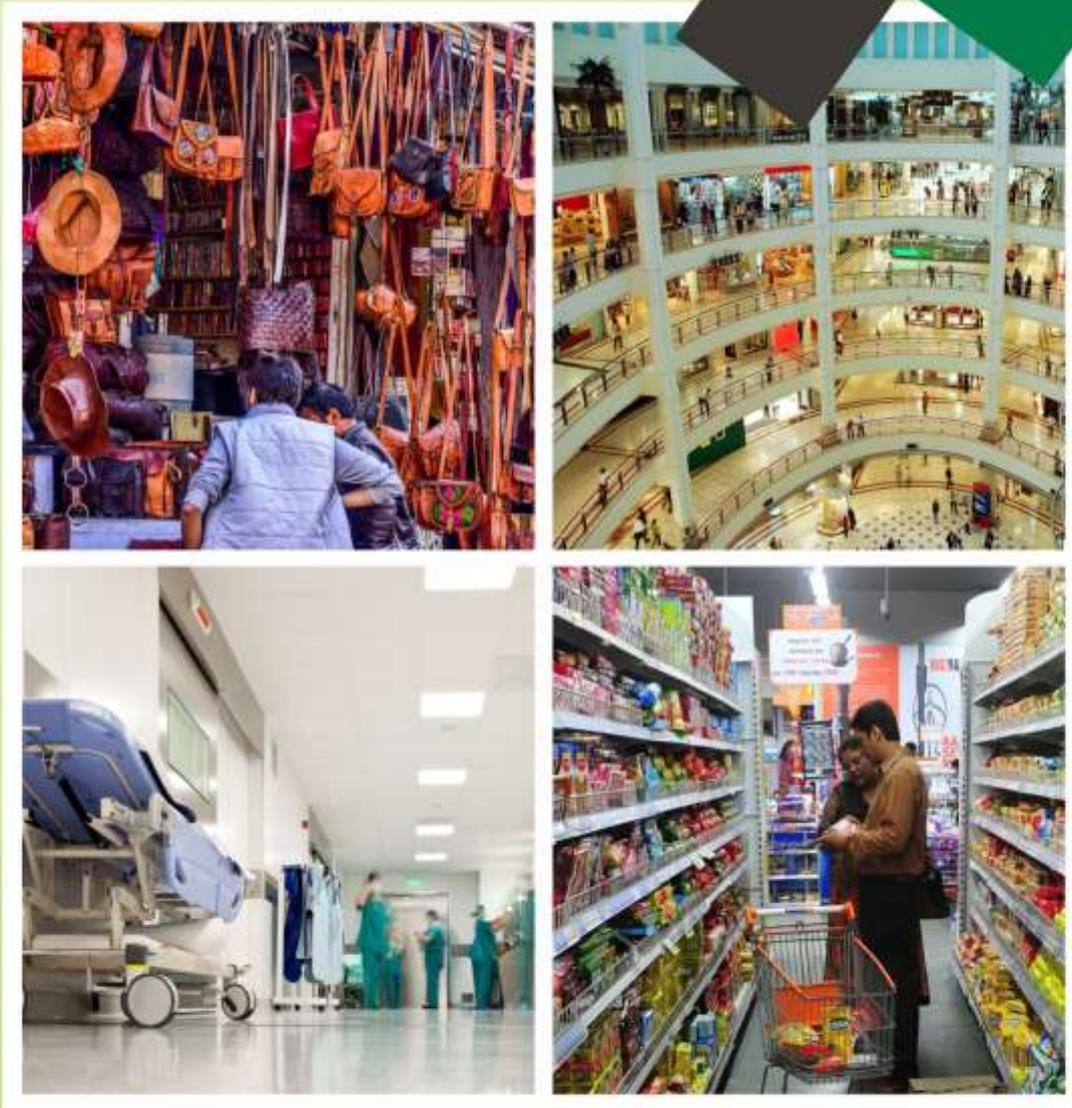


## Cost Benefit Analysis

# Proposed Amendments to the Rajasthan Shops and Commercial Establishments Act, 1958





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Our dedication to this critical area will be sustained by contributing to the current and future discourse on India's regulatory reforms in general and reforms in labour law in particular. CUTS International will not draw any profit from this report, since it is solely for informative and educational purposes. In addition, any error that may have remained is solely ours.

# Foreword

Public Policy across the globe aims to maximise public welfare. Often policy makers face challenges in achieving a balanced system harmonising apparent conflicting interest of diverse stakeholders. It is thus necessary to ensure that in the process of achieving the objective of regulation, the costs imposed on stakeholders do outweigh its benefits. To address this problem, OECD countries have adopted Regulatory Impact Assessment (RIA) as part of policy making for improving the quality of the legislations. RIA is a globally acknowledged tool to assess the impact of existing or proposed regulation on different stakeholders. It compares various possible options to achieve the objective of the regulation in a fair and transparent manner. Interaction with stakeholders is a key part of the RIA process.

To enhance Ease of Doing Business (EoDB), the Government of India had introduced the Model Shops and Establishments (Regulation of Employment and Condition of Service) Bill, 2016 (Model Bill) laying down the guidelines for States to adopt and accordingly amend their respective state legislations regulating shops and establishments. Taking a cue from the Central government, Maharashtra amended its existing Shops and Commercial Establishment Act and Kerala Government is in the process of amending its Act. The Rajasthan Government is also considering amendments to the Rajasthan Shops and Commercial Establishments Act 1958 (Act).

CUTS International has undertaken a rapid cost and benefit analysis of select provisions of the Act and the possible amendments thereto. Qualitative and quantitative costs and benefits were analysed based on inputs from various stakeholders. I am given to understand that if the proposed amendments come into force, the net monetary costs on all stakeholders taken together are likely to increase by only 1.24 percent. However, the total non-monetary impact of proposed amendments on stakeholders is likely be significantly positive. This is likely to outweigh the miniscule increase in net monetary costs. The analysis also finds that there remains substantial scope to further reduce costs and enhance benefits to stakeholders. Several suggestions have been made to reduce compliance burden on stakeholders and promote EoDB, which the Government of Rajasthan may consider adopting.

The objective of the exercise undertaken by CUTS International is to generate awareness among stakeholders about utility of assessment of costs and benefits of regulatory proposals. CUTS International is also working with the Better Regulation Advisory Group in the Central Government to push for adoption of RIA. The benefits of a RIA framework appear to be evident and steps to build institutional capacity for conducting rigorous analysis of costs and benefits of regulatory proposals are essential.

I congratulate CUTS International for this timely study and for acting as a pioneer in developing the RIA mechanism in India. I wish CUTS International all the very best in this initiative.

**Yaduvendra Mathur**  
Additional Secretary  
NITI Aayog

## Foreword

Labour law reform has always been an important consideration for Central Government to foster Ease of Doing Business (EoDB) and promote labour welfare. The Government of Rajasthan has also been a frontrunner in reforming labour laws. For instance, it has introduced electronic registration and renewal for businesses under different labour legislations.

In 2016, the Central Government introduced the Model Shops and Establishments (Regulation of Employment and Condition of Service) Bill, 2016 (Model Bill) laying down the guidelines for States to adopt and accordingly amend their respective State legislations regulating shops and establishments.

Regulations are expected to provide rational and reasonable provisions and harmonise apparently competing or conflicting interests of diverse stakeholders in a fair and transparent manner. Hence, good regulation making process needs to be clear about the need and objectives of regulation. It should compare different pathways which are likely to achieve such objectives, and should adopt the one which is likely to achieve the same at the least cost- social, economic and financial. While such analysis typically happens within a regulatory agency, it may lack transparency and a coherent structure. Lack of wider and adequate stakeholder consultation in a structured manner may lead to inefficient or ill- defined regulation. Such sub-optimal regulation may not achieve its objective and may impose costs which exceed the expected benefits.

Regulatory Impact Assessment (RIA) is a globally recognised tool to assess the impact of an existing or proposed regulation. It essentially involves robust stakeholder consultation and structured feedback from stakeholders as input in policy making. Costs and benefits of different regulatory proposals are assessed and compared and such option is chosen which is likely to achieve regulatory at least costs. This helps in resetting of existing regulations and formulating optimal regulation.

CUTS International has undertaken a rapid cost-benefit analysis of select provisions of the Act and select amendments thereto. In this exercise, several interactions took place between the Department of Labour and CUTS International. I am given to understand that CUTS International has pointed out that if the proposed amendments come into force, the net monetary costs on all stakeholders taken together are likely to increase by 1.24 percent only. However, the total non-monetary impact of proposed amendments on stakeholders is likely be significantly positive. This is likely to outweigh the miniscule increase in net monetary costs. The analysis also finds that there remains substantial scope to further reduce costs and enhance benefits to stakeholders. Several suggestions have been made to reduce compliance burden on stakeholders and promote EoDB, which we will be reviewing. I acknowledge the effort of CUTS International in making such suggestions.

I also understand that the objective of this exercise is to generate awareness among stakeholders about utility of assessment of costs and benefits of regulatory proposals and whet the appetite of the Government of Rajasthan to conduct such assessments in future. I am sure that the Government of Rajasthan will begin appreciating the utility of RIA in regulation making.

I also hope that CUTS International is able to disseminate its study among different state level regulators and other stakeholders for creating a demand for RIA. It is necessary to prise out the state level regulators from their insularity into a transparent participatory process of regulation making in order to make regulation wholesome and acceptable. That will also make compliance much easier and bring down regulatory compliance costs as well.

I congratulate CUTS International for coming out with this timely and important study on a sector in which regulation is presently being widely debated and hope that the study can contribute to such conversations. I wish CUTS International all the very best in this initiative.

**CBS Rathore**  
Additional Labour Commissioner  
Government of Rajasthan

## Preface

To assess Ease of Doing Business (EoDB) among states, the Department of Industrial Policy and Promotion (DIPP), Ministry of Commerce and Industry, has been ranking different states annually through its Assessment of State Implementation of Business Reforms. The rankings aim at triggering competition among states to attract investment opportunities, improving business conditions and ensuring proper regulatory environment. Different states have taken various measures to comply with the DIPP and the World Bank's parameters of ease of doing business.

Labour reforms, amongst others, have been at the centre of World Bank and DIPP's 'Doing Business Action Plan'. The Government of Rajasthan among other states in India has been a frontrunner in introducing labour reforms and a series of other policy reforms over the past three years.

The conditions of work and employment in shops and commercial establishments in the states are regulated by respective shops and commercial establishments related legislations. In line with the EoDB spirit, reform of such legislations has been on the agenda of Central Government for a long time. In 2016, it issued the Model Shops and Establishments Act, 2016 (Model Bill) laying down the guidelines for states to adopt and accordingly amend their respective State legislations.

Following the footsteps of Central government, some state governments have already started amending their respective shop and commercial establishment related legislations. The conditions of work and employment in shops and commercial establishments in the State of Rajasthan are regulated by the Rajasthan Shops and Commercial Establishments Act, 1958 (Act) read with the Rajasthan Shops and Commercial Establishment Rules, 1959. The Government of Rajasthan is considering the possibility of amending the Act in order to reduce compliance burden, enhance labour welfare and to promote ease of doing business.

This report highlights the findings and recommendations of a rapid assessment of costs and benefits of select provisions of the Act and possible amendments thereto. The assessment was conducted by CUTS International, with support from the World Bank group. The objective of this exercise is to generate awareness among stakeholders about utility of assessment of costs and benefits of regulatory proposals and whether the appetite of the Government of Rajasthan to conduct such assessments in future.

For the purpose of the report, key costs and benefits of the Act were identified and assessed on the basis of qualitative interactions with and information collected from key stakeholders i.e. representatives of establishments, employees and government. Stakeholder interactions were also key to estimate likely change in impact should proposed amendments come into force. Interactions with around 115 stakeholders from different locations of Rajasthan took place.

If the proposed amendments come into force, the net monetary costs on all stakeholders taken together are likely to increase by only 1.24 percent. However, the total non-monetary impact of proposed amendments on stakeholders is likely to be significantly positive. This is likely to outweigh the minuscule increase in net monetary costs. The analysis also finds that there remains substantial scope to further reduce costs and enhance benefits to stakeholders. Several suggestions have been made to reduce compliance burden on stakeholders and promote EoDB, which the Government of Rajasthan may consider adopting.

The report by CUTS serves the purpose of building evidence for the need and adoption of an RIA in regulation making. The time is ripe for the Government of Rajasthan to adopt a structured and transparent process in regulation making which takes into account costs and benefits of regulation prior to its adoption.

CUTS has been a frontrunner in calling for adoption of RIA in India and we hope that this report takes us closer to realising this dream.

**Udai S Mehta**  
Deputy Executive Director  
CUTS International

## Executive Summary

With an increasing thrust towards enhancing competitiveness of businesses in India, Central and State Governments, in the spirit of cooperative federalism, have been undertaking regulatory and policy reforms. Such reforms intend to provide an enabling environment for employment generation and facilitating Ease of Doing Business (EoDB) in the country.

The conditions of work and employment in shops and commercial establishments in states are regulated by respective shops and commercial establishments-related legislations. In line with the EoDB spirit, reform of such legislations has been on the agenda of The Central Government for the past few years. In 2016, it issued the Model Shops and Establishments Act, 2016 (Model Bill) laying down the guidelines for states to adopt and accordingly amend their respective state legislations.

Taking a cue from the Central Government, several states have started to amend their respective shops and commercial establishment legislations. The conditions of work and employment in shops and commercial establishments in the State of Rajasthan are regulated by the Rajasthan Shops and Commercial Establishments Act, 1958 (Act). The Government of Rajasthan has been evaluating the possibility of reforming the Act, to ease the compliance burden on shops and commercial establishments in the State (establishments), and protecting the interests of employees working in such establishments. Consequently, it has proposed certain amendments to the Act.

This report highlights the findings and recommendations of a rapid assessment of costs and benefits of proposed amendments to the Act conducted by CUTS International, with the support from the World Bank group. The objective of this exercise is to generate awareness among stakeholders about utility of assessment of costs and benefits of regulatory proposals and what the appetite of the Government of Rajasthan to conduct such assessments in future.

For the purpose of the report, key costs and benefits were identified and assessed on the basis of qualitative interactions with and information collected from key stakeholders, i.e. representatives of establishments, employees and government in Rajasthan. Stakeholder interactions were also significant to estimate likely change in key costs and benefits, should proposed amendments be enforced. Interactions with around 115 stakeholders from different locations of Rajasthan took place.

It has been estimated that the total monetary cost imposed per establishment in baseline scenario is INR33032 which is likely to increase by INR4737 (around 14 percent) to INR37769, should the proposed amendments come into force. Most of this increase is on account of substantial increase in maximum penalties in case of violation of provisions of the Act. If such increase (which is contingent upon occurring of non-violation) is disregarded, the cost per establishment is likely to marginally reduce by INR163 (around 0.5 percent). For similar reasons, if the proposed amendments come into force, the government is likely to be benefitted by INR4295. Disregarding the increase in penalties, the cost to Government is likely to increase substantially by INR605 (around 79 percent) from INR765 to INR1370. This is largely on account of cost to establish 'reliable information' about closure of establishments and the need to ensure safe keep of physical applications and hard copies of extracts of records collected from establishments. The proposed amendments are likely to have positive impact on employees as their overtime wage rate is likely to substantially increase.

Table 1 provides a summary of change in impact on stakeholders if proposed amendments come into force.

**Table 1: Summary of Change in Impact**

Baseline	Proposed Amendment	Change in Impact	
		Monetary (INR per unit)	Non-monetary
Submission of application for registration/renewal only through electronic mode	Application may be submitted through online or physical mode	Establishment: 65 Government: (10) Net: 55	<b>Positive</b> Establishments not having affordable access to electronic mode are likely to use physical mode, without which they may not apply
Registration is required to be granted within one day of application, but is usually granted within 7 to 8 days. Often, unnecessary clarifications are sought	Deemed registration within 30 days of application if no adverse order before completion of this period	Establishment: 200 Net: 200	<b>Positive</b> Labour inspectors will get more time to review the applications, while the outer limit of 30 days remains
Possibility to maintain records and registers in electronic form, as far as feasible	Establishments may maintain record and registers in electronic or physical form. The inspector may require duly signed hard copy extract of record or register.	Establishment: (10) Government: (2) Net: (12)	<b>Negative</b> Electronic records are as reliable as hard copy records and admissible as evidence
Employer needs to notify the inspector regarding closure of establishment within 10 days of closure	If the employer does not notify closure within 10 days, then based on 'reliable information' the inspector may <i>suo moto</i> cancel the registration	Establishment: 200 Government: (860) Net: (660)	<b>Negative</b> The risk of unilateral cancellation is high, as no guidance and process for use of discretion is proposed
Employer is required to pay overtime wages at the rate of one and half times the ordinary wage rate	The rate of overtime wages to be increased to two times the ordinary wage rate	Establishment: (25) Employee: 25 Net: 0	<b>Positive</b> Greater clarity about overtime wage rate and its increase is likely to enhance productivity
Employment of women at night is allowed, provided certain safety and security measures are taken by employer	Establishments may employ women at night subject to compliance with terms and conditions, as may be prescribed	NA*	<b>Positive</b> Increase in employment opportunities for women at night as enabling provision in primary law, is likely to have positive impact on establishments and the

Baseline	Proposed Amendment	Change in Impact	
		Monetary (INR per unit)	Non-monetary
			economy
Employees are required to file complaints within 30 days of alleged wrongful dismissal or discharge.	Employees may file complaint within six months of alleged wrongful dismissal or discharge.	NA*	<b>Positive</b> Employees can evaluate all options before filing complaints, and need not rush to comply with procedures.
Penalties of up to INR50, INR250 and INR 500 for non-compliance with different provisions of the Act and Rules	Penalty amount to be increased to INR500, INR5000 and INR10000 respectively	Establishment: <b>(4900)</b> Government: <b>4900</b> Net: <b>0</b>	<b>Positive</b> Increase in deterrence, compliance with the Act, employee welfare and penalty collection by government
No provision	Any offence can be compounded on payment of a composition fee equal to the maximum amount of the fine provided for such offence	Establishment: <b>(267)</b> Government: <b>267</b> Net: <b>0</b>	<b>Positive</b> Reduction in litigation costs. The Government is also likely to collect high fees
<b>Total impact</b>		<b>Establishment: (4737)</b> <b>Government: 4295</b> <b>Employee: 25</b> <b>Total: (417)</b>	<b>Significantly Positive</b>
<b>Net impact: Positive. The significantly positive non-monetary impact is likely to be greater than miniscule negative monetary impact. However, different stakeholder groups might experience substantial divergence in costs and benefits. Further, significant scope to reduce costs and improve benefits remain across stakeholder groups.</b>			

Note: Figures in (red) indicate costs i.e. increase in negative impact, green indicate benefits i.e. increase in positive impact and yellow indicate no change in impact

\* No change in impact between baseline and proposed amendment scenario

If the proposed amendments come into force, the net monetary costs on all stakeholders taken together are likely to increase by INR417, i.e. an increase of around 1.24 percent from total monetary costs at present of INR33510 to INR33927. This increase is primarily on account of provisions relating to the use of discretion of labour inspectors in: 1) requiring establishments to furnish extracts of records and registers in hard copy; and 2) cancelling the name of an establishment from the register of establishments. There is no clear indication on instances and manner in which such discretion may be exercised, thereby resulting in significant compliance cost for an establishment and administration cost for the government.

However, the total non-monetary impact of proposed amendments on stakeholders is likely to be significantly positive. This is likely to outweigh the miniscule increase in net monetary costs in case proposed amendments are enacted. Consequently, the proposed amendments are likely to have positive impact on stakeholders.

Nevertheless, there remains substantial scope to further reduce costs and enhance benefits to stakeholders. Following suggestions have been made to this end.

