the next quarterly meeting, penalties such as cancellation of the body's licence, naming and shaming, compensation, confiscation of property, limiting transactions, etc. of the chamber/body/community may be imposed.

In such cases, the employers' associations/bodies would also be held accountable to ensure compliance through peer pressure, while also giving them the opportunity to address their concerns.

**Figure 4: How the Suggested Penalty System Works**



### *Explanation*

The Model Act sets forth that the contravention of a provision of the Act shall be made punishable with fine, which may extend to Rs 2 lakh, and in case of a continuing contravention, to an additional fine of Rs 2000 per day of breach, provided the total fine does not exceed Rs 2000 per employee. The Model Act also proposes that a subsequent contravention of the same provision shall be made punishable with a fine of not less than Rs 1 lakh and may extend to Rs 5 lakh.

While hikes in penalty amounts would provide a disincentive for employers to circumvent the provisions, the stakeholders claim that such hefty sums could become a disincentive for conducting business itself.

### 12.1) Proposed Amendments to Section 29(3)(b): Power of Facilitator to Lodge Complaints at Courts

#### *Existing Condition*

The existing Act allows Inspectors to lodge complaints in a court of law. However, no court shall take cognisance of any offence punishable under the existing Act, unless the Inspector lodges the complaint within six months from the date on which the Inspector notices the alleged offence.

#### *Suggestion*

It is suggested that Facilitators may not be allowed to lodge complaints at courts on their own. They may be allowed to do so only after due consultation with and approval of the District Labour Officer or any officer appointed as Inspector in SRO 759/88, who is above the rank of the District Labour Officer.

It is also suggested that the period of filing a complaint from the date on which the Facilitator notices the offence be reduced to three months from six months for the alleged offence to be recognised by the court.

#### *Explanation*

Under the existing system, the number of opportunities and stages that employees and employers get to resolve their complaints or concerns is scarce. In such a scenario, it would be judicious to let the Facilitator lodge a complaint against an employer. Under the suggested system, employees and employers have a fair number of stages to address their complaints and concerns. Therefore, the Facilitators may not be allowed to lodge complaints against employers at their sole discretion. If needed, the Facilitators may obtain approval from the higher authority concerned.

Reducing the period to lodge complaints from six months to three months will improve transparency. This is also one of the recommendations in the Model Act.

### 13) Proposed Amendments to Section 30: Maintenance of Registers

#### *Existing Condition*

The Kerala Shops and Commercial Establishments Act, 1960, does not mention the maintenance of registers in electronic form.

### *Suggestion*

Employers may be allowed to maintain records electronically or manually, depending on their convenience, as per the suggestion in the Model Act. There needs to be a prescribed format for the electronic forms, which is to be made available on the online portal of the labour department. Efforts need to be taken to reduce the number of forms that need to be maintained under various labour laws. By consolidating a few forms, the filing of returns and maintenance of forms will become simpler.

### *Explanation*

The main purpose of registers and records is to keep an account of employment details, which should be produced during inspections. The Model Act proposes that employers need to be given the choice of maintaining the records electronically or manually. With the advancement of technology, the maintenance of records electronically is a convenient alternative to maintaining it in physical form. If the Facilitator demands the physical copy of the record during an inspection, then a printout of the electronic record can be given.

### **Table 10: Exploring Novel Ways of Record Keeping other than Forms**

Under the provision of Forms in the existing Act, employers maintain certain forms as prescribed. Section (11) of the existing Rules, mentions that forms other than the prescribed ones can be maintained, if the Labour Commissioner finds that such forms provide adequate information about the employees and conditions of employment. However, there could be novel ways of recording and providing information. Besides, merely producing the forms need not always guarantee the authenticity of the information submitted by the employer. Innovative methods like blockchain technology can be implemented to strengthen the authenticity of the information recorded in the existing system.