**Table 2: Summary of Recommendations**

<b>Provision</b>	<b>Summary of Recommendations</b>
<b>Application</b>	Generate awareness, build capacity about electronic mode and incentivise its usage
<b>Approval</b>	An auto generated registration certification should be issued to enable establishments to claim auxiliary benefits
<b>Furnishing hard copy extract</b>	Incentivise maintenance of records and registers in electronic mode and allow extract to be collected in soft copy
<b>Closure of establishment</b>	Provide indicators to determine existence of 'reliable information' and following of due process for recording closure
<b>Overtime wage rate</b>	Incentivise overtime wage payment and take measures to bring employees in formal economy
<b>Women employment at night</b>	Share the cost of women employment with establishments facing genuine difficulties in bearing such costs and provide incentives
<b>Wrongful dismissal</b>	Ease the process of filing complaint by allowing self-certification. Deter frivolous complaints through heavy penalties
<b>Penalty</b>	Strengthen enforcement and identify reasons for violation and work with establishments to address challenges
<b>Composition</b>	Compensate employees if they are negatively impacted by violation

As indicated earlier, the objective the report is to showcase merits in thinking about likely costs and benefits of regulatory proposals, before adopting them, through use of consistent analytical methods and a participatory approach via stakeholder consultation. Such assessment is part of the Regulatory Impact Assessment (RIA) tool, which also involves design of different regulatory proposals aiming to meet regulatory objective/solving the problem identified, comparing such proposals *inter se* and with baseline scenario, and selecting one which has the potential to result in maximum net benefits or minimum net costs.

However, RIA comes with its own limitations. It cannot guarantee implementation/administration and compliance with regulations. The information collected through stakeholder consultation is largely based on perceptions. Further, at present, limited understanding exists among stakeholder community about the RIA tool, thus making data collection challenging. The capacity within government departments to conduct RIAs/cost-benefit analyses is also limited. To overcome such limitations, greater awareness about RIA and its utility is required. Similarly, capacity building initiatives within government departments on RIA are essential. The government should create a dedicated pool of officers to conduct RIAs across sectors and build capacities within different departments, over time.

# Chapter 1: Background and Introduction

## 1.1 Regulatory reform agenda of the Government

With an increasing thrust towards enhancing competitiveness of businesses in India, both Central and State Governments in the spirit of cooperative federalism have been undertaking regulatory and policy reforms. Such reforms intend to provide an enabling environment for employment generation and facilitating Ease of Doing Business (EoDB) in the country. Since 2014, the World Bank Group has been supporting the Government of India in undertaking reforms across Central Government departments as well as across all states in India. To foster competitive spirit among states, the Department of Industrial Policy and Promotion (DIPP), Ministry of Commerce and Industry, has been ranking different states annually through its Assessment of State Implementation of Business Reforms. Labour reforms, amongst others, have been at the centre of World Bank Group and DIPP's 'Doing Business Action Plan.'<sup>1</sup> Given that there has been a lot of emphasis on state-led reforms, the Government of Rajasthan, among other states in India, has been a frontrunner in introducing labour reforms and a series of other policy reforms over the past three years.<sup>2</sup> This has helped the State to ensure that it continues to be ranked among the top 10 states every year.

The EoDB report<sup>3</sup> 2017 by NITI *Aayog* and IDFC Institute states that reforming laws governing labour markets and allowing greater flexibility in their enforcement can help enhance the EoDB of firms in a significant manner. Particularly, the firms which are labour-intensive in nature have brought forth concerns related to compliance burden due to labour-related regulations. It is widely believed that flexibility in labour laws will also facilitate the enterprises, including shops and commercial establishments, to expand and reach economies of scale, generating productivity improvements, job creation, and higher growth.<sup>4</sup>

The conditions of work and employment in shops and commercial establishments in the states are regulated by respective shops and commercial establishments related legislations. Reform of such legislations has been on the agenda of Central Government for the past few years. In 2016, it issued the Model Shops and Establishments Act, 2016 (Model Bill) laying down the guidelines for states to adopt and accordingly amend their respective state legislations regulating shops and commercial establishments. The Model Bill nudges states to contribute in facilitating EoDB in the country.<sup>5</sup> In addition, the Central Government has introduced various reforms to bring transparency and accountability in enforcement of labour laws and reducing the compliance burden on stakeholders owing to multiplicity of legislations governing the labour markets and enforcement agencies.<sup>6</sup>

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<sup>1</sup> <http://eodb.dipp.gov.in/Aboutus.aspx> Last accessed on December 24, 2017

<sup>2</sup> <http://economictimes.indiatimes.com/news/economy/policy/rajasthan-pioneer-state-in-implementing-labour-reforms-arun-jaitley/articleshow/49848504.cms> Last accessed on December 24, 2017

<sup>3</sup> 'Ease of Doing Business: An Enterprise Survey of Indian States', NITI *Aayog*, Government of India and IDFC Institute, 2017 Last accessed on December 24, 2017

<sup>4</sup> [http://www.ideasforindia.in/article.aspx?article\\_id=1458](http://www.ideasforindia.in/article.aspx?article_id=1458) Last accessed on December 24, 2017

<sup>5</sup> Draft Note for the Cabinet on the Model Shops and Establishments (Regulation of Employment and Conditions of Services) Act, 2015; Ministry of Labour and Employment; 2016 Last accessed on December 24, 2017, available at [http://www.raifnet.in/E-Mailers/Central\\_Model\\_S&E\\_Act\\_Proposal.pdf](http://www.raifnet.in/E-Mailers/Central_Model_S&E_Act_Proposal.pdf). Last accessed on December 24, 2017

<sup>6</sup> [http://labour.gov.in/sites/default/files/e-compliance\\_0.pdf](http://labour.gov.in/sites/default/files/e-compliance_0.pdf) Last accessed on December 24, 2017

Taking a cue from the Central Government, several states are taking initiatives to reform their respective shops and commercial establishment legislations. For instance, Maharashtra and Kerala have proposed amendments to their legislations in line with the Model Bill.

## 1.2. Proposed amendments to the Rajasthan Shops and Commercial Establishments Act, 1958

The conditions of work and employment in shops and commercial establishments in the State of Rajasthan are regulated by the Rajasthan Shops and Commercial Establishments Act, 1958 (Act), which is supplemented by the Rajasthan Shops and Commercial Establishments Rules, 1959 (Rules), and relevant notifications issued by the Department of Labour, Government of Rajasthan. It appears that the Government of Rajasthan has been evaluating the possibility of reforming the Rajasthan Shops and Commercial Establishments Act, 1958 (Act), to ease the compliance burden on shops and commercial establishments in the State (establishments), while protecting the interests of employees working in such establishments. The Government of Rajasthan also appears to have considered the proposals under the Model Bill for reforming the state legislation. Consequently, it has proposed certain amendments to Act.

**Table 3: Baseline and Proposed Amendments**

Sections	Baseline	Proposed Amendment
<b>Section 4(1)</b>	Submission of statement of registration and renewal through physical mode. The submission of statement through electronic mode became mandatory from February 05, 2016	An employer can submit a statement for registration under the Act either physically or electronically
<b>Section 4(2)</b>	Registration is required to be granted within 30 days of receipt of statement of registration and fees. However, with effect from August 23, 2017, registration is required to be granted within one day from the date of application	If no adverse order is passed in regard to the registration of establishment by the inspector within 30 days from the date of receipt of the statement and fees, then the establishment shall be deemed to have been registered and the inspector shall enter the establishment in the register and issue registration certificate to the employer
<b>Section 6</b>	Employer needs to notify the inspector regarding closure of establishment within 10 days of closure	If the employer does not notify the inspector regarding closing of his establishment within the stipulated time period, then the inspector may <i>suo moto</i> remove the name of the establishment from the register of establishment and cancel the registration certificate
<b>Section 8</b>	Employer is required to pay overtime wages at the rate of one and half times of ordinary rate of wages	The rate of overtime wages to be two times the normal wage rate
<b>Section 22</b>	Employment of women at night is allowed, provided certain safety and security measures are taken by employer	Establishments may employ women at night subject to compliance with terms and conditions, as may be prescribed
<b>Section 28 A</b>	Employees are required to file	The time period to file complaint by the

Sections	Baseline	Proposed Amendment
(2)	complaint within 30 days of alleged wrongful dismissal or discharge	employee for dismissal or discharge to be increased from 30 days to six months
Section 33	Penalties of up to INR50, INR250 and INR500 for non-compliance with different provisions of Act	Penalty amount to be increased from INR50 to INR500, INR250 to INR5000, and INR 500 to INR10000
Section 35-A	No provision	Any offence punishable under the Act or Rule can be compounded either before or after institution of prosecution on payment of a composition fee equal to the maximum amount of the fine provided for such offence
Section 36	Possibility to maintain records and registers in electronic form, as far as feasible	Establishments may maintain record and registers in electronic or physical form. If maintained in electronic form, inspector may require duly signed hard copy of extract of minutes
Section 40(3)	Contravention of the Rules is punishable with fine, which may extend to INR50	Contravention of the rules for the first time shall be punishable with a fine which may extend to INR5000 and for second or subsequent contravention the fine may extend to INR10,000

Source: Author's analysis

Amendments similar to those proposed by the Government of Rajasthan have been proposed/adopted in other states.

**Table 4: Amendments in Other States**

S. No.	Amendments Proposed in Rajasthan	Similar Provisions in Other States
1	<b>Electronic Registration:</b> An employer can submit a statement for registration under the Act either physically or electronically. {Section 4(1)}	Section 6 of the Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service) Act, 2017 ( <b>Maharashtra Act</b> ) provides that employer of every establishment employing ten or more workers shall submit application online in a prescribed form for registration. <sup>7</sup>
2	<b>Deemed Registration:</b> If no adverse order is passed in regard to the registration of establishment by the inspector within 30 days from the date of receipt of the statement and fees, then the establishment shall be deemed to have been registered and the inspector shall enter the establishment in the register and issue registration certificate to the	<b>Madhya Pradesh</b> has introduced similar provision of deemed registration if no action is taken on the application for registration within 30 days. <sup>8</sup>  The <b>Telangana</b> Shops and Establishments (Amendment) Act, 2017, amended Section 3 of the Telangana Shops and Establishments Act, 1988 to provide that on uploading the application for registration along with other enclosures as may be prescribed, provisional registration shall be

<sup>7</sup> For details, see <http://bombayhighcourt.nic.in/libweb/acts/Stateact/2017acts/2017.61.pdf>

<sup>8</sup> For details, see <http://labour.mp.gov.in/KnowledgeSharing/Public/ILVDocument.aspx?ID=187>

S. No.	Amendments Proposed in Rajasthan	Similar Provisions in Other States
	employer {Section 4(2)}	granted within 24 business hours and be valid until a final order is passed. Further, it states that no inspection need be conducted prior to registration <sup>9</sup>
3	<b>Closure of establishment:</b> If the employer does not notify the inspector regarding closing of his establishment within the stipulated time period, then the inspector may <i>suo moto</i> remove the name of the establishment from the register of establishment and cancel the registration certificate (Section 6)	Section 10 of the <b>Maharashtra</b> Act provides that if the Facilitator does not receive the information but he is otherwise satisfied that any establishment has been closed, he may remove such establishment from such register of establishments and cancel such certificate <sup>10</sup>
4	<b>Overtime wages:</b> The rate of overtime wages to be two times the normal wage. (Section 8)	Section 15 of the <b>Maharashtra</b> Act provides that when a worker in any establishment is required to work beyond nine hours a day or 48 hours a week, he shall be entitled, in respect of the overtime work, wages at the rate of twice his ordinary rate of wages <sup>11</sup>
5	<b>Employment of women at night:</b> Establishments may employ women at night subject to compliance with terms and conditions, as may be prescribed (Section 22)	Section 13 of the <b>Maharashtra</b> Act provides that the woman worker with her consent, shall be allowed to work during 9.30 pm and 7.00 am in any establishment in which adequate protection of their dignity, honour and safety, protection from sexual harassment and their transportation from the establishment to the doorstep of their residence as may be prescribed are provided by the employer or his authorised representative or manager or supervisor <sup>12</sup>
6	<b>Complaint by employee:</b> The time period to file complaint by the employee for dismissal or discharged to be increased from 30 days to six months. {Section 28A(2)}	
7	<b>Penalty:</b> Penalty amount to be increased from INR50 to INR500, INR250 to INR5000, and INR500 to INR10000 (Section 33)	Section 29 of the <b>Maharashtra</b> Act provides that whoever, contravenes the provisions of this Act or the rules made thereunder shall be punishable with fine which may extend to INR1,00,000 and in the case of a continuing contravention, with an additional fine which may extend to INR2,000 for every day during which such contravention continues. <sup>13</sup>

<sup>9</sup> For details, see

[http://legislation.telanganallegislature.org.in:9090/Bills/PassedBills/English/Eng\\_passbill B 1 11 59 v. 1.pdf](http://legislation.telanganallegislature.org.in:9090/Bills/PassedBills/English/Eng_passbill B 1 11 59 v. 1.pdf)

<sup>10</sup> Supra Note 7

<sup>11</sup> *Ibid*

<sup>12</sup> *Ibid*

<sup>13</sup> *Ibid*

S. No.	Amendments Proposed in Rajasthan	Similar Provisions in Other States
8	<b>Compounding of offences:</b> Any offence punishable under the Act or Rule can be compounded either before or after institution of prosecution on payment of a composition fee equal to the maximum amount of the fine provided for such offence. (Section 35A)	Section 33 of the <b>Maharashtra</b> Act provides that any offence punishable under this Act, not being an offence punishable with imprisonment only, or with imprisonment and also with fine, may, on an application of the accused person, either before or after the institution of any prosecution, be compounded by a Gazetted Officer. <sup>14</sup>  <b>Madhya Pradesh</b> has introduced provision with respect to compounding of offences. <sup>15</sup>
9	<b>Maintenance of records and registers:</b> Establishments may maintain record and registers in electronic or physical form. If maintained in physical form, the inspector may require duly signed hard copy of extract of minutes. (Section 36)	Section 25 of the <b>Maharashtra</b> Act provides that the records may be maintained electronically or manually. Provided that, at the time of inspection by a Facilitator, a hard copy of such records if demanded, shall be submitted duly signed by the employer or his representative. <sup>16</sup>  The <b>Bihar</b> Shops & Establishment (Amendment) Rule, 2016 amended Rule 42 of the Bihar Shops & Establishment Rules, 1955 to authorise the Government to allow that registers and records to be maintained in computerised or digital formats. <sup>17</sup>  <b>Madhya Pradesh</b> has introduced similar provisions. <sup>18</sup>
10	Contravention of the rules for the first time shall be punishable with a fine which may extend to INR5000 and for second or subsequent contravention the fine may extend to INR10,000. {Section 40(3)}	The <b>Tamil Nadu</b> Shops and Establishments (Amendment) Act, 2017 amended Section 45 of the Tamil Nadu Shops and Establishments Act, 1947 to provide that contravention of select provisions shall be punishable for the first offence, with fine which may extend to INR5,000 and for a second or subsequent offence, with fine which may extend to INR10,000. <sup>19</sup>

### 1.3. Scope and approach

This report highlights the findings and recommendations of a rapid assessment of costs and benefits of proposed amendments to the Act conducted by CUTS International, with support from the World Bank group. The objective of this exercise is to generate awareness among stakeholders about utility of such exercise in policymaking and whet the appetite of the Government of Rajasthan to conduct in-depth *ex ante* assessment of costs and benefits of regulatory proposals in future.

<sup>14</sup> *Ibid*

<sup>15</sup> Supra Note 8

<sup>16</sup> Supra Note 7

<sup>17</sup> For details, see [http://labour.bih.nic.in/Acts/Bihar-Shops-&-Establishment-\(Amendment\)-Rules-2016.pdf](http://labour.bih.nic.in/Acts/Bihar-Shops-&-Establishment-(Amendment)-Rules-2016.pdf)

<sup>18</sup> Supra Note 8

<sup>19</sup> For details, see [http://www.stationeryprinting.tn.gov.in/extraordinary/2017/36\\_Ex\\_IV\\_2.pdf](http://www.stationeryprinting.tn.gov.in/extraordinary/2017/36_Ex_IV_2.pdf)

For the purpose of the report, key costs and benefits were identified and assessed based on qualitative interactions with and information collected from key stakeholders, i.e. representatives of establishments, employees and government in Rajasthan. Stakeholder interactions were also important to estimate likely change in key costs and benefits should proposed amendments be enforced. However, given limited awareness about utility of a robust analysis of costs and benefits of regulatory provisions, stakeholders were understandably not forthcoming in providing detailed information. The report is limited to identifying and assessing direct costs and benefits to the stakeholders and does not necessarily consider indirect impacts on society, economy and households.

The information collected through stakeholder interactions was largely qualitative in nature. In cases wherein quantitative information was available, the same was based on experience and perception specific to relevant respondents. In order to gauge an industry-wide perspective and monetise quantitative and qualitative costs and benefits, several assumptions and estimations have been made. Thus, the findings and recommendations are largely indicative in nature. However, they definitely make a case for structured and in-depth stakeholder consultations and assessment of costs and benefits of regulatory proposals.

Such exercise of assessing costs and benefits is part of the RIA framework, a globally recognised best practice for regulation making. The entry point for a RIA exercise is much earlier than a cost-benefit exercise. It starts with defining the problem which the government is interested to solve through a comprehensive assessment of the baseline scenario. This is followed by design of multiple options likely to achieve regulatory objective/solve the problem, assessment and comparison of costs and benefits of such options *inter se* and with those of baseline scenario, and recommending such option which has potential to result in maximum net benefits to the stakeholders.

In order to design different options and compare their impacts, use of consistent analytical methods and a participatory approach via public consultation is necessary.<sup>20</sup> RIA is an important element of an evidence-based approach to policymaking. Impacts of regulatory options are compared *inter se* and with 'as is' scenario on the basis of scientifically developed tools, such as cost-benefits analysis, cost-effective analysis, etc. and thus best possible regulatory intervention is selected. The central goal of RIA is to ensure that laws and rules efficiently produce economic, social, and environmental benefits, i.e. benefits justify costs. Its process ensures that the assessment is open and transparent, that the information used is reliable and not biased. A comprehensive assessment of direct, indirect, patent and latent costs and benefits is the key to RIA exercise.

To the contrary, the report is limited to conducting rapid comparison of key costs and benefits of baseline scenario with those of proposed amendments. It does not delve into designing other regulatory options. The Government of Rajasthan has already drafted proposed amendments, thus, designing specific alternatives to such amendments may not add value. However, broad recommendations to improve the proposed amendments have been provided, which may be considered by the government to improve the likelihood of proposed amendments in achieving their objectives.

Despite its inherent limitations, the report can provide valuable insights in the process of assessment of costs and benefits of different regulatory options, challenges therein, and can act as a good starting point for the government to start thinking about incorporating RIA in the policymaking process.

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<sup>20</sup> <http://cuts-ccier.org/ria/> Last accessed on December 24, 2017

**Table 5: Scope and Benefits of RIA**

RIA exercise essentially answers the following questions:

1. What is the problem being solved, and why did it emerge?
2. What will happen if the government does not act?
3. What kinds of actions could be envisaged to address the problem?
4. What are the consequences of possible actions?
5. Why is the proposed solution best one? Does it best solve the problem by achieving maximum net benefit?
6. Can the government implement the solution effectively?

Developed and developing countries have increasingly realised benefits of RIA over the years. A study of 15 RIAs by the US Environmental Protection Agency showed that three (out of total 15) RIAs increased net benefits to society from recommended improvements in regulations, by US\$10bn. The total cost of preparing all of the 15 RIAs studied was approximately US\$10mn. Similarly, removing numerous regulatory barriers in South Korea was estimated to boost Foreign Direct Investment (FDI) by US\$26bn over five years. Moreover, The One-in, Two-out Policy of UK, which mandates removal of £2 of costs for imposition of £1 of costs via state-led intervention, has resulted in net reduction £836mn in costs to business between 2010 and 2014. A similar initiative recently adopted in US has reportedly resulted in savings of US\$ 8.1bn in regulatory costs in 2017.<sup>21</sup>

The Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) regulation from the European Commission would have imposed €10bn in costs on the European chemicals industry, as it was first written. The regulation was revised to make it easier to comply, without significantly changing benefits. The final cost was €2bn. The RIA cost the Commission about €1mn, producing a social return on investment of 8,000 to one and saving thousands of jobs. The Organisation for Economic Development and Cooperation (OECD) estimated in Vietnam that each full RIA is estimated to cost nearly US\$500 (due to very low labour costs in the public sector), but the introduction of RIA is expected to save the private sector 100,000 times that amount through a reduced or more efficient regulatory regime. In Victoria State, Australia, a recent evaluation of RIA showed that between 2005-06 and 2009-10, the RIA process achieved estimated gross savings of A\$902mn over the 10-year life of the regulations. For every dollar invested in the RIA process, gross savings to the private sector and government of between A\$28 and A\$56 were identified. Over 65 countries have adopted some form of RIA in making new laws and rules.<sup>22</sup>

Implementation of RIA improves overall regulatory quality, by factoring all the relevant expectations of stakeholders. Rigorous and transparent assessment of costs and benefits also increases the acceptability of regulation among stakeholders. As a result, there is greater clarity and predictability in regulatory process.

*Source: Author's analysis*

RIA has been recommended for India by several expert committees. These include the erstwhile Planning Commission's Working Group on Business Regulatory Framework (to which CUTS acted as a Knowledge Partner), Financial Sector Legislative Reforms Commission, Damodaran Committee Report, the Tax Administration Reform Commission and the Expert Committee on Prior Permission and Regulatory Mechanism recommended adoption of RIA in India by Central

<sup>21</sup> Pradeep S Mehta, *Dismantle barriers to prosperity*, Live Mint, January 30, 2018

<sup>22</sup> Scott Jacobs, *The RIA Revolution*, Hindu Business Line, November 19, 2015, Hindu Business Line, available at: <http://www.thehindubusinessline.com/opinion/the-ria-revolution/article7896549.ece>. Last accessed on December 23, 2017

and state governments.<sup>23</sup> The Pre Legislative Consultation Policy of the Government of India, introduced in 2014, also requires government departments to conduct partial RIA of proposed legislations. Most recently, the Better Regulation Advisory Group (of which CUTS is a member) constituted by the Government of India has been reviewing the need to adopt RIA in India and is evaluating different models used in other countries to adopt RIA.

## 1.4. Methodology

A comprehensive consultation exercise with different stakeholders, based in different locations in Rajasthan was adopted, in order to gauge costs and benefits of select provision of the Act and proposed amendments on key stakeholders.

All Sections of the Act are currently applicable to 35 municipal areas in Rajasthan. These include: select municipal areas in Jaipur, Ajmer, Kota, Udaipur, Banswara, Bikaner, etc. It is mandatory for all establishments falling within such municipal areas to obtain a registration certificate under the Act. As on **November 20, 2017**, the total shops and commercial establishments registered under the Act were 3,22,723. The Table below sets out the top five locations by registration, which cover around 90 percent shops and commercial establishments currently registered under the Act.

**Table 5: Number of Registered Establishments under the Act**

S. No	Location	Number
1	Jaipur	2,03,018
2	Ajmer	35,454
3	Kota	23,789
4	Udaipur	15,010
5	Bikaner	12,073

Source: Data obtained from the Rajasthan Labour Department up to 20 November 2017

Consequently, in order to conduct RIA, it was essential to interact with stakeholders in these locations. Interactions with around 115 stakeholders based out of locations where the Act is operational (including the locations mentioned above) were conducted through in-person, telephonic and focus group discussion mode. The stakeholder categories included:

**1. Employers of establishments**, such as hospitals, hotels, mobile shops, cinema halls, departmental stores, clothing shops, shops of daily use items, export units, and banks. Interactions with employer associations also took place. Conscious effort was made to interact with establishments of different nature and sizes.

**2. Intermediaries involved** in registration and compliance with different provisions of the Act such as, chartered accountants, consultants, lawyers, facilitators, *e-mitra* outlets, among others.

<sup>23</sup> Regulatory Impact Assessment, A CUTS Note, [http://www.cuts-ccier.org/BHC-RIA/pdf/Publications-Consolidated Briefing Paper.pdf](http://www.cuts-ccier.org/BHC-RIA/pdf/Publications-Consolidated%20Briefing%20Paper.pdf), last accessed on December 24, 2017

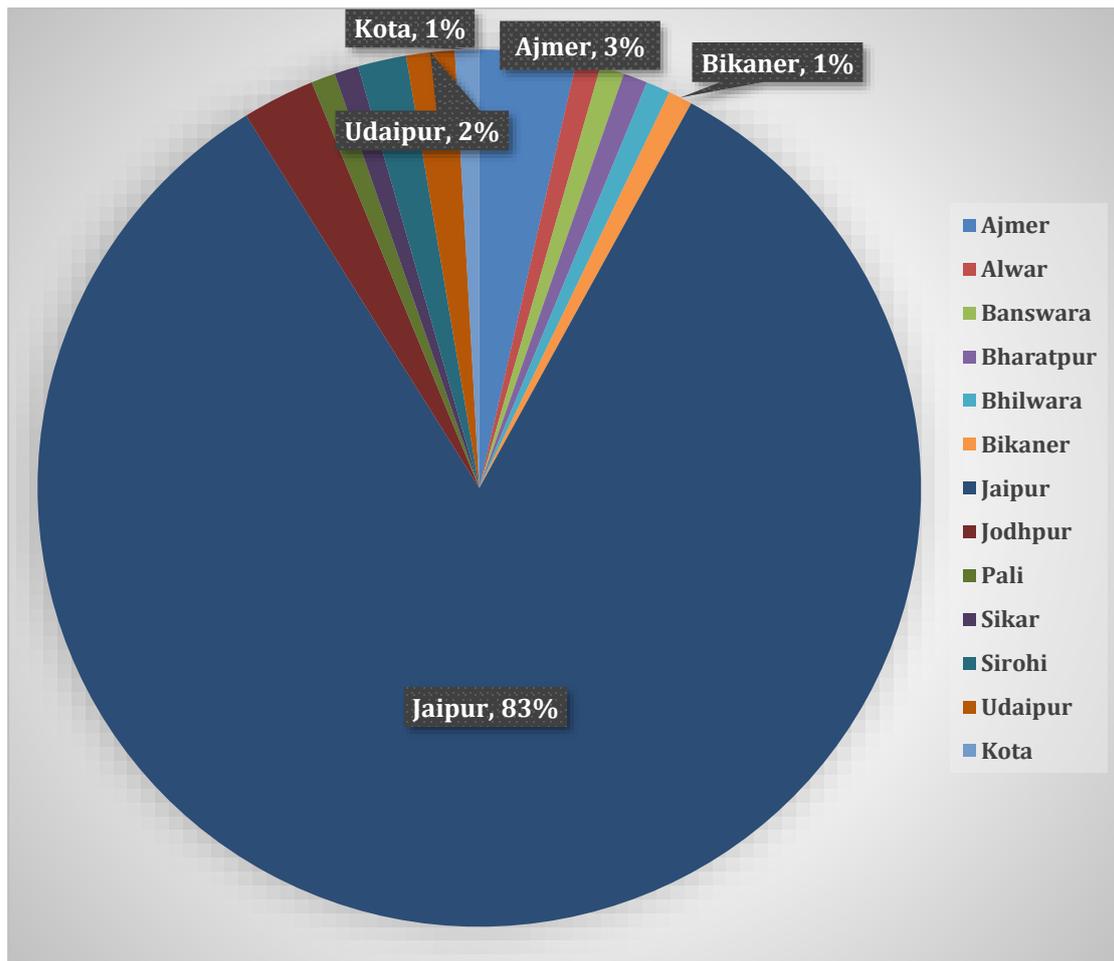
**3. Government representatives**, such as, senior and mid-level officials at Department of Labour, labour inspectors in districts, and officials managing the Labour Information Management System.

**4. Employees**, male and female, permanent and contractual and working in day and night shifts at different establishments. Interactions also took place with representatives of labour associations and former employees discharged from their establishments.

**5. Experts** including academia, media and think tanks in labour laws, and practitioners/experts in ease of doing business and related areas.

The location wise split of stakeholders interacted under the project is set out in Figure 1:

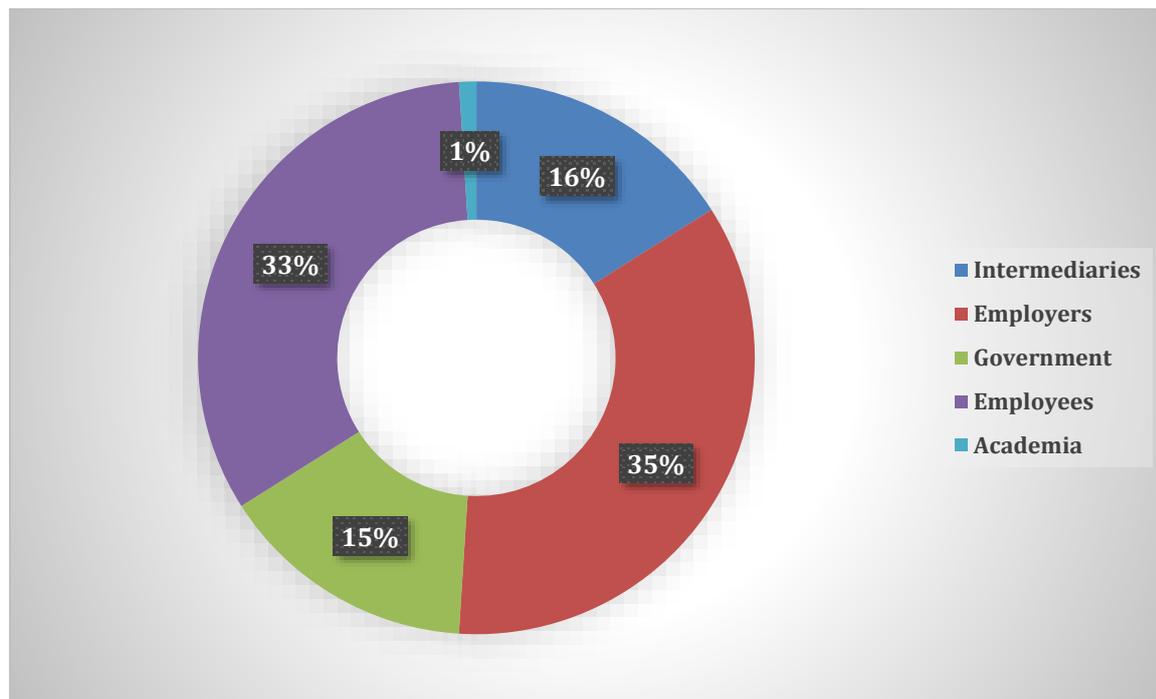
**Figure 1: Location of Stakeholders Interacted under the Act**



Source: Author's analysis

Further, a broad snapshot of stakeholders interacted under the project is set out in Figure 2.

**Figure 2: Categories of Stakeholders Interacted under the Project**



Source: Author's analysis

The stakeholders' interaction took place from November 2017 to December 2017.

In order to assess/estimate the impact of existing/proposed provisions of the Act, elements of standard cost model (SCM) has been utilised. The SCM focuses on identifying costs of compliance and administering of regulation. This requires details on reporting required under regulatory provisions, individuals involved in submitting and reviewing relevant information, time involved in submission and review, among other details. The SCM is a widely used tool to evaluate administrative costs related to the collection and reporting of information, and is an activity-based measurement of the administrative burdens of businesses. It breaks down the administrative costs into activities (or cost components) and the costs associated with these are then listed. This tool focuses on simplifying the administrative activities which would need to be undertaken to comply with the regulation.

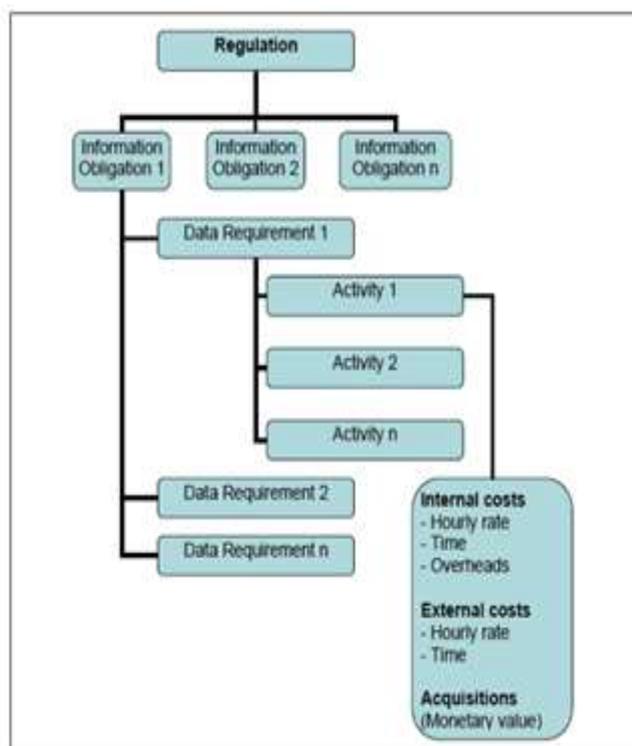
This model indicates the average costs per business incurred due to the administrative burdens. It takes into account the price of each activity over one year. The most common methodology involves multiplying a tariff which is based on the hourly cost of labour, with the time in hours required for each such action. Other types of costs are also accounted for wherever applicable, such as equipment costs, outsourcing costs, etc. Similar methodology is adopted to calculate cost of administration of regulation on the government.

The basic equation for calculation is  $P \times Q$ , where:

$P$  (Price) = Tariff  $\times$  Time (in hours per business)

$Q$  (Quantity) = Number of businesses affected  $\times$  Frequency (per year)

**Figure 3: Measuring the Cost of Regulation**



Source: *Measuring the Cost of Regulation*, New South Wales Government, June 2008

The following chapters summarise the findings of project. Chapters 2 to 10 each discuss the cost and benefits on relevant stakeholders of one specific provision in the Act and its corresponding amendment. Chapter 11 compares the costs and benefits under the baseline and proposed amendment scenario and provide suggestions. The concluding chapter 12 highlights the net monetary and non-monetary impacts and provides a way forward. The chapter outline is set out below.

**Table 6: Chapter Outline**

Chapter No.	Scheme
Chapter 2	Application for registration
Chapter 3	Grant of registration
Chapter 4	Maintenance of records and registers
Chapter 5	Closing of establishment
Chapter 6	Extra wages for overtime work
Chapter 7	Employment of women at night
Chapter 8	Complaint against wrongful dismissal or discharge
Chapter 9	Penalties
Chapter 10	Composition of offences
Chapter 11	Impact Comparison and Recommendations
Chapter 12	Conclusion and Way Forward

# Chapter 2: Application for Registration

## 2.1 Regulatory framework

Section 4 of the Act provides for registration of establishments. Within 30 days of setting up an establishment,<sup>24</sup> the employer of every establishment is required to send to the labour inspector of the area concerned a statement in the prescribed form, together with the fees as may be prescribed, requesting grant of registration certificate under the Act. Each registration certificate can be granted or renewed for a period of one year or three years or five years, and remains in force up to December 31 of such year.<sup>25</sup> The application of renewal of registration certificate should be made within one month from the date on which the certificate expires and if the application is so made the premises are deemed to be duly certified until the inspector renews the certificate.<sup>26</sup>

The fees for new registration certificate and renewal of registration certificate are prescribed under Rule 3 of the Rules. The fees depend on the number of employees employed by the establishment and the period for which the certificate is sought. The payment of fees can be made with the help of services rendered by e-mitra or bank gateway.

**Table 7: Fees for Application of New Registration and Renewal**

S. No.	Maximum Number of Employees Employed on any Day during the Year <sup>27</sup>	Amount of Fees (INR) <sup>28</sup>		
		1 Year	3 Years	5 Years
1.	No employees	125	250	375
2.	1 to 2 employees	300	600	900
3.	3 to 5 employees	500	1000	1500
4.	6 to 10 employees	750	1500	2250
5.	11 to 20 employees	1250	2500	3750
6.	21 to 50 employees	3125	6250	9375
7.	51 to 100 employees	5625	11250	16875
8.	101 and above employees	18750	37500	56250

Source: Rule 3 of the Rules

Pursuant to an office order dated February 03, 2016, issued by the Labour Department, Government of Rajasthan, the manual mode for registration/renewal of licenses under different legislations, including the Act, was done away with. It was provided that with effect from

<sup>24</sup> Section 4(3) of the Act

<sup>25</sup> Rule 4(2) of the Rules

<sup>26</sup> Rule 6(2) of the Rules

<sup>27</sup> Rule 3 of the Rules

<sup>28</sup> *Ibid*

February 05, 2016, the registration/renewal of licences would be possible only through the electronic mode, by using centralised electronic software: Labour Department Management System (LDMS). The LDMS portal is utilised for registration/renewal of licences under different legislations under the State.

The LDMS was previously operationalised on March 13, 2015, and its use was optional up to February 05, 2016. It was envisaged that use of LDMS would enhance transparency and efficiency and also aid different departments to provide better services to beneficiaries. Table 9 sets out the process of making an application at the LDMS portal under the Act.

**Table 8: Process of Application at LDMS Portal**

<p>An application form is required to be filled on the LDMS portal electronically. In addition, following documents are required to be attached:<sup>29</sup></p> <ul style="list-style-type: none"><li>● Passport size scanned photograph of employer</li><li>● Scanned photo of shop along with owner</li><li>● List of management employees (.xls format)</li><li>● Rates of wages (.xls format)</li><li>● Details of employees working in establishment (.xls format)</li><li>● Employee weekly holidays (.xls format)</li><li>● Address proof of establishment: copy of shop's rent agreement (if on rent) or shop's ownership document proof (maximum file size: 450 KB)</li><li>● Photo identification document (Permanent Account Number Card/Driving Licence/Aadhar Card/Passport) - (maximum file size: 450 KB)</li><li>● Affidavit (declaration form) which is to be downloaded, filled, scanned and uploaded (max file size: 450 KB)</li></ul> <p>In case of renewal, only such documents are to be attached/uploaded which are not available in registration record.<sup>30</sup></p> <p>In addition, obtaining a business registration number (BRN) is a prerequisite for applying for registration of establishment under Act.</p>
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Source: Department of Labour, Government of Rajasthan

Interactions with stakeholders revealed that in case of registration, a statement prescribed in Form 1<sup>31</sup> is required to be downloaded, manually filled, scanned and uploaded by the establishments. The details required to be furnished under such Form 1 are substantially similar (such as details of employer, establishment, employees, etc.) to those required to be uploaded on the LDMS portal with the online application. In case of renewal, a statement prescribed in Form 5<sup>32</sup> is required to be downloaded, manually filled, scanned and uploaded by the establishments.<sup>33</sup> In addition, a declaration of no change is required to be made and a scanned copy of registration certificate is required to be uploaded. If application and attached documents are found in order, message for payment of prescribed fees is sent on the applicant's

<sup>29</sup> <http://www.labour.rajasthan.gov.in/RulesShop.aspx>

<sup>30</sup> Department of Labour, *Registration/ Renewal Handbook*, available at: [www.labour.rajasthan.gov.in/Documents/RegistrationProcedure\\_Eng.pdf](http://www.labour.rajasthan.gov.in/Documents/RegistrationProcedure_Eng.pdf). Last accessed on December 23, 2017

<sup>31</sup> The requirement of Form 1 is under Rules 3 of the Rules and the format is provided in Annexure to the Rules

<sup>32</sup> The requirement of Form 5 is under Rules 6 of the Rules and the format is provided in Annexure to the Rules

<sup>33</sup> Department of Labour, *Renewal: Application Procedure*, [www.labour.rajasthan.gov.in/RulesShop.aspx](http://www.labour.rajasthan.gov.in/RulesShop.aspx). Last accessed on December 23, 2017

registered mobile number and email address. In the alternative, clarification is sought from the applicant if: the application is not found complete; any document is not legible; not fulfilling the criterion of required documents.<sup>34</sup> Subsequent to providing necessary clarifications (if any) to the satisfaction of inspector, and payment of prescribed fee, the applicant can download the registration certificate online.

## 2.2 Baseline/no change scenario

As indicated earlier, 322,723 establishments are registered under the Act. It appears that the proportion of establishments registered under the Act is significantly lesser than unregistered establishments.