Moving to novel and automated methods of record keeping, which would generate precise data, will make way for more presentable and robust evidence at the time of inspections. An increase in demand for latest record keeping methods could drive innovation and help bring down the prices. These practices of self-certification and self-regulation will improve transparency in the system.



## 14) Proposed Amendments to Kerala Shops and Commercial Establishments Rules, 1961

### 14.1) Amendments to Rule (10): Maintenance of Forms

#### *Existing Condition*

The existing Kerala Shops and Commercial Establishments Rules, 1961, mandates that the employer has to maintain register and records in certain forms, as mentioned in Rule 10 [(1A), (3), (4A), (4B), (9)]. These forms have to be maintained physically in the premises of the respective shop or establishment. Rule 10(11) also requires the employer to maintain an inspection book.

#### *Suggestion*

The prescribed forms mentioned in Rule (10) shall be made available on the online portal of the state labour department. Since records can be maintained electronically, the inspection book need not be maintained in physical form. The details of the inspection book and inspection reports may be maintained electronically on the portal.

#### *Explanation*

Since amendments need to be made in Section 30 allowing employers to maintain records electronically or manually, subsequent changes need to be made in the Rules also.

### 14.2) Amendments to Rule (12): Submission of Returns

#### *Existing Condition*

Rules 12(A) and 12(B) stipulate that the submission of welfare returns needs to be done every quarter and annual returns every year. Rule 12(B) is currently applicable to medium and big establishments, as defined by the existing Act.

#### *Suggestion*

Submission of returns under Rule 12(A) and Rule 12(B) has to be facilitated through online means.

#### *Explanation*

Electronic submission of returns saves time and effort, and simplifies the process.

### 14.3) Amendments to Rule 6(D): Crèches

#### *Existing Condition*

The existing Act mandates that every establishment employing 20 or more women in any day of the preceding 12 months should provide crèche facilities either on their own or through shared facilities. Rule 6D [(2), (3), (4), (5), (7), (8), (9), (10)] mandates various physical and operational aspects of crèches.

#### *Suggestion*

Mandating the provision of crèche facilities in establishments is not the best approach. The government must encourage employers to provide childcare facilities voluntarily and make childcare affordable for parents. The Welfare Fund Board can facilitate the process by bearing childcare costs incurred by the parents and encouraging private players to operate childcare centres. Two approaches that could be considered for providing childcare facilities are suggested here.

##### a) Voucher System

Childcare services can be provided through a voucher system for employees earning less than Rs 2.5 lakh per annum and those who contribute to the Kerala Shops and Commercial Establishments Workers Welfare Fund Board. It can be utilised for availing childcare services for children up to 10 years of age. If both parents are eligible to get the benefits, only one of them can avail childcare services with the voucher.

The voucher amount will vary depending on whether the services are availed for the entire day or just for a few hours after school. The maximum amount that can be availed through the voucher in a month needs to be set, considering the average cost incurred to avail childcare services. The amount should cover at least 50 per cent of the childcare cost.

The intention of the voucher system is to reduce the childcare cost of employees belonging to the low-income group. Efforts can be taken to increase the supply side by easing the process of starting childcare centres and effectively regulating them to ensure quality of services provided. The services of childcare can be availed from any childcare centres meeting the standard requirements.

The employers can voluntarily contribute to the amount to be paid by the employee for availing childcare facilities. The employer can support the voucher system by intimating the Welfare Fund Board and getting the voucher on behalf of the employees. Details regarding 'Womenomics in Japan' and the effectiveness of the policies to increase women's employment are mentioned in Appendix 7.

#### b) Creche Tie-Ups

Establishments can be encouraged to collaborate with one another to provide common crèches for their employees. Fees can be collected from the employees to avail childcare services but it cannot be mandated by law. LSGs can take the initiative to establish crèches in partnership with various establishments, as the needs at the local level can be better addressed by them. Employers' organisations and trade unions can also play a vital role in setting up crèches. Details of various means of providing childcare services across various countries are given in Appendix 8.

#### *Explanation*

Childcare support is considered as a strategic initiative to retain employees and is part of other provisions like leave policies, working hours and flexible work arrangements, which ensure work-life balance. Since many factors influence employee retention, it is difficult to measure the positive effects of childcare support separately. Childcare facilities are provided with the intention of reducing employee attrition, encouraging the return of new mothers to work, reducing absenteeism and increasing productivity. The need of the employees is the provision of childcare till children start schooling, for after school hours and in times of emergencies. The system for providing childcare facilities varies for different countries.

#### ***Effectiveness of legislation mandating employers to provide crèche facilities at workplace***

In countries like India, Brazil and Chile, employers are held responsible for providing crèche facilities. The employers must provide onsite childcare facilities, if they have employed a certain number of female employees at some point of time in their establishment. The legislation has raised concerns about its implications on gender equality and the willingness of employers to employ women. In most cases, the rule is flouted because it is not feasible or economically viable for employers to provide onsite childcare facilities.

It should also be questioned whether there is a need for crèches in establishments. Childcare is not only the responsibility of individuals but also the State, because it benefits the society as a whole. Holding only the employers responsible for providing childcare facilities can sabotage the key objectives of competitiveness and profitability. It is not fair to expect the employers to bear the financial burden of childcare services, if there is no incentive to provide such facilities at the workplace.

Globally, in most cases, onsite childcare facilities are provided in large companies, as they can afford it and the organisation accrues benefits by providing such facilities. The beneficiaries of such initiatives are people who belong to the upper-, middle- or high-income group and people with high occupational skills. So the end result is that a large group of unskilled workers and members of the low-income group do not receive the benefits of childcare service, which is a public good.

The report on workplace solutions for childcare by ILO states that though workplace initiatives can supplement the achievement of societal goals of poverty reduction and social equity, it cannot substitute the efforts to improve the availability, quality and affordability of community services for all families. So there is a need for government-aided childcare services and other market based models or partnerships, along with onsite crèche facilities, to serve the larger goals.

### 15) Summary of Provisions in Kerala Shops and Commercial Establishments Act, 1960, and Model Shops and Establishments Act, 2016, and Suggestions given by CPPR

Parameters	Kerala Shops and Commercial Establishments Act, 1960	Model Shops and Establishments Act, 2016	Suggestions in the Draft by CPPR
Applicability	Applicable to all establishments in Kerala	Applicable only to establishments with more than 10 workers; also	Applicable only to establishments with more than ten

		applicable to non-hazardous manufacturing units with less than 10 employees	workers
Definition of Shop	Distribution, packaging and repackaging centres of finished goods are not included in the definition of shop	Distribution, packaging and repackaging centres of finished goods are included in the definition of shop	Same as the proposal in the Model Act
Term used for the official who conducts inspection	Term 'Inspector' is used	Term 'Facilitator' is used	Replace term 'Inspector' with 'Facilitator'
Definition of big establishment, medium establishment and small establishment	Small establishment: 0-5 employees; medium establishment: 5-19 employees; big establishment: 20 and more employees	Not defined	Definition of establishments needs to be changed by categorising establishments with less than 10 employees as 'small establishments' or make the definitions of small, medium and big establishments redundant
Definition of	Not included under Section 2	Wages are defined	a) House Rent Allowance needs to

wages	of definitions	in the Act	be included in the definition of wages  b) Wages need to be defined under Section 2 of the amended Act
Exemption from all the provisions of the Act	Hospitals and other institutions for the treatment or care of the sick, the infirm, the destitute or the mentally unfit are not included under Section 3(1)	Institutions for the treatment or care of the sick, the infirm, the destitute or the mentally unfit are included in the category of establishments totally exempt from the provisions of the Act	Hospitals and other institutions for the treatment or care of the sick, the infirm, the destitute or the mentally unfit need to be included in the category of establishments totally exempt from the provisions of the Act [Section 3(1)]
Registration of establishments	a) Registration cannot be done completely online  b) Issuance of LIN is not mentioned  c) Validity of registration certificate is only one year	Mentions that LIN must be issued	a) Efforts need to be taken to make the registration process completely online  b) Registration certificate needs to be issued online by the Facilitator and ensure that the certificate carries LIN of establishment