According to stakeholders, only about 40 percent of total establishments are registered under the Act. However, according to the latest estimates of National Sample Survey Office (NSSO),<sup>35</sup> the total number of enterprises in Rajasthan were 2,686,933,<sup>36</sup> of which registered establishments under the Act make 12.01 percent. This corresponds to the partially formal firms at a national level. According to the Economic Survey 2017-18, around 12 percent of firms in the country are in the tax net but not the social security net.<sup>37</sup>

India is a country with significantly high proportion of informal enterprises. As per the Economic Survey 2017-18, around 87 percent of firms, representing 21 percent of total turnover, are purely informal, outside both the tax and social security nets.<sup>38</sup> Similarly, in Rajasthan, NSSO estimates suggest that approximately 76 percent of enterprises are not registered under any legislation.<sup>39</sup>

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<sup>34</sup> Supra Note 30

<sup>35</sup> National Sample Survey Office, *Key Indicators of Unincorporated Non-agricultural enterprises (excluding construction) in India: NSS 73<sup>rd</sup> Round (July 2015-June 2016)*, June 2017, at [http://www.mospi.gov.in/sites/default/files/publication\\_reports/NSS\\_KI\\_73\\_2.34.pdf](http://www.mospi.gov.in/sites/default/files/publication_reports/NSS_KI_73_2.34.pdf)

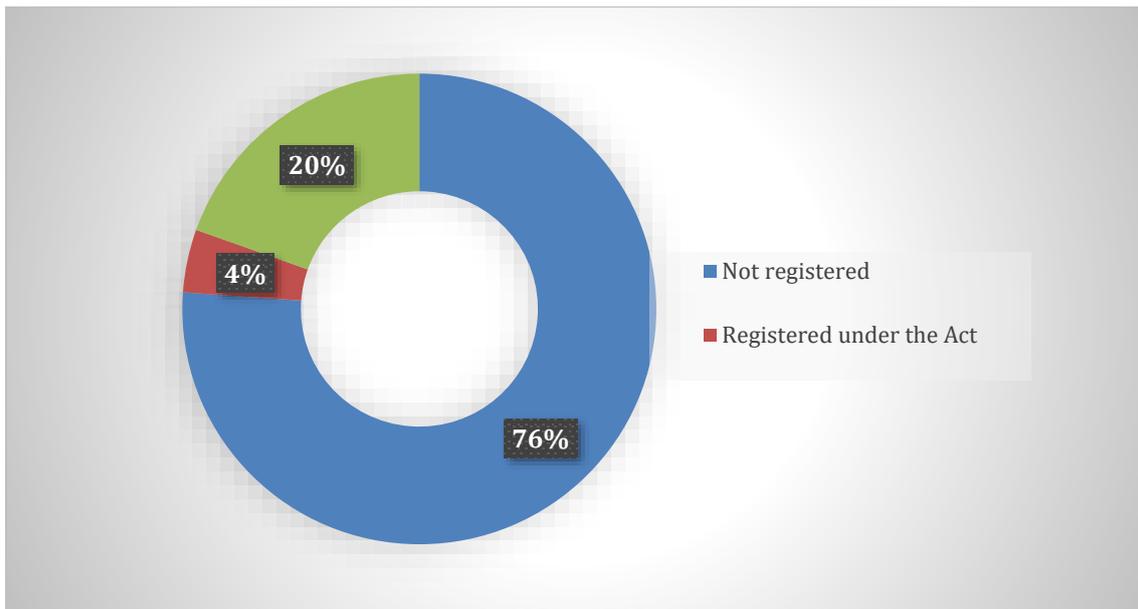
<sup>36</sup> 1278226 (all rural enterprises) + 1408707 (all urban establishments) = 2686933

<sup>37</sup> The Economic Survey points out, "*Informality or rather formality can be defined in at least two senses. First, when firms are providing some kind of social security to employees... A second definition of formality is when firms are part of the tax net. Since new data on the GST is available, one can define tax formality as firms having registered under the GST.*" Economic Survey of India, *A new exciting bird eye view of the Indian economy through the GST, 2017-18*, at [http://mofapp.nic.in:8080/economicsurvey/pdf/032-042\\_Chapter\\_02\\_ENGLISH\\_Vol\\_01\\_2017-18.pdf](http://mofapp.nic.in:8080/economicsurvey/pdf/032-042_Chapter_02_ENGLISH_Vol_01_2017-18.pdf)

<sup>38</sup> Economic Survey of India, *A new exciting bird eye view of the Indian economy through the GST, 2017-18*

<sup>39</sup> NSSO, *Operational characteristics of unincorporated non-agricultural enterprises (excluding construction) in India: NSS 73<sup>rd</sup> Round (July 2015-June 2016)*, March 2018, at [http://www.mospi.gov.in/sites/default/files/publication\\_reports/NSS\\_581.pdf](http://www.mospi.gov.in/sites/default/files/publication_reports/NSS_581.pdf)

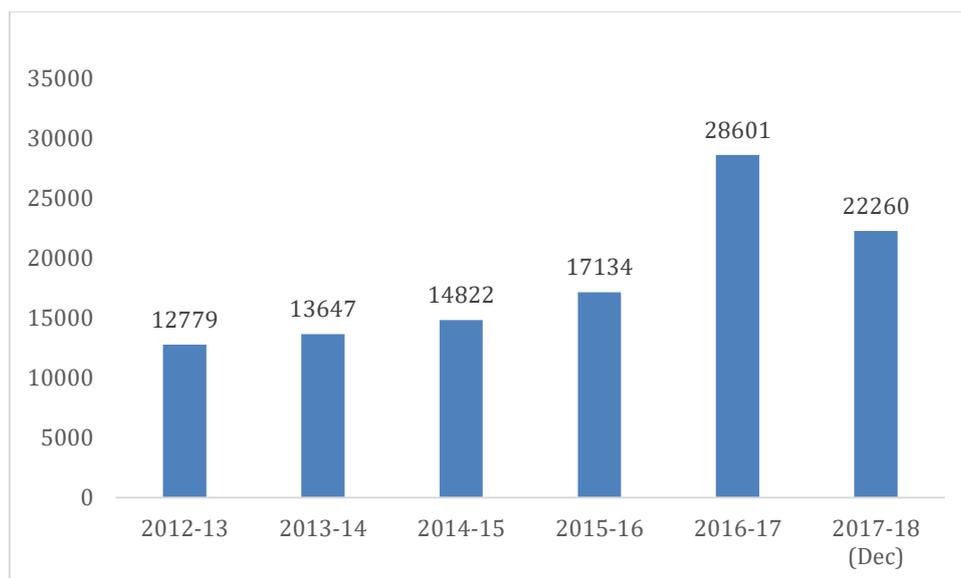
**Figure 4: Enterprises in Rajasthan**



Source: NSSO, Operational characteristics of unincorporated non-agricultural enterprises (excluding construction) in India: NSS 73<sup>rd</sup> Round (July 2015-June 2016), March 2018

Despite the above, the compound annual growth rate (CAGR) of new registrations under the Act since 2012-13 up to 2016-17 is 22.31 percent. It is clear from Figure 5 that registration rate witnessed a spike since introduction of LDMS portal.

**Figure 5: New Registrations under the Act**



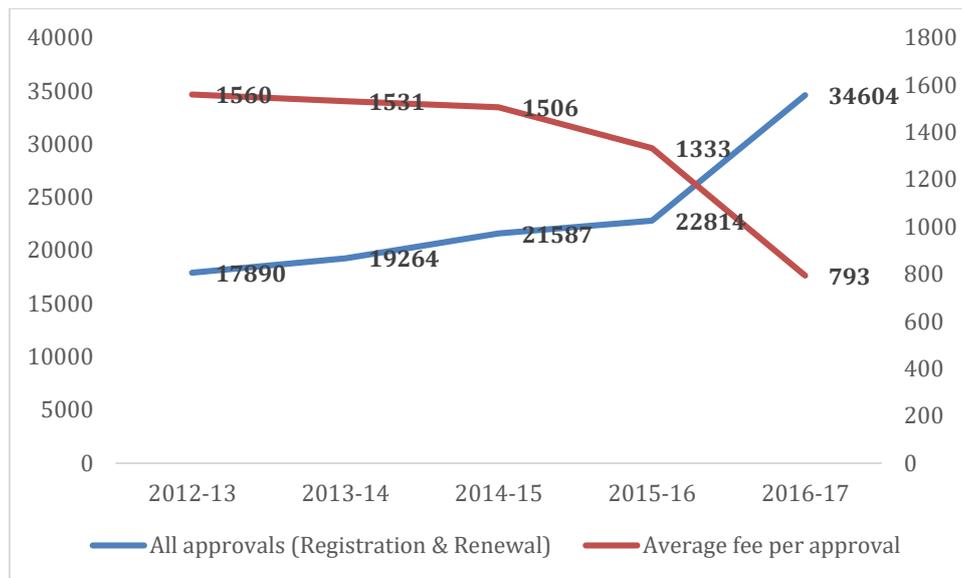
Source: Data obtained from government up to December 2017

Interactions with stakeholders revealed that there was a change in banking regulation in 2016 as a result of which possessing a registration certificate under the Act became necessary for opening a current account.<sup>40</sup> This could have resulted in increase in number of registrations

<sup>40</sup> Direction 28(2) of the Reserve Bank of India (Know Your Customer (KYC)) Directions, 2016, available at <https://rbi.org.in/scripts/NotificationUser.aspx?Mode=0&Id=10292>

since 2016. As the number of annual registrations has increased, the average fees collected by the government per approval has reduced from INR1560 in 2012-13 to INR793 in 2016-17.

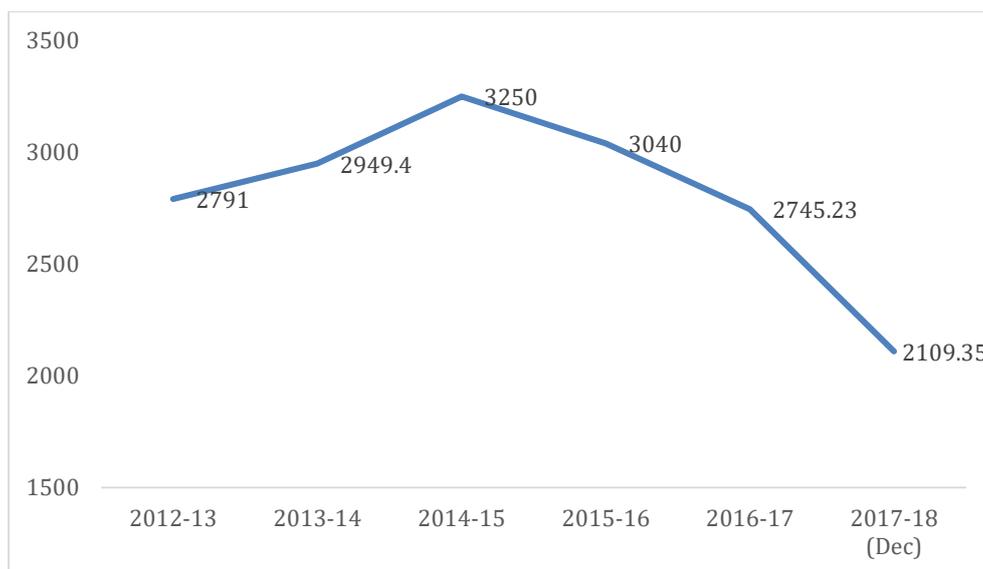
**Figure 6: Approvals and Average Fee**



Source: Author's Analysis

While the annual registrations have increased, the revenue generated by the State Government over the years through registration and renewal fees has declined.

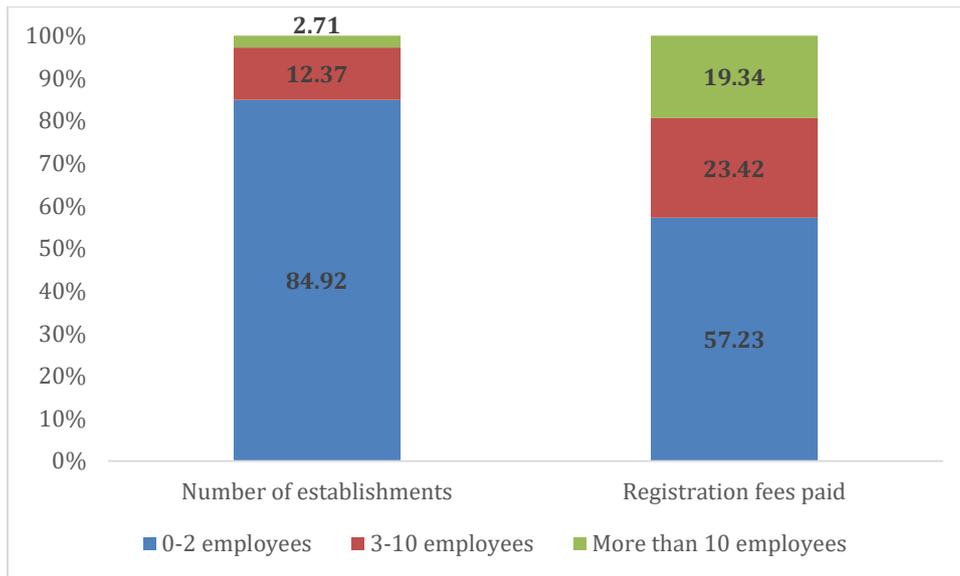
**Figure 7: Registration and Renewal Fees Collected (INR'0000)**



Source: Author's Analysis

Interestingly, more than 97 percent of establishments registered through the LDMS portal since its introduction in 2015 have 10 or less employees. Similarly, since the introduction of LDMS portal, around 81 percent of registration fees have been paid by this category of establishments. In other words, establishments with 11 and more employees make only about 3 percent of total registered establishments, yet have paid approximately 19 percent of registration fees.

**Figure 8: Types of Establishments and Fees Paid (in %)**



Source: Author's Analysis

The average fee paid by an establishment with zero-two employees was approximately INR500 and by an establishment with more than 10 employees was INR5306. Also, around 57 percent of all establishments have obtained registration for a period of five years.

### 2.3 Impact of baseline/no change scenario

This section discusses key costs and benefits incurred by establishments and government under the baseline/no change scenario.

#### **Impact on establishments**

##### Costs

The costs on establishments for obtaining registration/renewal certificate may be direct (cost in making application) and indirect (inconvenience in making application) in nature.

An establishment can obtain registration/renewal certificate under the Act by completing the required process through: i) e-mitra outlets; ii) consultants; and iii) employees.

**E-mitra outlets:** Registration/renewal facility is available at select e-mitras operated by the Government of Rajasthan.<sup>41</sup> An e-mitra outlet can assist employers in entering relevant information in the online forms, and scan relevant documents (photo identification, address proof, rent deed ( if any), photograph, etc.) which need to be attached with application. The total fee charged by e-mitra is INR30 per application for registration/renewal. In case of correction/modification in application, the e-mitra is authorised to charge INR30 again per application. However, if correction/ modification or renewal does not include scanning of documents, the e-mitra fee per application is INR20. In addition, the fee to obtain print out of registration/renewal certificate from an e-mitra outlet is INR10.<sup>42</sup> However, interactions with

<sup>41</sup> Details of e-mitra are available at <http://emitra.gov.in/home.jsp#>. Last accessed on December 24, 2017

<sup>42</sup> Government of Rajasthan, Labour Department, *Annual Progress Report 2016-27*, Page 95. Last accessed on December 24, 2017

stakeholders revealed that E-mitras charge fees up to INR500 for completing registration/renewal formalities.

**Consultants:** Establishments also rely on intermediaries like consultants, chartered accountants (CAs), lawyers/legal facilitators/notaries, among others, for registration/renewal formalities. Such intermediaries charge commission for registration/renewal services. It appears that the amount of commission is dependent on factors, such as size of establishment, net worth, brand of CA/consultants, location of establishment, etc. The commission varies from INR 100 to INR5,000. According to stakeholder interactions, commission charged to establishments in Jaipur was higher as compared to commission charged to establishments outside Jaipur.

**Employees:** Large-sized establishments often employ skilled individuals on a full-time basis to fulfill registration and renewal formalities under the Act. Such individuals also perform other tasks, mostly related to computer/information technology. Average monthly salary for such individuals is in the range of approximately INR15,000-INR20,000. If all the relevant documents are available, not more than 30 minutes are required to fulfil the online registration/renewal process. Consequently, average cost for a large-sized establishment capable of employing a dedicated skill individual for fulfilling registration/renewal formalities under the Act is in the range of INR36-INR48. Smaller establishments which are not in a position to employ such dedicated individuals and do not possess the requisite basic computer skills/literacy need to rely on third parties like e-mitras/consultants, to fulfill registration/renewal formalities under the Act, who often charge significantly higher, as indicated earlier.<sup>43</sup>

The costs incurred for registration by establishments under different modes is set out in Table 10.

**Table 9: Costs Incurred for Registration by Establishments**

Mode	Cost per Application (INR)	Type of Establishment likely to Incur such Cost*
E-mitra	30-500	Small and medium
Consultant	100-5000	Small, medium and large
Employee	36-48	Large

\*Source: Stakeholder interactions

In addition to high monetary costs, it appears that awareness about registration under the Act and its process is lacking amongst employers in the State. Limited incentives for registration contribute to the total number of establishments registered under the Act remaining low. It was reported that ability to open a current account with a bank-based on registration certificate is the primary incentive for registration. The costs incurred by establishments appear to be disproportionately higher than the benefits expected from registration, especially for small and medium enterprises.

Further, stakeholders face the following problems while applying for registration under the Act.

- **Duplicity of information:** While information is required to be entered online, several forms are required to be filled manually, scanned and uploaded. This results in same information being entered multiple times, resulting in duplicity of efforts.
- **Size limitations:** Some documents which need to be uploaded, such as rent deeds cannot exceed a pre-determined size. This results in additional efforts.

<sup>43</sup> [http://www.labour.rajasthan.gov.in/Documents/Registrations\\_Renewal\\_Tutorial.pdf](http://www.labour.rajasthan.gov.in/Documents/Registrations_Renewal_Tutorial.pdf), Last accessed on 24 December 2017

- **No assistance in identification of incomplete application:** it appears that there is no mechanism to preview a filled form before final submission. In addition, applicants are not prompted by the system about submission of incomplete form/fields. Consequently, inspectors are required to inform applicants about sections which might have remained incomplete. This requires re-submission of the form by the applicants.
- **Sub-optimal infrastructure:** it was also felt that often, the time taken to upload relevant documents at the LDMS portal is excessive, perhaps owing to inability of the portal to handle burden of significantly higher number of applications at any particular time. The capacity of LDMS portal is tested specifically in months of December and January during a year, as all registrations expire on December 31 of a year and applications for renewal needs to be made within a month of such expiry. Robust Internet connectivity and optimal technical support are prerequisites to ensure registration and renewal through electronic mode. It was pointed out by stakeholders that the server capacity and bandwidth of LDMS portal should be periodically reviewed.

### Benefits

Despite direct and indirect costs involved, electronic procedure for registration has been preferred by the applicants over the previously used manual procedure as it is hassle free, easy, takes less time, and removes the possibility of misplacement of documents. In addition, the possibility of being duped by handing over of forged certificate by suspect intermediaries is reduced.

Applicants have the opportunity to provide feedback on the quality of LDMS portal, by filling an online feedback form. Pursuant to the Annual Report for the financial year 2016-17 of the Labour Department, Government of Rajasthan, around 65.5 percent of more than 3,000 feedbacks have rated the quality as 'extremely satisfied'. Out of 4,756 responses received by November 2017, more than 95 percent respondents were 'satisfied' with the quality of LDMS portal.

### **Impact on government**

#### Costs

The costs incurred by government in operationalising electronic procedure for registration could be one-time (capital), recurring (repair and maintenance) and salary costs.

One-time cost for LDMS portal was INR 1.46 crore. The activities included installation of LDMS portal, procurement of computers, printers, scanners, physical infrastructure, training and capacity building of labour inspectors and one-year maintenance. Capacity building included basic computer literacy courses and training on usage of LDMS. This cost was incurred by the government in 2014-15. In addition, total budgeted recurring cost for LDMS portal for November 2015-November 2018 was estimated to be INR3.91 crore, i.e. an annual average recurring cost of INR1.30 crore. The activities include repair of hardware, maintenance, procurement of UPS. A substantial portion of this cost has already been incurred. Subsequent to November 2018, upgradation of bandwidth and maintenance of LDMS is expected to be planned and budget is expected to be accordingly drawn.