			c) Validity of registration certificate shall be extended to more than one year; duration of validity of registration certificate can be decided by employer, provided it does not exceed the limit of a maximum of 10 years
Daily working hours and overtime allowed in a quarter	Daily working hours: eight; weekly working hours: 48; overtime allowed in a quarter: 50 hours	Daily working hours: nine; weekly working hours: 48; overtime allowed in a quarter: 125 hours	Daily working hours: eight, or can be nine hours, if there is a mutual agreement between employer and employee; weekly working hours: 48; overtime allowed in a quarter: 125 hours
Interval for rest	No worker shall work for more than a period of four hours continuously without a rest period of one hour	No worker shall be asked to work for more than five hours without being given a break of not less than half-an-hour	Rest period shall be regulated in such a way that no employee shall work for more than five hours continuously without rest, and the rest period shall not

			be less than an hour
Opening and closing times of establishments	Government decides the opening and closing times of various classes of establishment	Freedom for employers to decide opening and closing times of establishments	Same as the proposal in the Model Act
Closing of shops and grant of weekly holidays	<p>a) Shops and establishments need to remain closed one day of the week</p> <p>b) Nothing should result in an employee working consecutively for 10 days without a holiday for a whole day; employee needs to be paid wages equal to his/her average daily wages during the week he/she has last worked, for working on a rest day (as per Minimum Wages Act, 1948)</p>	<p>a) Freedom for shops and establishments to remain open 365 days a year, provided employees are given a rest day in a week</p> <p>b) If a worker is denied a weekly holiday, compensatory leave needs to be given within two months of the missed weekly holiday; employee needs to be paid double the rate of his/her wages, if he/she has worked on a rest day</p>	<p>a) Same as the proposal in the Model Act</p> <p>b) Employee shall be recompensed with a compensatory leave within one month of working on a rest day or be paid double the rate of his/her wages for working on a rest day</p>
Employment of	a) Existing title of Section 20:	a) Title:	a) Suggested title:



women	<p>Prohibition of employment of women and persons below seventeen</p> <p>b) Normal timing: 6 am-7 pm; women are not permitted to work before 6 am or after 7 pm</p>	<p>Responsibility of employer</p> <p>b) Normal timing: 6 am-9 pm; women can work beyond 9 pm, if they are willing</p> <p>Employer should ensure safety of women in workplace and provide transportation facilities</p>	<p>Conditions for employment of employees after 9 pm</p> <p>b) No restriction on work timings of employees based on gender</p> <p>Ensuring safety of women outside workplace and providing transportation is not just the employer's responsibility</p>
Inspection process	No mention of web-based inspection	Web-based Inspection	<p>Web-based Inspection needs to be introduced;</p> <p>Dispute Resolution Team needs to be formed</p>
Power and duties of Inspector	<p>a) Term 'Inspector' used to refer to the person conducting inspection</p> <p>b) Role of Inspector is largely limited to inspection and related duties</p> <p>c) Inspector is allowed to</p>	<p>a) Term 'Inspector' to be replaced by 'Facilitator'</p> <p>b) Duties of Facilitator include providing employers with</p>	<p>a) Same as the proposal in the Model Act</p> <p>b) Same as the proposal in the Model Act</p> <p>c) Facilitator may not be allowed to</p>

	lodge complaints in a court	necessary information that will help them to comply with the provisions along with conducting inspection  c)Facilitator is allowed to lodge complaints in a court	lodge complaints in a court on their own, but in consultation with higher authorities
Penalties	<p>a) Maximum fine for contravention of a provision is Rs 5000; Rs 250 per day will be fined, in the case of continuous breach of the provision</p> <p>b)Maximum fine for failure of compliance of the same provision is Rs 10,000</p> <p>c) Period of filing a complaint from date on which the Facilitator notices an offence is six months, for the alleged offence to be cognised by a court</p>	<p>a) Maximum fine for contravention of a provision may extend to Rs 2 lakh; continuous breach may invite a fine of Rs 2000 per day, provided the total amount of fine shall not exceed Rs 2000 per employee</p> <p>b) In case of failure of compliance of the same provision, fine shall not be less than Rs 1 lakh and can extend up to Rs 5 lakh</p>	<p>a) Alternative measures like warnings and compliance programmes suggested instead of fines</p> <p>b) Administrative and/or economic sanctions and negotiations, in case of recurring violation of a provision</p> <p>c) Period of filing a complaint from the date on which the Facilitator notices an offence needs to be reduced to three months from six</p>

		c) Period of filing a complaint from the date on which the Facilitator notices an offence is three months for the alleged offence to be cognised by a court	months for the alleged offence to be cognised by a court
Maintenance of registers	No mention of electronic maintenance of records	Employers need to be given the choice of maintaining records either electronically or manually	<p>a) Employers shall be allowed to maintain records electronically</p> <p>b) Efforts to be taken to consolidate the forms under various labour laws to make the process simpler</p>
Provision of crèche facilities [Rule 6(D)]	Crèche facilities need to be provided in establishments with more than 20 women employees	Crèche facilities need to be provided in establishments with 30 or more women employees, or 50 or more employees; common crèche facilities can be provided by a	<p>a) Voucher system and crèche tie-ups/partnerships</p> <p>b) Legislation making it mandatory to provide crèche facilities based on number of women employees is not the right approach</p>

		group of establishments within a radius of 1 km	
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## Appendix 1: Court Judgments regarding the Ambiguity of Treating Hospitals as Commercial Establishments

Hospitals were exempted from the Act until 1993. The Kerala High Court in 1993 ruled that hospitals do not come under the purview of the Act. In November 1993, the Government of Kerala cancelled all the exemptions enjoyed by hospitals by a notification published in the ‘*Kerala Gazette Extraordinary – Vol. 38 No. 1162*’, citing public interest as the reason. Again, hospitals were exempted from the purview of the Act for two years in 2005 by another government order. However, the request for exemption was rejected in 2011. In the existing Act in Kerala, hospitals are exempted from the provisions of Section 10 [Section 3(2)]. The Bombay High Court also ruled that hospitals do not come under the purview of the Act, as it cannot be treated as a commercial establishment.

## Appendix 2: ShramSuidha Portal and Labour Identification Number

The unified SSP provides a common platform for the employer, employee and law enforcement agencies, and aims to bring in transparency and facilitate reporting of inspections and submission of reports. LIN provided by the portal has been issued to about 18 lakh units covered under various labour laws. Currently, this is an additional number along with codes for ESIC and EPFO. The Government of India is planning to come up with a single business identification number. The labour departments of Gujarat, Haryana and Maharashtra have already issued LIN under SSP.

Registration and Renewal Application Procedure in Rajasthan:  
<http://www.labour.rajasthan.gov.in/RulesShop.aspx>

## Appendix 3: Convention No. 1 and Convention No. 30, ILO Standards Governing Working Time

*“Convention No. 1 entered into force on 13 June 1921 and, to date, it has been ratified by 47 member States. It applies to public or private industrial undertakings, such as mines and quarries; industries in which articles are manufactured or materials are transformed, such as shipbuilding and energy generation; construction, maintenance and demolition of roads, bridges and tunnels; and transport of passengers or goods by road, rail, sea or inland waterway.”*