It may be recalled that LDMS is utilised for registration/renewal under different labour legislations, including the Act. Thus, its cost may not be solely attributable to activities under the Act. Up to March 2018, 2,671,763 online transactions were carried out on LDMS. Average cost per transaction on LDMS for government was around INR17, as on March 2018.<sup>44</sup>

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<sup>44</sup> Assuming that total cost=total one-time cost (INR1.46 cr) + proportionate recurring cost [(INR 3.91 cr) \* 28/36] i.e. INR3.04 cr]

In the process of reviewing of application for registration and renewal, one Lower Divisional Clerk (LDC) is posted in a district who is required to forward the applications received to relevant labour inspector. Average annual remuneration of one labour inspector is around INR454,248 (INR3,7854 per month). As per stakeholder interactions, average time taken by a labour inspector to review one application for registration/renewal is 30 minutes. Consequently, the salary cost per application is around INR108. The Department of Labour, Government of Rajasthan, has 180 sanctioned positions for labour inspectors. Of this, 119 positions are filled. 94 positions were filled in 2017. Stakeholder interactions revealed that basic computer literacy was a pre-requisite for candidates thus the government was not required to invest resources in making labour inspectors computer literate. However, newly recruited inspectors are provided short trainings on LDMS and are required to learn on the job, with help from peers.

Applications of registration and renewal are reviewed on a computer. As per stakeholders' interactions, the cost incurred by government in procurement of one computer was approximately INR35,000. However, such computers are utilised for other functions of labour officers as well, such as generating inspections and filing inspection reports under different legislations including the Act.

Further, as indicated earlier, after the introduction of LDMS, the annual revenue generated by government through registration and renewal process has decreased from INR3.25 crore in 2014-15 to INR2.75 crore in 2016-17. This was less than revenue generated in 2012-13, which was around 2.79 crore. As compared to 2015-16, average loss of notional revenue for the government per approval in 2016-17 was INR 540.<sup>45</sup>

**Table 10: Estimated Key Costs to Government per Approval**

LDMS (as on March 2018)	INR 17
Salary of labour inspector	INR 108

Source: Author's analysis

### Benefits

The objective of government in promoting electronic registration was to make registration process easy, hassle free and convenient for the establishments. The growth in annual registrations indicates that significant progress has been made in achieving this objective, while some concerns remain. It was pointed out during stakeholder interactions that electronic system for registration and renewal has led to reduction in paper work, improvement in efficiency, and increase in transparency. It is also expected to facilitate the government in data analysis.

## 2.4 Scenario projection

Based on indicators in previous years/months, following scenarios may be projected with respect to establishments estimated to be registered under the Act during 2017-18.

**Projected scenario 1:** The CAGR of new registration certificates issued under the Act in the last 5 years is 22.31 percent. Should this trend continue, it is estimated that **34,979** establishments will register under the Act in 2017-18.

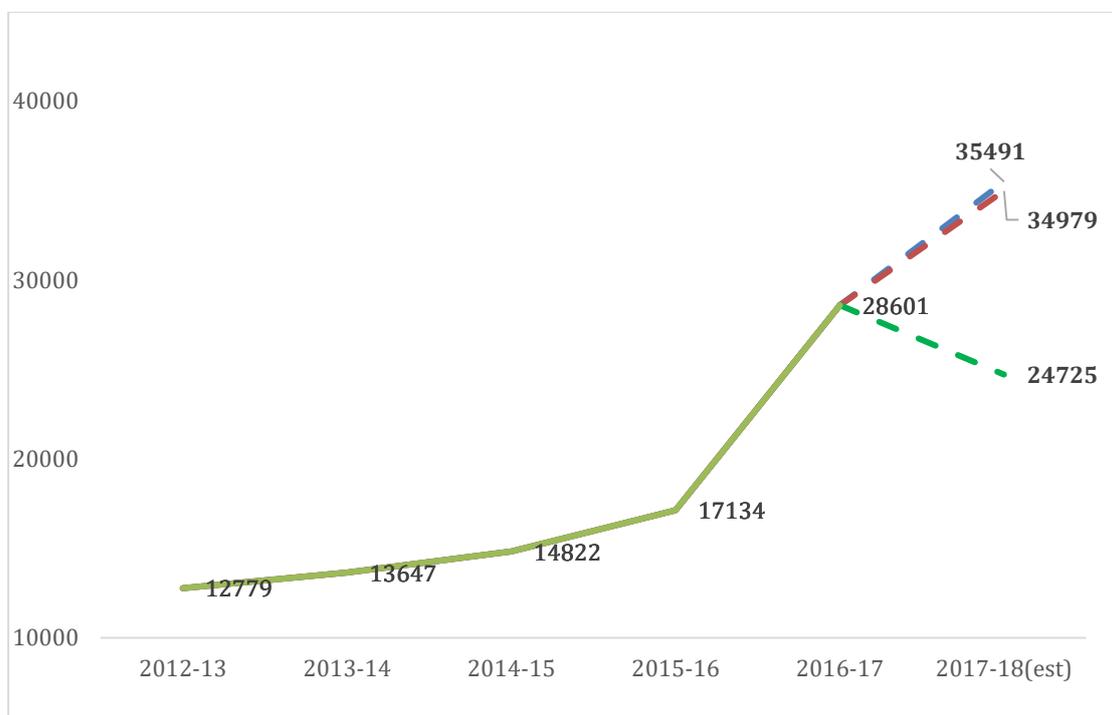
**Projected scenario 2:** The average number of new registrations per month from April 2015-December 2017 (33 months since introduction of LDMS) years is 2060.45. Assuming that

<sup>45</sup> INR 1333-793

average monthly new registrations in entire 2017-18 remain 2060.45, it is estimated that **24,725** establishments will be registered under the Act in 2017-18.

**Projected scenario 3:** The growth in the total new registrations under the Act has been erratic. While in 2015-16, 2312 new establishments were registered under the Act, in 2016-17, 11,467 new establishments were registered. Thus, the average growth in new registrations in these two years has been 6,889.5. Assuming that the average growth in registrations under the Act remains 6,889.5, total new registrations in 2017-2018 are estimated to be **35,491**.

**Figure 9: Projected Scenarios of New Registrations (2017-18)**



Source: Author's analysis

It appears that the government expects that the number of applications will increase in near future and thus it has recently recruited 94 labour inspectors. In addition, it has been reported that the Labour Department is planning to procure around 70 new computers to increase efficiency and manage the load of increasing applications.

## 2.5 Proposed amendment and intended objective

It appears that the government is cognisant of the risks which the electronic application process brings with itself (such as limited internet connectivity) and constraints it imposes on stakeholders (like high costs, among others, as discussed above). Thus, pursuant to the proposed amendment to Section 4(1) of the Act, it intends to re-introduce the physical mode of submitting applications, in addition to the electronic mode.

Section 4 of the Act is currently applicable to 115 locations in Rajasthan. These locations fall within different municipal areas in the State. Several municipal areas in the state are currently excluded from the operation of Section 4. Further, Section 4 is not applicable to non-municipal areas in the State. Interaction with government representatives revealed that government might be intending to expand the application of Section 4 to the areas in which it is not currently applicable. In such scenario, the option to apply for registration/renewal through electronic as well as physical mode (as proposed under the amendments) becomes essential as such areas

might not have adequate electricity and internet connectivity. Further, employers in such areas might not be adept with the Internet/online/electronic services. Thus, electronic mode will need to be gradually mandated in such areas, subsequent to awareness generation and capacity building initiatives.

Further, reinforcing the electronic mode of making application for registration and renewal through primary legislation might result in greater focus on addressing existing impediments to adoption of such mode.

**Table 11: Possible Motivations for Government to Amend Section 4(1) of the Act**

- |  |
|--|
| <ul style="list-style-type: none"><li>• Provide an economical alternative for establishments to register</li><li>• Expand geographic application of Section 4 to places with low internet awareness/access</li><li>• Address the concerns in electronic mode, by making it one of the possible modes of registration under the primary legislation</li></ul> |
|--|

*Source: Author's analysis*

## 2.6 Estimated impact of proposed amendment

This Section discusses how the costs and benefits incurred by establishments and government under the baseline/no change scenario are likely to change when the proposed amendments to Section 4(1) of the Act come into effect.

### **Estimated impact on establishments**

#### Costs

The proposed amendment provides an option to the establishments to opt either for electronic or physical mode for making applications under the Act. Establishments are likely to choose such mode which they perceive to be cost effective. However, costs, such as handling and safe-keeping of physical documents (which might not be typically perceived as costs) are likely to increase for establishments choosing to opt for physical mode.

As indicated earlier, using electronic mode of registration and renewal is expensive for small and medium enterprises that do not have internal capacity to complete the formalities and rely on third parties, such as e-mitra and consultants. Such establishments are less likely to use electronic mode of registration and may not outsource the registration/renewal formalities, thus saving the consultant fee, and reducing the cost of registration. Further, the cost to scan and upload relevant documents will be saved.

However, in such scenario, establishments will need to deploy internal resources to complete registration/renewal procedures through physical mode, and thus incur travel and opportunity cost. In addition, the requirement to deal with significant number of physical documents will increase and risk of misplacement of documents is likely to escalate. The transparency and accountability related benefits which electronic mode brings with it are likely to reduce in case physical mode is reintroduced.

**Table 12: Change in Costs to Establishments**

Costs under Baseline Scenario	Costs of Physical Mode of Application	Change in Costs
INR265 for third party commission <sup>46</sup>	INR200 for opportunity cost <sup>47</sup>	Saving of INR65
Higher possibility of submitting incorrect/incomplete application	Cost of handling and safe-keeping of physical documents	

Source: Author's analysis

Medium and large scale establishments which are using electronic mode in their daily business activities and compliance with other regulatory requirements<sup>48</sup> are likely to rely on electronic mode for registration and renewal under the Act thus are unlikely to face change in costs.

**Table 13: Likelihood of Opting Physical Mode**

Types of Establishments	Likelihood to Opt for Physical Mode
Small	High
Medium	Medium
Large	Low

Source: Author's analysis

### Benefits

In case the application of Section 4 of the Act is extended to new areas, establishments hitherto not eligible will have an opportunity to register under the Act. Their choice of mode of application will be contingent upon availability of internet connectivity and awareness/comfort level with use of electronic mode for registration and renewal. It is likely that such establishments will opt for physical mode of application.

As indicated earlier, speed, efficiency, transparency, are benefits of electronic mode of registration. Online platforms for company incorporation and registration are likely to make the processes faster and cheaper, and help such companies reap the benefits that come with formalisation. Also, literature suggests that electronic registration and online services substantially reduce the opportunities for bribery and other forms of corruption.<sup>49</sup>

However, such establishments opting for physical mode of registration are unlikely to reap such benefits. Such establishments are likely to value a physical proof of registration over aforementioned benefits. Further, under the physical mode, owing to the possibility of in-person interactions between employer and labour inspectors, the employers are likely to better understand the clarifications sought by inspectors and address the same, rather than relying on written communication.

<sup>46</sup>  $(30+500)/2 = \text{INR } 265$ , i.e. average application cost through online mode

<sup>47</sup> Assuming monthly salary of employee = INR 10,000 and half day is required for submitting application out of 25 working days

<sup>48</sup> For instance, the recently introduced goods and service tax requires relevant enterprises to use electronic mode for periodic submissions and interactions with government

<sup>49</sup> World Bank Group, *Doing Business 2015: Going Beyond Efficiency*, October 2014, available at: [www.doingbusiness.org/reports/global-reports/doing-business-2015](http://www.doingbusiness.org/reports/global-reports/doing-business-2015). However, the commission charged by intermediaries for processing applications through the online mode may exceed the limit prescribed.

**Table 14: Change in Benefits to Establishments Opting Physical Mode**

Benefits to Establishments likely to Reduce in Physical Mode	Benefits to Establishments likely to Increase in Physical Mode
<ul style="list-style-type: none"> <li>• Speed</li> <li>• Efficiency</li> <li>• Transparency</li> </ul>	<ul style="list-style-type: none"> <li>• Clear understanding of questions/clarifications sought by labour inspectors</li> <li>• Receipt of original physical documentation from the government</li> </ul>

Source: Author's analysis

**Estimated impact on government**

**Costs**

Given that the proposed amendments envisage submissions of applications through physical as well as electronic mode, it will be necessary for the Government to put in place necessary systems and processes to ensure receipt, timely review and optimal decision making on such applications. Physical applications will be required to be stored in a file cabinet. Assuming that a file cabinet with storage capacity of 1,000 applications is likely to cost around INR10,000<sup>50</sup>, per application storage cost comes to around INR10. Further, data related to such applications will need to be incorporated in electronic database.

Perhaps the government was aware of need to ensure availability of additional resources, thus had recruited 94 labour inspectors in 2017 and is in the process of procuring 70 computers. However, the government is still short of 69 labour inspectors, as compared to the sanctioned positions. As indicated earlier, as term of registration expires on December 31 of any particular year, the applications for renewals are significantly higher in December and January when compared to other periods of a year. Consequently, the systems and processes in place, both electronic and physical, must be efficient to handle such increased amount of pressure of renewals in select months.

**Table 15: Change in Costs to Government under Physical Mode**

Costs to Government likely to Reduce in Physical Mode	Costs to Establishments likely to Increase in Physical Mode
<ul style="list-style-type: none"> <li>• Higher potential of receiving correct application as clarifications will be provided in-person in real time</li> <li>• Reduction in average cost of reviewing application, owing to increase in total number of applications</li> </ul>	<ul style="list-style-type: none"> <li>• Handling and safe-keeping of physical documents, in a file cabinet likely to cost around INR10 per application</li> <li>• Reduction in transparency/accountability</li> </ul>

Source: Author's analysis

**Benefits**

As indicated earlier, the total number of applications for registration and renewal under the Act are likely to increase should the government introduce an option to make applications physically. This will be in line with government objective of increasing registrations under the Act. In addition, existence of physical mode will provide an opportunity to the government to

<sup>50</sup> For a range of file cabinets, see <https://www.pepperfry.com/furniture-office-furniture-office-storage-file-cabinets.html?order=price&dir=asc&p=1>

expand application of the Act in hitherto excluded areas, wherein availability and awareness about internet and electronic modes might be limited. This is likely to have a positive impact on overall revenue generated by the Government in terms of registration and renewal fees.

However, introduction of physical mode is likely to reduce the transparency, speed and efficiency inherent in the electronic mode. Physical mode will require in-person interactions between labour inspectors and employers and can potentially adversely impact accountability.

**Table 16: Change in Benefits to Government under Physical Mode**

<b>Benefits to Government likely to Reduce in Physical Mode</b>	<b>Benefits to Government likely to Increase in Physical Mode</b>
<ul style="list-style-type: none"> <li>• Speed</li> <li>• Efficiency</li> <li>• Transparency</li> <li>• Accountability</li> </ul>	<ul style="list-style-type: none"> <li>• Increase in number of applications</li> <li>• Increase in government revenue owing to increase in number of applications for registrations and renewals</li> </ul>

*Source: Author's analysis*

# Chapter 3: Grant of Registration

## 3.1 Regulatory framework

Section 4(2) of the Act states that on the receipt of statement and fees, the labour inspector on being satisfied about the accuracy of the statement, is required to register the establishment in the register of establishments. After scrutiny of application, the labour inspector is required to intimate the employers about the discrepancy, if any, in the application or issue an instruction for the deposit of the fee amount. The registration process is complete after the confirmation of payment receipt by the government. The Rules provide that the labour inspector is required to register the establishment in appropriate part of the Register of Establishment in Form No. 2 and is required to issue a registration certificate (electronic) in Form No. 3 to the employer. Under the Act, the registration process is required to be completed within 30 days of receipt of application.

However, following the recommendations by the Department of Industrial Policy and Promotion (DIPP, Government of India, under the Business Reform Action Plan-2017, the Rajasthan Labour Department issued a Circular dated August 23, 2017 to eliminate the requirement of inspection prior to registration under the Act. The objective was to ensure that the registration is granted within one day from the date of application. In this regard, the circular mentioned that to make compliance of labour laws simpler henceforth registration and renewal under the Act shall be completed in a single day after application has been received. In addition, a circular dated October 24, 2017 clarified that at the time of application for registration by establishments under the Act, the Department shall not undertake any inspection prior to registration.

## 3.2 Baseline/no change scenario

A significant number of employers are not aware about the timeframe for grant of registration. Further, the registration process is rarely completed within one day. The employers or their representatives are required to follow up physically with the relevant labour inspectors at the divisional offices. The entire process of following up and receipt of registration/renewal certificate takes around seven-eight days, on an average. However, interactions with stakeholders did not reveal emergence of any trend with respect to grant of registration/renewal certificate and the time taken for registration under the Act appears to range between 1-30 days.

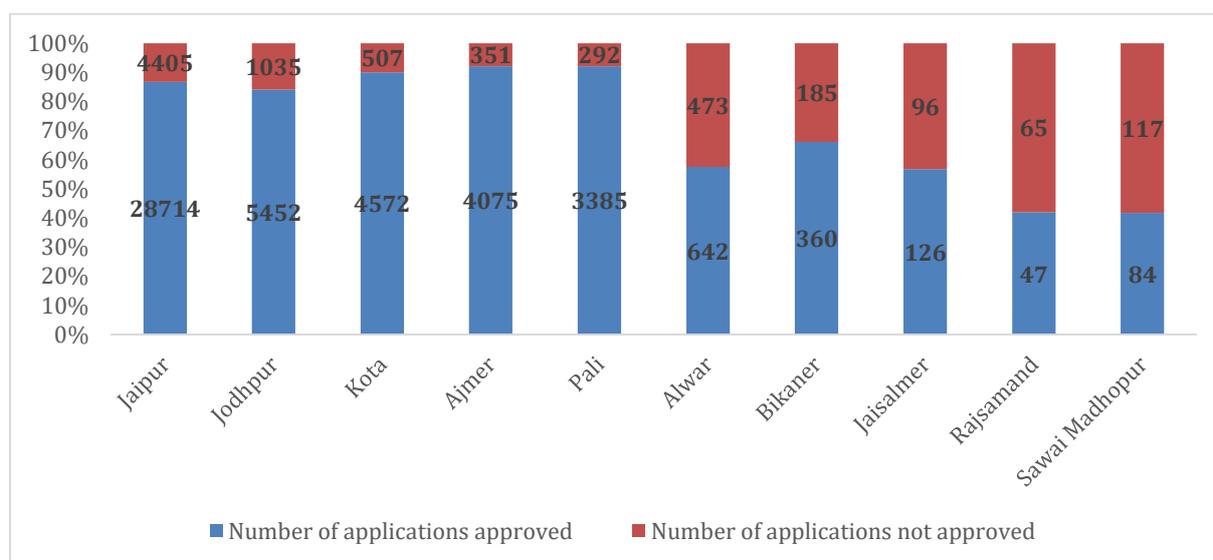
**Table 17: Time period for Disposal of Application from the Date of Receipt**

As Prescribed under Act	As Prescribed under Government Circular	Typical Time Taken as Revealed under Stakeholder Interactions
30 days	1 day	7-8 days

Per stakeholder interactions, the government prescription of disposing of applications within a day has put immense pressure on labour inspectors. As a result, at times the applications are disposed of by labour inspectors with limited application of mind. This is indicated in Figure 10 wherein certain districts generate significantly higher number of applications when compared with others. This leaves labour inspectors in high application receiving districts with limited time to process the applications. This perhaps results in high 'approval' rate. Conversely,

districts getting lesser number of applications allows labour inspectors more time to review applications, resulting in high proportion of applications remaining ‘not approved’.<sup>51</sup>

**Figure 10: Processing of Applications**



Source: Data obtained from Rajasthan Labour Department from 3/03/2015 12:00:00 AM to 26/12/ 2017 12:00:00 AM

For instance, non-approval rate in Jaipur was 13.30 percent, as against the non-approval rate in Sawai Madhopur as high as 58.21 percent. Jaipur received more than 30,000 applications whereas Sawai Madhopur received around 200 applications.

Estimates also suggest that high application receiving divisions like Jodhpur and Ajmer also score high in average applications reviewed per computer, when compared with low applications receiving divisions. For instance, average applications reviewed per computer<sup>52</sup> in Jodhpur and Ajmer divisions were 1608 and 1099 respectively, as against average applications reviewed per computer in Bharatpur and Bikaner being 178 and 237.

Higher approval rate in districts with higher applications may also indicate greater awareness about the registration process under the Act. Similarly, lower approval rate in districts with less number of applications might be as a result of low awareness about the process or documentation required for registration.

Further, a circular issued by the Government of Rajasthan on May 27, 2016 provides that each labour inspector is required to inspect establishments registered under labour laws for 8 days in a month and the number of inspections carried out per day is three amounting to a total of 24 inspections in a month. Inspections specific to the Act are required to be 10. Consequently, the inspectors are left with only around 14 working days in a month to complete the registration formalities under the Act, other legislations, and other tasks which may be assigned to labour inspectors.

<sup>51</sup> Applications ‘not approved’ include clarification sought, application pending or rejected

<sup>52</sup> Assuming availability of nine computers per division (as indicated in stakeholder consultations)

### 3.3 Impact of baseline/no change scenario

This section discusses key costs and benefits incurred by establishments and the Government under the baseline/no change scenario.

#### **Impact on establishments**

##### Costs

Owing to the pressure of disposing of applications within a day, at times the applications are disposed of by labour inspectors with limited application of mind. This might result in rejection of applications or raising of objections/clarifications with limited justification by labour inspectors. Applications might be rejected by mistake or owing to limited technical competence of the labour inspector, who is working under pressure. Approval of applications with incomplete/incorrect details or rejection/raising clarifications/objections with limited justification may adversely impact interests of establishments.

Further, establishments are required to regularly follow-up with the government in order to ensure that applications are processed within a reasonable time frame. Assuming that around a half day is required to travel and follow-up with government and that average salary of employee undertaking this task is INR10,000, the average employee cost to establishment for following up with government on processing of an application is likely to be around INR200.<sup>53</sup>

Rejection of application or issuance of objections/clarifications may adversely impact establishments. The employers may be required to correct/modify the application. E-mitras are authorised to charge INR20 for correction/modification of applications. In scenario wherein applications are resubmitted, establishments may need to bear costs comparable to those incurred while making original applications.

##### Benefits

As indicated earlier, labour inspectors typically take seven-eight days to process applications under the Act, much lesser than statutory prescribed limit of 30 days. This saves time of applicants.

**Table 18: Impact on Establishments in Existing Application Processing Mechanisms**

<b>Costs</b>	<b>Benefits</b>
<ul style="list-style-type: none"><li>• Delay owing to issuance of clarifications/ rejection of genuine application</li><li>• Cost of follow up per application is INR200</li><li>• Cost of correction/modification/re-application.</li></ul>	<ul style="list-style-type: none"><li>• Processing of applications in a time much lesser than prescribed in the primary legislation</li></ul>

#### **Impact on government**

##### Costs

Interactions with government representatives revealed that it is difficult for the labours inspectors to provide response on applications for registration/renewal in a single day. Further, labour inspectors are required to deal with the applications on first-in-first-out basis, i.e. applications submitted first are required to be disposed of prior to the applications received later. This mechanism takes away the discretion to prioritise the applications, which the labour inspectors had under the manual mode of processing applications.

<sup>53</sup> Per day employee cost = 10,000/ 25 = INR 400. Consequently, half day cost is estimated to be INR 200.

### Benefits

It appears that the requirement to dispose of applications within a day has induced labour inspectors to improve their speed and efficiency. As a result, labour inspectors are able to dispose of applications within seven-eight days as against statutory prescribed time frame of 30 days. This has plausibly limited the pendency with the labour department.

**Table 19: Impact on Government in Existing Application Processing Mechanisms**

<b>Potential Impact on Government under the Baseline/No Change Scenario</b>	
<b>Costs</b>	<b>Benefits</b>
<ul style="list-style-type: none"><li>• Working under pressure</li><li>• Delay owing to issuance of clarifications/ rejection of genuine applications</li></ul>	<ul style="list-style-type: none"><li>• Increase in efficiency and productivity</li><li>• Low pendency</li></ul>

### **3.4 Proposed amendment and intended objective**

The proposed amendment to Section 4(2) of the Act provides that if no adverse order is passed in regard to registration of establishment by the inspector within a period of 30 days from the date of receipt of statement and fees, the establishment shall be deemed to have been registered. Consequently, the inspector is required to enter the establishment in the register of establishments and issue a registration certificate to the employer.

It appears that the objective to allow deemed registration is to facilitate the employer to continue the business activities without interruption, even in case of delay in decision making by labour inspector. This is in accordance with the initiatives on EoDB, as launched by the central and the state governments. Another objective of allowing deemed registration could be to put pressure on labour inspectors to act in a timely manner, and avoid delays in matters of registration and renewal.

### **3.5 Estimated impact of proposed amendment**

This section discusses how the costs and benefits incurred by establishments and government under the baseline/no change scenario are likely to change when the proposed amendment to Section 4(2) of the Act come into effect.

#### **Estimated impact on establishments**

##### Costs

Literature in relation to procedures, wherein the government is required to raise objections/comments within a specified timeframe, failing which the applicant is deemed to get a go ahead and highlight certain concerns with such process. More often than not, objections/comments are raised by the government near to the deadline of raising objections/comments, subsequent to which the timeline restarts.<sup>54</sup> Consequently, it appears that the provision for deemed approvals may not always achieve its objective.

Further, at present, the registration process is typically completed in seven-eight days, owing to the pressure created by one-day registration requirement. In case the total time period available with the inspectors is extended to 30 days, a delay from the current standards may be

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<sup>54</sup> CUTS, Regulatory Impact Assessment in Indian Electricity Generation Sector, 2015, [http://www.cuts-cier.org/ADB-RIA/pdf/Regulatory\\_Impact\\_Assessment\\_in\\_Indian\\_Electricity\\_Generation\\_Sector.pdf](http://www.cuts-cier.org/ADB-RIA/pdf/Regulatory_Impact_Assessment_in_Indian_Electricity_Generation_Sector.pdf)

observed. Also, one of the key objectives to obtain registration under the Act is opening current account with banks. A deemed registration without official endorsement from the government may not help in achieving such purpose.<sup>55</sup> Further, grant of deemed registration to establishments may result in legal issues for such establishments which are not found fit for registration or operating as establishments at a later stage.<sup>56</sup>

### Benefits

As indicated earlier, in order to obtain registration certificate under the Act, employers are often required to follow-up with relevant labour inspectors. In case a provision for deemed registration is operationalised, the need to follow-up is expected to be eliminated and the employers will have an opportunity to focus on their businesses with a sense of certainty, and save significant opportunity costs, which have been estimated to be around INR200 per application. Also, the costs hitherto incurred by establishments in correction/modification/ re-application of applications will be saved.

### **Estimated impact on government**

#### Costs

A deemed approval provision may result in ineligible entities getting registration certificate, which may cause administrative complications for the government. In addition, the government may need to invest in internal 'alert' mechanism which informs the labour inspectors of the upcoming deadline for processing of application.

#### Benefits

A 30-day period of consideration of applications may result in labour inspectors getting adequate time to review applications. As a result, labour inspectors are less likely to make errors while disposing of applications. Further, the labour inspectors will not be required to take any further action in case they find application to be eligible for grant of approval. Upon expiry of the 30-day period, the applicant will automatically be granted deemed approval. This is likely to reduce the pressure on labour inspectors.

**Table 20; Estimated Impact of Deemed Registration Process**

<b>Stakeholder</b>	<b>Cost</b>	<b>Benefit</b>
Establishments	<ul style="list-style-type: none"> <li>• Delays from current standards and owing to possibility of raising of objections/comments near 30-day deadline.</li> <li>• Inability to use deemed registration for any other purpose like opening current account with banks.</li> </ul>	<ul style="list-style-type: none"> <li>• No requirement to follow up with government after submission of application, thus saving INR200 per application</li> <li>• Certainty and reduction in opportunity cost.</li> <li>• Savings of correction/modification/re-</li> </ul>

<sup>55</sup> Under the Single Window Clearance System of Uttarakhand, in case, the in principle approval is not granted within the stipulated time, it is deemed to be approved. However, the 'deemed approval' is not considered as a valid approval by various agencies, such as banks at the time of issuing credits/loans. Thus, the industry players are still compelled to visit respective departments to secure proof of approval. See, [http://www.cuts-ccier.org/STATE-COMP/pdf/Ease\\_of\\_Doing\\_Business\\_Uttarakhand\\_Briefing\\_Paper.pdf](http://www.cuts-ccier.org/STATE-COMP/pdf/Ease_of_Doing_Business_Uttarakhand_Briefing_Paper.pdf)

<sup>56</sup> [http://dipp.gov.in/sites/default/files/improve\\_BusinessEnvironment\\_06May2014\\_0.pdf](http://dipp.gov.in/sites/default/files/improve_BusinessEnvironment_06May2014_0.pdf)

Stakeholder	Cost	Benefit
	<ul style="list-style-type: none"> <li>• Grant of registration to ineligible entities</li> </ul>	<p>application cost as such instances are likely to reduce</p>
Government	<ul style="list-style-type: none"> <li>• Grant of registration to ineligible entities</li> </ul>	<ul style="list-style-type: none"> <li>• Less likely to make errors</li> <li>• Reduction in pressure</li> </ul>

*Source: Author's analysis*

# Chapter 4: Maintenance of Records and Registers

## 4.1 Regulatory framework

Section 36 of the Act provides that employers of establishments are required to maintain such registers and records as may be prescribed. The registers and records include notice of weekly holidays, leave wages register, leave book, muster roll, register of employment, register of daily hours of work, record of work, and notice of weekly holidays.

All such registers and records are required to be kept on the premises of the establishment to which they relate to. Further, a notification dated May 27, 2015 issued by the Department of Labour states that following the legal recognition of electronic records and use of electronic records and digital signatures in government and its agencies under the Information Technology Act, 2000, the employers may keep registers and records in electronic form as far as feasible under the Act.<sup>57</sup>

In addition, section 30 of the Act empowers the labour inspector to enter any establishment and examine registers, records or notices as may be prescribed under the Act and take relevant evidence in this regard from persons as may be deemed necessary by the inspector. Section 32 of the Act requires employer to produce all registers, records and notices to be maintained under the Act, on demand by inspector.

## 4.2 Baseline/ no change scenario

Interactions with stakeholders revealed that establishments which are not in a position to employ dedicated employees for functions like human resource, administration or finance and accounts are less likely to maintain records and registers prescribed under the Act. Further, limited disincentives in case of non-maintenance of records and registers contribute to the total number of establishments maintaining records and registers remaining low.<sup>58</sup> However, the need to meet the demand of auditors may motivate some establishments to maintain record and registers.

Establishments which do maintain records and registers may do so in diverse manners, as mentioned below:

**Physical records:** Records and registers are often maintained by establishments in hard copy (in form of record books) in formats as prescribed under the Rules. In order to justify divergence from the formats prescribed, establishments typically attach additional documents (such as salary slips) to the registers, to showcase compliance.

**Partial electronic records:** In some establishments, some records and registers are maintained in hard copy while others are maintained electronically. In order to electronically maintain

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<sup>57</sup> The notification is available at <http://www.labour.rajasthan.gov.in/Notification.aspx>, Last accessed on 24 December 2017

<sup>58</sup> Section 33 of the Act provides that the fine for non-maintenance of records and registers or non-furnishing of such records or registers to inspectors may extend up to INR 50.

records, establishments may procure electronic formats of records or may create electronic formats based on formats provided under the Rules.

**Electronic records:** Record of attendance is likely to be maintained electronically, as it is linked with biometric attendance system. Establishments which have multiple branches across cities usually have a centralised mechanism to maintain records and registers electronically, thus savings on costs and efforts. Such establishments are likely to use specialised software (such as Wyse) for maintaining records of wages, hours of work, leave, among others.

Interaction with stakeholders revealed that labour inspectors typically request hard copies from employers when they suspect the information shared by employers. Employers, at times, question such a demand by inspector as there is currently no clear provision authorising inspectors to demand hard copies of records which are maintained electronically.

Further, in case the records or registers are not maintained by the establishment, or if erroneous records or registers are maintained, the inspectors usually issue warnings to establishments to maintain proper records within seven to 15 days. If employers fail to take corrective action within the prescribed time frame, the inspectors usually file a challan under Section 33 of the Act.

### 4.3 Impact of baseline/no change scenario

The baseline/no change scenario may impose cost and benefits on different stakeholders i.e. establishments, government and employees.

#### Impact on establishments

##### Costs

Costs incurred by establishments to maintain record and registers could include one-time infrastructure cost and recurring employee salary and other recurring costs, as indicated below.

**One time (Infrastructure) costs:** In case of electronic record maintenance, establishments which have multiple branches across cities usually have centralised software to maintain records and registers. The cost of such software is approximately INR1,50,000. In case records are maintained physically, dedicated infrastructure is required to be procured for safekeeping of records and registers of around eight years (100 months). A file cabinet with a storage capacity of record books/registers of similar period is likely to cost around INR10,000.

**Recurring costs:** Establishments that employ dedicated individuals for non-core functions like accounts, administration, record and register maintenance under different legislations pay such individuals a monthly remuneration in the range of INR15,000-20,000. Interactions with employers manually maintaining records and registers revealed that around three-four hours in a month are required to maintain relevant records and registers under different legislations, including the Act. This translates into monthly employee cost of record and register maintenance of approximately INR350.<sup>59</sup> Large establishments also appoint specialised consultants (like Teamlease, KPMG) to check the compliance with register related requirements every month. The cost to appoint such specialised consultants is approximately INR12,000 per month. Such consultants review records and registers maintained under different legislations, including the Act. Thus, the cost may not be exclusively attributable to compliance under the Act. Assuming that consultants devote a tenth of their time for reviewing records and registers under the Act, the average monthly cost is estimated to be around INR1200. Records and

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<sup>59</sup> Per month man hours=200 hours (25 working days \* 8 hours per day). Per hour employee cost = Rs87.5 (Rs17500 (average)/ 200 hours). Employee cost for 4 hours=INR350 (INR87.5 \* 4 hours)

registers may be maintained either manually or electronically, depending on the practice of the establishment.

**Other recurring costs:** Around INR1,000 per month is spent on print outs in case of electronic records and stationery in case of physical records. Such print outs/stationary relate to requirements under different legislations, including the Act. Thus, the cost may not be exclusively attributable to compliance under the Act.

**Table 21 Costs to One Establishment for Record Maintenance**

Cost	Physical Mode	Electronic Mode
Monthly infrastructure costs	Infrastructure for safekeeping of records and registers: INR10,000 for 100 months i.e. INR100 per month	Software for maintaining record and registers: INR 1,50,000 for 100 months i.e. INR 1,500 per month
Monthly Employee/consultant cost	INR350- INR1200 i.e. INR775 (average)	INR350-INR1200 i.e. INR775 (average)
Monthly stationary cost	INR1000	INR1000
Total estimated monthly cost	INR1875	INR3275
Estimated average monthly cost	INR2575	

Source: Author's analysis

### Benefits

The prevailing regulatory scenario provides a freedom to the establishments to maintain records and registers in the manner they deem fit. This potentially incentivises establishments to maintain records and registers. While the labour inspectors are authorised to inspect record and registers, they are most likely to inspect the records in the format maintained by the establishments.

### Impact on government

#### Costs

Interaction with government representatives revealed that the approximate time taken by labour inspectors for inspection of one establishment under the Act is three hours. This includes average time taken for travel, inspection of records and preparation of inspection report. As indicated earlier, average monthly salary of labour inspectors is INR37,854. Consequently, average cost incurred by government for inspection of one establishment is approximately INR645.<sup>60</sup>

In addition, if the time taken for inspection (inclusive of travel) is less than 12 hours, then the inspector is eligible to obtain reimbursement of travel expenses. In case the time taken exceeds 12 hours, the inspectors are eligible to obtain reimbursement of travel expenses and dearness allowance up to INR500.

#### Benefits

The labour inspectors are able to physically verify the completeness and veracity of records and registers maintained by the establishments, and provide instance feedback to establishments.

<sup>60</sup> Per hour employee cost = INR 37854 / 176 hours (22 working days \* 8 working hours per day) = INR215.07. Employee cost for 3 hours = INR215.07 \* 3 = INR645.24.

### **Impact on employees**

#### **Costs**

Electronic records may be considered more susceptible to change, when compared with physical records. Also, employers may refuse to share extracts of such records in hard copies with labour inspectors. This has the potential to adversely impact labour welfare.

#### **Benefits**

The cost effective option to electronically maintain records is likely to nudge establishments to maintain records and registers. This will make it easier for labour inspectors to verify compliance with relevant regulatory requirements, thus benefiting employees.

## **4.4 Proposed amendment and intended objective**

The proposed amendment to the Act introduces a new Sub-section to Section 36, which provides for maintenance of records and registers by establishments either physically or electronically. It is provided that if the record and register is maintained electronically, then a duly signed hard copy of such extracts of records and registers may be required to be furnished to the inspector during inspection.

The proposed amendment appears to serve three objectives. First, it reinforces existing practice prescribed by executive order through primary legislation, thus providing it greater legitimacy and importance. Second, it adopts the recommendations made in the Model Bill, which has similar provisions with respect to maintenance of records and registers and furnishing of extracts of records of records and registers to labour inspectors. Third, it provides greater clarity and certainty about rights of labour inspectors to collect relevant extracts or records and registers. This is perhaps perceived to reduce the possibility of tampering with records and registers electronically maintained.

## **4.5 Estimated impact of proposed amendment**

The following sections highlight changes in costs and benefits as a result of the proposed amendment on relevant stakeholders, i.e. establishments, government and employees.

### **Impact on establishments**

#### **Costs**

It appears that the provision of furnishing hard copy of extracts of records/registers to inspectors might put an additional compliance cost on the employers. In case of an establishment wherein records/registers are maintained electronically, the need to produce hard copies will require an access to printer, which might not have been necessary in baseline scenario. An e-mitra typically charges INR10 for print out of one-pager registration certificate. Consequently, it may be assumed that one page of print out from an external source is likely to cost INR10. Further, since an inspector is authorised to use discretion (without any consequent need for justification) to require employers to furnish hard copies, such use of discretion could at times result into unjustifiable requests.

#### **Benefits**

The proposed amendments are expected to promote electronic maintenance of records and registers and facilitate EoDB. Given that a reference of electronic mode is being made in the primary law, the government is expected to take necessary steps to address existing impediments in this regard.

### **Impact on government**

#### **Costs**

Implementation of proposed amendment is likely to increase the instances wherein the labour inspectors demand extract of electronic records and registers in hard copy. This will require the government to create adequate space to store and safe-keep such extracts. Assuming that the cost of a file storage cabinet with storage capacity of 5,000 two-pager extracts is around INR10,000, the storage cost per two-pager extract is expected to be INR2.

#### **Benefits**

As indicated earlier, interactions with stakeholders revealed that at present, hard copies of extracts or records and registers is requested from employers when the inspector suspects the information shared by employers. Employers, at times, question such a demand by the inspector as there is currently no provision authorising inspectors to demand hard copies of records which are maintained electronically. Thus, if the proposed amendment is operationalised, the inspectors will be better positioned to seek such extracts in the form of hard copies from an employer and check the validity of information received by them.

### **Impact on employees**

#### **Costs**

The requirement to arrange for hard copy extracts of records and registers maintained in soft copy, if prohibitively expensive, may dissuade employers from maintaining records and registers. This may adversely impact interests of employees.

#### **Benefits**

Given that the proposed amendments will oblige employers to furnish hard copy extracts of electronic records maintained, the possibility to tamper with records may reduce, thus benefitting employees.

# Chapter 5: Closing of Establishment

## 5.1 Regulatory framework

Section 6 of the Act provides that an employer shall, within 10 days of it closing an establishment, notify to the inspector in writing of such closure. The inspector, shall, on receiving the information and being satisfied about its correctness, remove such establishment from the register of establishments and cancel the registration certificate.

## 5.2 Baseline/no change scenario

As per stakeholder interactions, employers do not generally communicate to the inspectors on closing their establishments. This perhaps owes to lack of awareness of such provision, limited incentives to comply, and limited disincentives in case of non-compliance with the provision.<sup>61</sup> Further, employers are often not sure if the establishments are being closed permanently or for a limited time period.

Employers who do inform inspectors about the closure of their establishments may do so in different ways. At present, both offline (through letter or in-person) and online (through email) modes are used by employers to notify the inspector regarding the closing of an establishment. Following the notification by an employer, the registration certificate of an establishment is cancelled. When an employer notifies through email, the inspector reverts over email itself and informs the employer about the cancellation of registration. If the employer informs verbally/in person, then information about cancellation of registration certificate is given verbally. In cases where an employer has an LDMS account, the same becomes non-operational, once the registration certificate is cancelled.

At present, despite an inspector getting information about the closure of an establishment through reasonably reliable sources (other than notification by employer), the inspector is not in a position to remove the details of an establishment from the register of establishment.

## 5.3 Impact of baseline/no change scenario

The sections below assess the costs and benefits incurred by establishments and government in the baseline/ no change scenario.