*“Convention No. 30 entered into force on 29 August 1933 and, to date, it has been ratified by 27 member States. It applies to commercial establishments, and establishments and administrative services in which the persons employed are mainly engaged in office work. It does not apply to hospitals and similar institutions, hotels, restaurants, cafes or theatres. The combined scope of application of Conventions Nos 1 and 30, although very wide, does not cover all branches of economic activity; in particular, agricultural and domestic workers are excluded.”*

#### Appendix 4: Differences in the Provisions of Kerala Shops and Establishments Act, 1960, Model Act, 2016, and Minimum Wages Act, 1948

Provisions	Kerala Shops and Establishments Act, 1960	Minimum Wages Act, 1948	Model Shops and Establishments Act, 2016
Maximum overtime allowed in a quarter	As per Minimum Wages Act	50 hours	125 hours
Payment of wages for work on a rest day	As per Minimum Wages Act	Payment at a rate equal to his/her average daily wages during the week he/she has last worked	Payment at a rate equal to double the rate of his/her wages
Compensatory leave	As per Minimum Wages Act	Compensatory leave should be given in such a way that no employee should be working consecutively without a holiday for 10 days	Compensatory leave shall be given within two months of a weekly holiday

## Appendix 5: Comparison of Number of Paid Holidays as per Kerala Shops and Establishments Act, 1960, Model Act, 2016, and Kerala Industrial Establishments (National and Festival Holidays) Act, 1958

Provisions	Kerala Shops and Establishments Act, 1960	Kerala Industrial Establishments (National and Festival Holidays) Act, 1958	Model Shops and Establishments Act, 2016
Paid holidays	As per Kerala Industrial Establishments (National and Festival Holidays) Act, 1958	13 paid festival holidays, including August 15th, January 26th, October 2nd and May 1st, and nine other festival holidays	Eight paid festival holidays, including August 15th, January 26th and October 2nd and five other festival holidays

## Appendix 6: Steps to Improve Enforcement and Tackle Non-compliance: Practices Followed in the UK

The enforcement process is intended to ensure the protection of the basic rights of employees and tackle non-compliant employers. Reforms in the area of enforcement should serve the purpose of reducing the burden of compliance and inspection on employers by providing advice, information and risk-based inspections.

Instead of holding the Labour Commissionerate responsible for ensuring compliance, government bodies and agencies are given the responsibility to ensure compliance of the basic employment rights.

The government has set up a Pay and Works Right Helpline as a single gateway for employees to contact the enforcement agencies. Based on the employee's request, advice and

information will be provided, and if the query does not come under the scope of the helpline, the employee will be connected to the most relevant body for advice and information.

The helpline would also cover queries related to the element of unpaid wages. The Advisory, Conciliation and Arbitration Service (ACAS) would deal with holiday pay queries, and the Equality and Human Rights Commission (EHRC), through the Equality Advisory Support Service established in 2012, would handle queries about discrimination.

## **Appendix 7: Womenomics in Japan: A Bid to Boost Female Labour Force Participation Rate**

The policy package initiated by the Japanese Government aimed to boost female participation in the workplace. One of the main goals of the package was to provide 500,000 additional childcare centres from 2016 to 2018 and subsidised childcare services. Though the female labour force participation rate of those aged 15-64 rose to 66 per cent in 2016, studies<sup>9</sup> show that there has not been a considerable increase in the number of mothers coming back to the workforce with the increase in the number of childcare centres. This raises questions over the effectiveness of the policy to bring mothers back to the workforce. Studies conclude that it resulted in increasing employment of women only modestly.

It has been suggested that subsidy for childcare should be concentrated on low-income families as they have limited resources, restricting the mothers from working. One of the studies states that the policy effect on maternal employment would be greater, if childcare services are provided for low-income families.