### **Impact on establishments**

#### Costs

Establishments are required to incur communication cost (in term of travel cost, publication cost, cost to use technology, etc.) and opportunity cost in order to communicate closure of establishments to the government. Assuming that around a half day is required to travel and communicate the closure to government and that average salary of employee undertaking this task is INR10,000, the employee cost to establishment for intimating closure is likely to be around INR200.<sup>62</sup>

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<sup>61</sup> Section 33 of the Act provisions that non-intimation about closure of establishment to the inspector within a period of 10 days attracts a fine which may extend up to INR 500.

<sup>62</sup> Supra Note 53

Further, stakeholder interactions indicated that the timeframe of 10 days within which such intimation has to be made appears to be insufficient for an employer to decide upon permanent closure of one's business. There could be instances wherein an employer might decide to re-open the establishment after a substantial period of time (more than 10 days), after re-working the business plan. It could therefore be induced that there are limited incentives to comply and greater incentives to not comply with the said provision.

#### Benefits

A timely intimation of closure of establishment by the employer is likely to result in correction of official records and may prevent employer from becoming subject to any liability/penalty in future, with respect to compliances under the Act.

#### **Impact on government**

##### Costs

As indicated above, employers do not generally inform the inspectors about the closure of establishments. Further, despite an inspector being aware about the closure of establishments from reasonably reliable sources other than the employers themselves, they are not in a position to cancel the registration on *suo moto* basis. This results in maintenance of incorrect records in register of establishments.

Presumably, inspectors need to follow-up with the employers to validate the information regarding the status of establishment's closure. It is reasonable to assume that this imposes cost (time cost and communication cost) on the government.

##### Benefits

The requirement to remove details of an establishment from the register of establishments only upon intimation from employer facilitates certainty about status of establishments. It ensures that only genuinely 'closed' establishments are removed from the register of establishments.

## **5.4 Proposed amendment and intended objective**

The proposed amendment to the Act provides that where an inspector is satisfied on the basis of reliable information that an establishment has been closed and the employer has failed to notify within the period of ten days about such closure, the inspector may remove such establishment from the register of establishments and cancel the registration certificate.

It appears that the intent of the government in introducing the proposed amendment is to reduce the burden imposed on employers to communicate closure of establishments. At the same time, the amendment intends to ensure that register of establishments remains up to date thus allows labour inspector to make changes to the register subject to satisfaction based on reliable information.

## **5.5 Estimated impact of proposed amendments**

The sections below estimate the changes in costs and benefits incurred by establishments and the government owing to the proposed amendments.

#### **Impact on establishments**

##### Costs

It was highlighted during stakeholder interactions that labour inspectors find it difficult to determine whether an establishment has been closed or it has been moved to a different location. Further, it is difficult to ascertain if the establishment is closed temporarily or on

permanent basis. Consequently, *suo moto* cancellation of registration by an inspector on receiving incorrect information, could lead to hassle for an employer. This could add complexities for an employer, for availing auxiliary benefits associated with registration.

#### Benefits

It is reasonable to assume that if the proposed amendment is operationalised, the employer would avoid the compliance cost associated to notifying the labour inspector, about closure of establishment, thus saving them around INR200. This is unlikely to subject the employers to additional risk as labour inspectors will have the authority to verify the closure from reliable sources and cancel the registration.

In addition, as mentioned above, one of the primary objectives for an employer to opt for registration under the Act is associated to availing auxiliary benefits, such as opening of a current account with banks. Therefore, in case of *suo moto* cancellation of registration by an inspector, it may be presumed that the government may notify other government agencies of such cancellation. Consequently, the costs typically incurred by employers in communicating the closure of establishment to different agencies and consequent surrender of auxiliary benefits could also be avoided.

#### **Impact on government**

##### Costs

In order to verify closure of establishment from reliable sources, the labour inspectors are likely to incur additional costs. This includes cost to identify and record reliable information, and safekeeping of rationale to cancel the registration. In addition, in case of alleged incorrect cancellation, labour inspectors will be required to deal with relevant grievances and complaints.

Further, while the labour inspector's discretion is dependent upon receiving 'reliable information', it is difficult to determine as to what constitutes such information. There are no indicators to help labour inspector ascertain what information constitute 'reliable'. Such uncertainty may fuel disputes and grievances. Assuming that half working day will be required by labour inspector to identify and record reliable information and cancel the registration, the average cost is estimated to be approximately INR860.<sup>63</sup>

##### Benefits

The adoption of proposed amendment would facilitate the government in maintaining records with updated information. The inspectors would not have to rely much on an employer's intimation regarding closure, or do follow ups. Inspectors could use their discretionary power to cancel the registration based on reliable information. Therefore, the costs associated with following up with employers could be avoided. Further, the proposed amendment is expected to reduce the costs associated with going for inspections of establishments which have been closed.

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<sup>63</sup> Per hour employee cost = Rs. 37854/ 176 hours (22 working days \* 8 working hours per day) = Rs. 215.07. Employee cost for 4 hours = Rs. 215.07 \* 4 = Rs. 860.28.

# Chapter 6: Extra Wages for Overtime Work

## 6.1 Regulatory framework

Section 8 of the Act recognises that that an employee may work in any establishment for more than nine hours in any day or more than 48 hours in a week. In such situations, the employee will, in respect of such overtime work, be entitled to wages at the rate **of one and a half times the ordinary rate** of wages.

Rule 26 of the Rajasthan Minimum Wages Rules 1959 (RMW Rules)<sup>64</sup> provides that when a worker works in an scheduled employment for more than nine hours on any day or for more than 48 hours in any week, he shall, in respect of overtime work, entitled to wages: (a) in the case of employment in agriculture, at one and a half time the ordinary rate of wages; and (b) in the case of any other scheduled employment, at **double the ordinary rate** of wages. Employment in establishments is recognised as scheduled employment.

Consequently, there appears to be inconsistency between the Act and the RMW Rules. While the former provides overtime wages at 1.5 times the ordinary rate, the latter prescribes this rate to be double. Interactions with stakeholders revealed that the possible reason for inconsistency could be the nature of work in establishments. Despite an establishment being open during normal working hours, employees in shops/consumer facing establishments are likely to be engaged only when there is customer footfall. Consequently, employees are less likely to be overworked despite working beyond normal working hours, unlike in other avenues of employment.

Pursuant to a circular dated October 27, 2015 issued by the Rajasthan Labour Department, the inspectors are authorised to record statements of workers at establishments with respect to payment of less wages, gratuity, late payment, unauthorised deduction, etc. Inspectors are also authorised to obtain copy of the registers and records, so that a claim may be filed before the competent authority in such cases.

## 6.2 Baseline/no change scenario

Interactions with stakeholders revealed that awareness with respect to payment of overtime wages among employees of establishments is limited. In addition, employers at smaller establishments are less likely to be aware of the requirement to pay overtime wages. In case awareness exists about the need to pay overtime wages, there is lack of clarity on overtime working hours and rate of overtime wages.

The ordinary wage rate and ordinary working hours are determined by mutual understanding or industry practice. For instance, in case employees end up working for some time (such as, around an hour) beyond ordinary working hours while dealing with customers at a shop/customer facing establishment, they are usually not paid overtime wages.

Interactions with stakeholders also revealed that some medium and large sized establishments are likely to pay overtime wages. At times, overtime wages at ordinary wage rate are paid to employees. Permanent employees are likely to be paid overtime wage at double the rate of ordinary wage rate, as prescribed under the Regulations on Minimum Wages (RMW) Rules.

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<sup>64</sup> <http://www.labour.rajasthan.gov.in/ActsAndRules.aspx>, Last accessed on December 24, 2017

Further, establishments like hotels and hospitals, which are usually open for significantly longer durations, have pre-determined work-shifts for employees (such as, work shifts for six hours or eight hours). Consequently, employees are typically not required to work beyond their prescribed work-shifts.

### 6.3 Impact of baseline/no change scenario

The sections below discuss costs and benefits incurred under the baseline/no change scenario by relevant stakeholders i.e. establishments and employees.

#### ***Impact on establishments***

##### Costs

The requirement to pay overtime wages increases the employee costs of establishments. To the extent employers require employees to work beyond ordinary working hours but do not pay overtime wages, they run the risk of non-compliance with the applicable legislations, and may attract penal action. For instance, an employee receiving INR10,000 per month (INR50 per hour) is likely to receive INR75 (at the rate of one and a half times the ordinary wage rate) for working every overtime hour.

Even when employers pay overtime wages at the rate of one and a half times of ordinary wage rate, they run the risk of non-compliance with the RMW Rules, owing to inconsistency between the Act and the RMW Rules.

##### Benefits

Payment of overtime wage is likely to motivate employees to perform better which in turn can benefit establishment.

#### ***Impact on employees***

##### Costs

To the extent establishments are unable to pay overtime wages, employees are likely to be adversely impacted. At times, in order to avoid burden of overtime wage payment, employees are recruited on contractual basis, thus denying them benefits of regular employment. In case employees get overtime wages at the rate of one and half times of ordinary wage rate, they are deprived of the benefits prescribed under the RMW Rules.

##### Benefits

In case the employees receive overtime wages, they are likely to be motivated and improve productivity and performance. For an employee receiving monthly wage of INR10,000, an hour of overtime work is likely to result in additional wage of INR25 over the ordinary wage (when overtime wage rate is one and half times the ordinary wage rate).

**Table 22: Impact on Stakeholders of Overtime Wage Requirement in Baseline Scenario**

Stakeholder	Cost in Baseline Scenario	Benefit in Baseline Scenario
Establishments	<ul style="list-style-type: none"> <li>High employee cost owing to the requirement to pay overtime wages, up to INR25 per hour</li> <li>Risk of non-compliance, owing to inconsistency between regulatory requirements</li> </ul>	<ul style="list-style-type: none"> <li>Increase in employee productivity positively impacting the establishment.</li> </ul>
Employees	<ul style="list-style-type: none"> <li>Recruitment on contractual basis denying employees benefits of</li> </ul>	<ul style="list-style-type: none"> <li>Higher incentives to perform, owing to</li> </ul>

Stakeholder	Cost in Baseline Scenario	Benefit in Baseline Scenario
	regular employment <ul style="list-style-type: none"> <li>• Overtime wage payment at less than regulatory prescribed rate.</li> </ul>	additional payment of INR25 per hour

## 6.4 Proposed amendment and intended objective

The proposed amendment to the Act provides that the rate of overtime wages be increased from one and half times of ordinary wage rate to twice the ordinary wage rate. It appears that the objective of the proposed amendment is to ensure consistency between the RMW Rules and the Act, and promote labour welfare.

## 6.5 Estimated impact of proposed amendment

The sections below estimate the changes in costs and benefits incurred by the stakeholders i.e. establishments and employees, in case the proposed amendments are implemented.

### **Impact on establishments**

#### Costs

As indicated earlier, at present, there is limited awareness about the requirement to pay overtime wages and the overtime wage rate. Without generating awareness and ensuring compliance, it is unlikely that proposed amendments will impact establishments. Further, several large establishments are already paying overtime wages at double the ordinary wage rate. Consequently, such establishments are unlikely to be impacted by the proposed amendment.

To the extent the establishments comply with the proposed amendment, the cost of doing business is likely to increase. Some such establishments are likely to pass on the increased cost to consumers by way of increase in prices of goods and services. An establishment wherein employee is paid a monthly wage of INR10,000 is likely to receive per overtime hour wage of around INR100 (at the rate of double the ordinary wage rate), as against INR50 (at ordinary wage rate) and INR75 (at the overtime wage rate of 1.5 times the ordinary wage rate.)

However, unable to comply with such requirements, some small establishments may lay off employees and increase the number of contractual/informal workforce in the establishment, should the rate of wages of such contractual/informal workforce be higher than the overtime wage rate. This may adversely impact productivity and performance of employees which may have a negative impact on the establishment.

Literature on impact of minimum wage increase on employment and employers suggests that the research is still divided. It has been suggested that a modest increase in wage floor is not very dangerous. However, increase in minimum wage may demotivate employees who are not receiving the increased wage. More than modest increase in employee cost may result in reduction in employment in the relevant industry. However, employment in other sectors/ areas may witness an increase. Some research also suggests that a significant increase in minimum wage may result in relatively modest employment reduction, especially in low wage industries. Increase in minimum wage may also reduce recidivism rate, resulting in significant positive societal impact.<sup>65</sup>

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<sup>65</sup> Noah Smith, *Research on minimum wage is still divided*, 15 January 2018, LiveMint, at <http://www.livemint.com/Opinion/oRCqjLOFn1an7ZAck0z3FI/Research-on-minimum-wage-is-still->

### Benefits

Consistency between the overtime wage rates between the Act and RMW Rules appears to be a positive development and is expected to provide clarity to the establishments about the prevailing regulatory requirements. Further, payment of overtime wages at twice the ordinary wage rate may motivate employees to improve their performance thus positively impacting establishments.

### ***Impact on employees***

#### Costs

As indicated earlier, limited awareness among employees exist with respect to overtime wages and overtime wage rate. To the extent such lack of awareness persists, the proposed amendments are unlikely to impact employees. Further, employees in large establishments who are already receiving overtime wages at double the rate of ordinary wages are unlikely to be impacted.

In case an employer is unable to bear such increase in employee cost and decides to lay off employees, such individuals are likely to be adversely impacted. Alternatively, the mode of employment may be changed from regular to contractual thus denying the employees benefits associated with regular employment.

#### Benefits

To the extent employees experience an increase in overtime wage rate, they are likely to be benefitted. An employee receiving wages of INR10,000 per month is likely to experience increase of INR25 over hourly overtime wage such employee used to receive earlier.

**Table 23: Impact of Proposed Amendment in Overtime Wage Rate**

<b>Stakeholder</b>	<b>Change in Costs if Proposed Amendments are Implemented</b>	<b>Change in Benefits if Proposed Amendments are Implemented</b>
Establishments	<ul style="list-style-type: none"><li>• Increase in employee cost owing to the requirement to pay higher overtime wages, by around INR25 per hour from the overtime wages received earlier by an employee receiving wages of INR10,000 per month</li></ul>	<ul style="list-style-type: none"><li>• Increase in employee productivity positively impacting the establishment.</li><li>• Reduction in risk of non-compliance, owing to removal of inconsistency between regulatory requirements</li></ul>
Employees	<ul style="list-style-type: none"><li>• Retrenchment/recruitment on contractual basis denying employees benefits of regular employment</li><li>• Overtime wage payment at less than regulatory prescribed rate.</li></ul>	<ul style="list-style-type: none"><li>• Higher incentives to perform, owing to increase in wages by 5.</li></ul>

# Chapter 7: Employment of Women at Night

## 7.1 Regulatory framework

Section 22 of the Act states that women are not permitted to work in an establishment during night<sup>66</sup>. Pursuant to a notification dated 12 May 2017 issued by the Government of Rajasthan, an exemption for three years from section 22 to establishments with five or more employees has been granted. Such exemption is subject to fulfilment of following conditions:<sup>67</sup>

1. A woman employee can be asked to work at night only after she has given her consent for the same.
2. An appointment letter and a photo identity card shall be issued to all women employees by the employer.
3. The employer shall be responsible to ensure complete safety of the women employees working at night and appropriate travel arrangements shall be made for their pick up and drop at night.
4. Arrangements for separate restrooms and lockers for women shall be made at the workplace.
5. Pregnant women shall not be asked to work at night, during the period ranging between three months before the expected date of her delivery till the next three months post the delivery date.
6. Adequate protection shall be given to employees against sexual harassment at the workplace.
7. Violation of any of the above mentioned provisions will result in termination of the exemptions granted to employers under the Act. Further, the employer will be held responsible for any lawful proceedings pertaining to such violations.

## 7.2 Baseline/no change scenario

Interactions with stakeholders suggest that awareness exists amongst employers about prohibition of employment of women at night. However, many employers are not aware about the possibility of exemption under Section 22 by ensuring compliance with conditions as per aforementioned notification.

The establishments operating in Rajasthan which typically employ women at night include hospitals, big hotels, and business process outsourcing (BPO) units of companies. Prior to introduction of the stated notification, the Labour Department used to grant exemption to establishments interested to employ women at night on case to case basis, albeit subject to requirements similar to those mentioned in the said notification.

However, interactions with women employed at night in hospitals revealed divergence in practices with respect to provisioning of pick-up and drop facility, one of the important conditions to be met by employers for employing women at night. While some hospitals appear to provide such a facility to female employees at night, others do not.

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<sup>66</sup> Section 2(11) of the Act defines night as a period of at least 12 consecutive hours which shall include the interval between 10 P.M. and 6 P.M.

<sup>67</sup> The notification is available at <http://www.labour.rajasthan.gov.in/Notification.aspx>, Last accessed on December 24, 2017

Interactions with women employees in some hotels with ratings of 5 stars and above in Jaipur revealed that, typically, all employees are provided pick-up and drop facility irrespective of time and gender of the employee. In few such hotels, women employees are accompanied by a security guard in case of pick up and drop in night. Night shifts generally take place for teams working at the front office of hotels, involving women employees accompanied by male colleagues. Stakeholder interactions revealed that most large establishments employing women at night have separate restrooms, provide locker facilities to women, and have anti-sexual harassment committees in place.

### 7.3 Impact of baseline/no change scenario

The sections below discuss the costs and benefits incurred by stakeholders i.e. establishment and women employees in baseline/no change scenario.

#### ***Impact on establishments***

##### Costs

Interactions with stakeholders revealed that most of the small and medium establishments refrain from employing women at night, owing to risks associated to women safety and costs related to providing safe work environment. However, a few big establishments, such as hotels are open to hiring women at night, as mentioned above.

In order to comply with conditions provided under aforementioned notification, such hotels engage a driver at night, a security guard and deploy a vehicle. The monthly salary of driver ranges between INR7,000-15,000. The cost of such vehicles typically ranges between INR7lakh-11 lakh. However, such vehicles are also used for purposes other than providing pick-up and drop facilities to the employees. The monthly salary of security guard ranges between INR8,000-9,000. In addition, establishments are required to bear cost of maintenance and fuel cost of vehicle.

**Table 24: Costs Incurred by Establishments for Employing Women at Night**

Type of cost	Amount (INR)
Monthly cost of vehicle*	10000 <sup>68</sup>
Monthly salary cost of driver*	11000 <sup>69</sup>
Monthly salary cost of security guard*	8500 <sup>70</sup>
<b>Total monthly cost (INR)*</b>	<b>29,500</b>

*\*Not exclusively for women employment at night*

*Source: Author's analysis*

Interactions with such large employers employing women at night revealed that they believe in providing equal opportunity to employees and there are no tasks which are expected to be performed exclusively by women employees. Further, such employers do not perceive making arrangements for security of women employees as an additional burden but as reasonable expectations of employees.

<sup>68</sup>  $(7,00,000 + 11,00,000)/2 = 9,00,000$  average cost / 90 months (7.5 years = average life span) = INR 10,000 per month

<sup>69</sup>  $(7000 + 15000)/2 = 11000$  per month

<sup>70</sup>  $(8000 + 9000)/2 = 8500$  per month

### Benefits

Ability to employ women provides an opportunity to the employers to choose from wider pool and give precedence to talent over other considerations, which can have positive impact on establishments. Also, diversity in workforce is likely to result in bringing different points of views, and perspectives which is likely to make the decision making process robust and promote productivity.

### ***Impact on women employees***

#### Costs

As indicated earlier, majority of establishments do not prefer employing women at night, owing to risks associated to their safety, and costs establishments are required to bear to employ women at night. This indicates that despite aforementioned notification allowing employers (with five or more employees) to hire women to work at night, such employment opportunities are restricted to a few big establishments. Thus, while the possibility of employing women at night certainly increases the available employment opportunities for women professionals, but such opportunities are currently limited.

#### Benefits

To the extent establishments are open to employ women at night, the available employment opportunities for women are likely to increase.

### ***Impact on government***

#### Costs

Government is required to deploy surveillance and related resources to ensure compliance with prescribed conditions by the establishments.

#### Benefits

Positive impact in relation to twin objectives of the government to provide employment opportunity to women while ensuring their safety and security is likely to be observed.

## **7.4 Proposed amendment and intended objective**

The proposed amendment to Section 22 provides that the state government may, subject to such terms and conditions as may be prescribed, permit any establishment or class of establishments to allow a woman to work in any such establishment during night. The provision is in line with the notification issued by the Government of Rajasthan dated May 12, 2017 as mentioned above, which already allows employment of women at night.