## **Appendix 8: Global Examples of Provisions for Childcare Services**

The approach to childcare facilities varies across countries with the differences in the perception of childcare as the responsibility of families or the State. Most of the countries take the middle ground in devising ways to finance and provide childcare services. France and Hungary consider childcare as a public entitlement. In these countries, the gaps in childcare facilities not addressed by public services are less compared to countries with less

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<sup>9</sup> <https://asia.nikkei.com/Viewpoints/Shintaro-Yamaguchi/Subsidized-child-care-slightly-raises-women-s-employment-in-Japan>



government intervention. <sup>10</sup>The public expenditure on early childcare and education is above one per cent in France, New Zealand and Nordic countries. OECD countries spend an average of 0.7 per cent of GDP on early childcare and education.

## Examples of Financial Support by Government

### *a) Child Voucher Scheme in the UK*

It is an employer supported childcare facility. The part of the salary of the employees used for childcare vouchers is tax free and exempt from National Insurance Contributions. Employees can exchange up to £243 of their gross salary in a month (£55 in a week) for childcare vouchers. This is capped based on the amount of tax paid. The government has capped the amount of childcare vouchers a taxpayer can request each month to £243 for a basic rate taxpayer, £124 for a higher rate taxpayer and £110 for an additional rate taxpayer. Child voucher schemes are also followed in Chile and France.

### *b) Tax-free Childcare Scheme in the UK (Instead of Child Voucher Scheme)*

Tax-free childcare scheme provides working parents and self-employed workers with another option for tax savings on their childcare directly through the government.

The new scheme allows some working parents (where both parents are working or in case of single parents) to claim up to £2,000 per child towards the cost of childcare per year. It has been proposed that parents will contribute 80 per cent of the cost of childcare to a dedicated online account and the government will contribute 20 per cent of the cost capped up to £2,000 of savings per child per year. This is equivalent to the basic rate of tax.

Parents can use the vouchers with any childcare provider regulated by the Office for Standards in Education, Children's Services and Skills (Ofsted) in England and equivalent bodies in Scotland, Wales and Northern Ireland, just as they can with the current childcare vouchers.

### *c) Dependent Care Flexible Spending Accounts in the US*

It is a pre-tax benefit account used to pay for eligible dependent care services, which include childcare and pre-school facilities. The money paid to Dependent Care Flexible Spending

<sup>10</sup> [https://www.oecd.org/els/soc/PF3\\_1\\_Public\\_spending\\_on\\_childcare\\_and\\_early\\_education.pdf](https://www.oecd.org/els/soc/PF3_1_Public_spending_on_childcare_and_early_education.pdf)

Accounts is not subject to taxes, and hence results in savings for the individual and allows them to continue to work, as they can avail the benefits of childcare and other eligible expenses under the account.

In countries such as the UK and the US, government subsidies for low-income workers operate side by side with tax exemptions for better-paid workers, extending public support for both groups.

## **Examples of Childcare Services<sup>11</sup> through Partnerships with Various Stakeholders**

A few examples of childcare facilities provided through a collaborative effort of trade unions, employers' organisations, LSGs, third parties like NGOs and the State are listed below.

- a) Childcare centres for seasonal agricultural workers are monitored by employees' unions. Employers give voluntary contributions and parents pay the fees. The programme is administered by the national government and managed by the LSGs.
- b) Inter-enterprise Crèches through Employer Partnerships

Countries like France and the UK have taken measures to encourage inter-enterprise crèches along with enterprise crèches. In the UK, employers who join with other employers, and help to finance and run a shared crèche get the same tax rebates as a company crèche. Small enterprises are encouraged to collaborate with large enterprises. Though there are benefits when enterprises partner with one another to provide crèche facilities, such instances are very rare.

- c) Crèche Facilities Provided by Third Parties

There are many examples of workplace childcare centres initiated by employees unions, employers' associations and NGOs. They are mainly located in industrial zones, shopping malls, airports and business parks.

Mobile Creches is an NGO in India providing onsite crèche facilities for children of construction workers.

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<sup>11</sup> Catherine Hein and Naomi Cassirer, *Workplace Solutions for Childcare*, ILO Geneva