It appears that with an objective to provide equal opportunity to work at night to women, the government plans to reinforce the said notification in the proposed amendments by bringing it under the purview of primary legislation.

Additionally, the Model Bill, which has a similar provision, states that employment of women at night will enhance the gender diversity at work places and will also do away with the 'protective discrimination' faced by women, who were exempted from working during the night shifts. It further prescribes that establishments employing women at night need to put in place relevant safety and security conditions. Hence, the proposed amendment seems to be in line with the provisions in the Model Bill.

## 7.5. Estimated impact of proposed amendment

The sections below discuss changes in costs and benefits likely to be faced by relevant stakeholders, i.e. establishments, women employees and government, should the proposed amendment come into force.

### *Impact on establishments*

#### Costs

Given that the conditions subject to which women employment will be allowed in the night should proposed amendments be implemented are not prescribed yet, it is difficult to ascertain the change in costs (if any) required to be incurred by establishments to employ women at night. Stakeholder interactions indicate that the conditions are unlikely to change, thus the cost to employ women at night is likely to remain same.

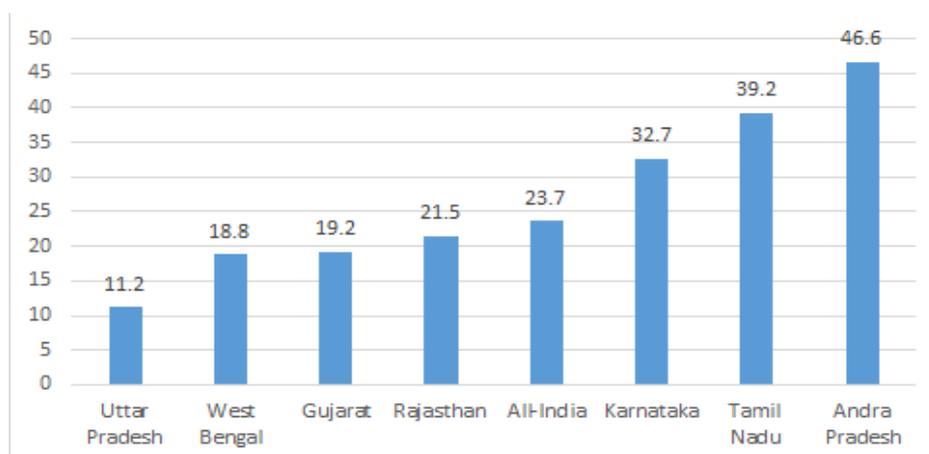
To the extent the adoption of proposed amendment increases the employment of women at night, the per capita cost of women employment is likely to reduce.

#### Benefits

If the proposed amendment is implemented, given the same will be included in the primary legislation, awareness among establishments about the possibility to employ women at night is likely to increase. Consequently, industries, such as hospitals, hotels and BPOs are expected to employ more women. Literature suggests that BPO sector is perceived to be most promising sector for women to work in night shift. They are expected to adopt stringent security rules and provide an efficient and friendly environment for women working in night shift.<sup>71</sup> This will provide an opportunity to establishments to choose from greater pool of applicants and weigh talent over other considerations.

At present, Rajasthan fares poorly when compared with other states and the national average in relation to participation of women in the labour force. Consequently, it is expected that adoption of proposed amendment will improve performance of Rajasthan on participation of women in labour force.

**Figure 11: Female Labour Force Participation in 2015-2016 (in percent)**



Source: Government of India, Report on Fifth Annual Employment – Unemployment Survey, 2015-16

<sup>71</sup> NCW India, Night shift for women: Growth and opportunities, available at: <http://ncw.nic.in/pdfreports/night%20shift%20for%20women.pdf>, Last accessed on January 17, 2018

## ***Impact on women employees***

### Costs

To the extent the proposed amendment does not impose additional costs on establishment, the costs incurred by women for employment at night is likely to remain unchanged.

To the extent the adoption of proposed amendment increases the employment of women at night, the per capita cost of women employment is likely to reduce.

### Benefits

The adoption of proposed amendment is expected to provide additional employment opportunities to women given the change are in primary legislation. Literature suggests that call centre jobs present young women with employment opportunities that they might have never experienced before, and provide a high quality of life. It is has been reported that despite the concerns and stress, women employees generally appreciate the benefits of newly found opportunities and acknowledge the social and economic empowerment that these jobs have brought.<sup>72</sup>

## ***Impact on government***

### Costs

The government will need to ensure that employers comply with relevant conditions, in relation to safety and security of women. It will need to deploy greater resources than hitherto employed to ensure compliance with relevant conditions by establishments.

### Benefits

If the proposed amendment comes into force, it is expected to increase the overall share of women participation in the labour market and also in the economy, which will be in line with the government objective.

**Figure 12: Impact of Proposed Amendment Regarding Women Employment at Night**

<b>Change in Impact on Stakeholders if Proposed Amendments are Implemented</b>		
<b>Stakeholder</b>	<b>Costs</b>	<b>Benefits</b>
<b>Establishments</b>	<ul style="list-style-type: none"><li>• Women employee costs are likely to remain same, i.e. INR29500 per month per establishment</li><li>• Per capita women employee cost is likely to reduce, given the expected surge in women employment</li></ul>	<ul style="list-style-type: none"><li>• Increase in pool to choose from, providing an opportunity to give precedence to merit over other considerations.</li></ul>
<b>Women employees</b>		
<b>Government</b>	<ul style="list-style-type: none"><li>• Increase in surveillance cost</li></ul>	<ul style="list-style-type: none"><li>• Increase in women employment at night</li></ul>

<sup>72</sup> Mitter et al, *On the threshold of informalization: women call centre workers in India*, available at <http://182.71.188.10:8080/jspui/bitstream/123456789/724/1/Swasti%20Mitter%20-%20Call%20Center.pdf>, Last accessed on January 17, 2018

# Chapter 8: Complaint against Wrongful Dismissal or Discharge

## 8.1 Regulatory framework

Section 28A(2) of the Act provides that any employee who is dismissed or discharged may make a complaint in writing to the prescribed authority<sup>73</sup> within 30 days of the receipt of the order of dismissal or discharge.

Such complaint can be made on the following grounds:

- (a) there was no reasonable cause for dispensing with services of such employee; or
- (b) no notice was served upon the employee as required by Sub-section (1) of Section 28A<sup>74</sup>;  
or
- (c) such employee had not been guilty of any misconduct.

The prescribed authority may condone delay in filing such a complaint if it is satisfied that there was sufficient cause for not making the complaint within the prescribed time.

Rule 24B(2) of the Rules provides that a complaint under Section 28A(2) of the Act is required to be presented in the form of a memorandum in duplicate, stating therein concisely the grounds of objection to the order against which the complaint is made. The memorandum is required to be accompanied by an affidavit sworn before a magistrate of the first class that the contents of the memorandum are true to the best of the knowledge and belief of the complainant. Such memorandum is required to bear a court fee stamp of INR5.

## 8.2 Baseline/no change scenario

Interactions with stakeholders revealed that limited awareness exists among employees in relation to the possibility of filing complaints against wrongful dismissal or discharge. Employees associated with labour unions usually file such complaints with assistance from office bearers of such labour unions.

Data reveals that average annual disposal rate of complaints under section 28A of the Act since 2013-14 to 2016-17 has been 19.09 percent. Consequently, at least 25 percent of the matters pending as on November 2017 were also pending in April 2013.

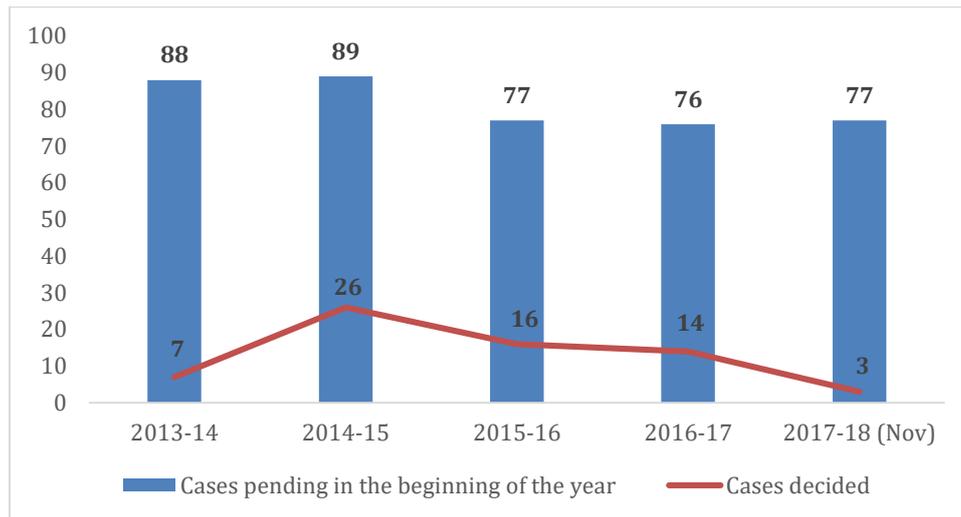
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<sup>73</sup> The prescribed authority can be notified by the state government from time to time. Currently, the prescribed authority at the Department is the Joint Labour Commissioner

<sup>74</sup> Section 28 A (1) of the Act provides that (1) No employer shall dismiss or discharge from his employment any employee who has been in such employment continuously for a period of not less than 6 months except for a reasonable cause and after giving such employee at least one month's prior notice or on paying him one month's wages in lieu of such notice:

Provided that such notice shall not be necessary where the services of such employee are dispensed with for such misconduct, as may be defined in the rules made by the State Government in this behalf, and supported by satisfactory evidence recorded at an enquiry held for the purpose in the prescribed manner.

**Figure 13: Disposal Rate under Section 28A of the Act**



Source: Author's analysis on the basis of data obtained from the Rajasthan labour Department up to November 2017

### 8.3 Impact of baseline/no change scenario

The costs and benefits incurred by relevant stakeholders i.e. establishments, employees and government, under the baseline/no change scenario are set out below.

#### **Impact on establishments**

##### Costs

The opportunity to employees to allege wrongful dismissal and discharge may be misused imposing litigation costs on establishments.

##### Benefits

The prescribed process which requires employees to swear in affidavit about the contents of memorandum of complaint is likely to reduce the instances of frivolous complaints by the employees.

#### **Impact on employees**

##### Costs

As indicated above, employees lack awareness about the opportunity to file complaints against wrongful dismissal and discharge. It appears that fear of not getting employment opportunities in other establishments also precludes employees from filing complaints against wrongful dismissal and discharge.

Even when employees are able to summon courage to file a complaint, they are discouraged by cumbersome and expensive process. An employee is first required to present the complaint in a prescribed memorandum. Then the employees are required to swear in affidavit before the magistrate that contents of the memorandum in which complaint is presented are true to the best of the knowledge and belief of the complainant.

Thereafter, such memorandum in duplicate along with affidavit is required to be submitted to the prescribed authority. Such memorandum is required to bear a court fee stamp of INR5. The requirement to swear in affidavit before magistrate puts additional compliance burden on employees, and often makes it difficult for employees to file complaints within the stipulated

time of 30 days. Even if complaints are filed, employees are unlikely to obtain resolution within a reasonable time frame. This adds to hardships being faced by the employees.

#### Benefits

The ability to file complaint provides an opportunity to the employees to contest wrongful dismissal and discharge and obtain appropriate remedy.

#### ***Impact on government***

##### Costs

In order to resolve complaints under the Act, the government is required to prescribe an authority to adjudicate complaints filed by employees. In addition, it is required to invest resources to ensure functioning of quasi-judicial machinery to handle complaints. The government is also required to put in place a process to ensure that frivolous complaints are not filed against establishments. It should also ensure that genuine complaints are not ignored.

##### Benefits

Putting in place a mechanism which facilitates employees to obtain redress against unlawful dismissal and discharge furthers labour welfare, one of the stated objectives of government.

### **8.4 Proposed amendment and intended objective**

The proposed amendment to Section 28A(2) of the Act provides that any employee who is dismissed or discharged may make a complaint in writing to the prescribed authority<sup>75</sup> within 6 months of the receipt of the order of dismissal or discharge by the employer.

It appears that the amendment has been proposed to address the difficulties faced by employees in complying with the process of filing complaints against dismissal or discharge within the stipulated time period of 30 days, as mentioned earlier.

### **8.5. Estimated impact of the proposed amendments**

The likely changes in costs and benefits incurred by relevant stakeholders, i.e. establishments, employees and government if the proposed amendments are adopted, are discussed in the sections below.

#### ***Impact on establishments***

##### Costs

The extension of time period to file complaints under the Act is likely to result in increase in number of complaints. This may result in increase in litigation cost for establishments. Also, the number of frivolous complaints may increase.<sup>76</sup>

##### Benefits

The extended time period to file complaints by employees might provide an opportunity to employers to reach out to employees and resolve any grievances in advance, thus saving litigation costs.

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<sup>75</sup> The prescribed authority can be notified by the state government from time to time.

<sup>76</sup> It was brought forth during the stakeholder interactions that under the Industrial Disputes Act, 1947, no timeframe has been prescribed for an employee to file a complaint. Instances of fake complaints of wrongful discharge or dismissal are quite common under such legislation.

### **Impact on employees**

#### **Costs**

Given the process of filing complaints under the Act does not change, the costs incurred by employees in filing complaints is likely to remain the same.

#### **Benefits**

Given the time period for filing complaints under the Act is likely to be extended, the pressure upon employees to complete the entire procedure within a limited time frame is likely to reduce. The extended time period may allow employees to seek appropriate advice from labour associations and other consultants and decide appropriate course of action.

### **Impact on government**

#### **Costs**

The government is already struggling to dispose of the complaints filed under the Act within a reasonable time frame. Given the number of complaints are likely to increase after proposed amendments are adopted, the prescribed authority will be under greater pressure to dispose of complaints within a reasonable time frame.

#### **Benefits**

Given the time period to file complaints has been extended, the magistrate is likely to have adequate time to scrutinise the memorandum in which the complaint is presented, and verify the correctness of complaint. This is likely to reduce the number of frivolous complaints.

# Chapter 9: Penalties

## 9.1 Regulatory framework

Section 33(1) of the Act states that contravention of any provision under Sections 4, 6, 7, 9, 10, 11, 12, 13, 14, 15, 23, 24, 25, 26, 28, 28A and 28B of the Act shall on conviction be punishable with fine, which may extend to INR250 for first offence and for second or any subsequent offence the fine may extend to INR500. The Table below briefly highlight the sections relevant for the project, which are covered under Section 33(1).

**Table 25: Relevant Non-compliances under Section 33(1)**

<b>Section 4-</b> Non-registration of establishment
<b>Section 6-</b> Non-intimation of closing of establishment to inspector
<b>Section 28A-</b> Wrongful dismissal or discharge of employees by establishments

Further, Section 33(2) of the Act provides that contravention of any provision of Sections 8, 16, 21, 22, 27, 32, and 36 shall on conviction be punishable with fine which may extend to INR50. The Table below briefly highlight the Sections relevant for the project, which are covered under Section 33(2).

**Table 26: Relevant Non-compliances under Section 33(2)**

<b>Section 8:</b> Non-payment of wages for overtime work equivalent to one and half times the ordinary wage rate
<b>Section 22:</b> Employment of women at night in violation of relevant conditions
<b>Section 36:</b> Non-maintenance of registers and records and display of notices

## 9.2 Baseline/no change scenario

It appears that the amounts of penalties have not been revised since a significant time period. Consequently, the penalties are not expected to act as deterrent. This was validated during interactions with stakeholders under the project.

## 9.3. Impact of baseline/no change scenario

The sections below discuss the costs and benefits incurred by stakeholders i.e. establishments, government and employees, under the baseline/no change scenario.

### **Impact on establishments**

#### Costs

Penalties, in their current form, are unlikely to act as deterrent for establishments. Thus, they are unlikely to impose substantial costs on establishments. The average penalty comes to around INR267.<sup>77</sup>

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<sup>77</sup>  $(250 + 500 + 50) / 3 = 266.67$

### Benefits

As indicated earlier, the low amount of penalties is not expected to disincentivise employers from not complying with provisions under the Act. Interactions with stakeholders revealed that at times, employers do not mind paying penalties and continue to not comply, as the cost of compliance is often higher than the amount of penalties imposed.

### **Impact on government**

#### Costs

Low penalties neither are unlikely to ensure compliance nor will be in a position to generate adequate revenues for the government. Consequently, the twin government objectives are unlikely to be met.

### **Impact on employees**

#### Costs

To the extent establishments are unable to comply with labour welfare related provisions under the Act, the employees are likely to be adversely impacted.

## **9.4 Proposed amendment and intended objective**

The proposed amendment to Section 33(1) of the Act provides that the quantum of fine on violation of Sections 4, 6, 28A and other sections under the Act shall be increased from up to INR250 (in case of first offence) and INR500 (in case of second or any subsequent offence) to up to INR5,000 and INR10,000 respectively. Similar provision has been proposed in case of Non-compliance with Rules. The proposed amendment to Section 33(2) provides that the fine on contravention of Sections 8, 22, 36 and other Sections under the Act shall be increased from up to INR50 to up to INR500.

It appears that the penalties provided under the Act have not been revised for a significant period of time. Further, as mentioned above, a major factor resulting in large number of non-compliances of various provisions under the Act is that the cost of compliance for stakeholders is higher than the cost of non-compliance. The stakeholders are not deterred enough from not complying with the provisions. It therefore seems that in order to increase the cost of non-compliance, the government has decided to propose amendments to Section 33.

## **9.5 Estimated impact of proposed amendments**

The sections below discuss the likely change in costs and benefits incurred by relevant stakeholders, i.e. establishments and government should the proposed amendments are implemented.

### **Impact on establishments**

#### Costs

The increase in penalties is expected to increase the cost of non-compliance for employers. This is further expected to encourage employers to comply with provisions under the Act. For smaller establishments which genuinely faced difficulties in complying with provisions of the Act, the proposed amendment is expected to increase the cost of doing business. The average increase in penalties is set out below:

**Table 27: Average Increase in Penalty**

<b>Violation</b>	<b>Increase in penalty (INR)</b>
First time non-compliance under Section 33(1)	4750
Second time non-compliance under Section 33(1)	9500
Non-compliance under Section 33(2)	450
<b>Average increase (INR)</b>	<b>4,900</b>

Benefits

Compliances with relevant provisions of the Act is likely to benefit establishments in longer term and they will be in a position to obtain other incentives linked with compliance. For instance, registration of establishment is likely to assist it in opening of current account with banks.

**Impact on government**

Costs

To the extent some establishments were unable to comply with provisions of the Act owing to genuine lack of awareness and high compliance cost, such establishments are likely to be discouraged and may move to informal sector. This may adversely impact government objective of promoting compliance with provisions of the Act.

Benefits

As indicated above, increase in penalties is expected to create deterrence against non-compliance with provisions of the Act. This is expected to increase overall compliance and thus raise government revenue. Further, with an increase in compliance by the stakeholders, the overall workload on the government machinery under the Act, mainly owing to reduction in cases, of filing of *challans* and claims, is expected to reduce. To the extent non-compliance continues, the amount of penalties collected is expected to increase, thus adding to government revenue. Average increase in revenue expected to be collected per non-compliance is INR4,900.

**Impact on employees**

Costs

To the extent establishments are unable to comply with the increased compliance cost and are likely to go informal, employees may be adversely impacted on account of loss of regular employment.

Benefits

To the extent penalties corresponding to provisions that impose duties on employers to ensure employees' welfare (Section 8, 22 and 28 A) increase, the level of compliance with such provisions by employers is likely to increase. This is expected to consequently enhance the welfare of employees, and ensure safe working environment for women employees in particular.

# Chapter 10: Composition of Offences

## 10.1 Regulatory framework

The proposed Section 35A provides that notwithstanding anything contained in any other provision of the Act or the rules made thereunder, an officer authorised by the State Government in this behalf by notification in the Official Gazette may compound any offences punishable under the Act or rules made thereunder, either before or after institution of the prosecution, on payment by, or on behalf of, the offender a composition fee equal to the maximum amount of the fine provided for such offence.

It provides that where an offence is compounded before institution of prosecution, the offender shall not be liable to prosecution. Where an offence is compounded after institution of prosecution, the composition shall amount to acquittal of the offender.

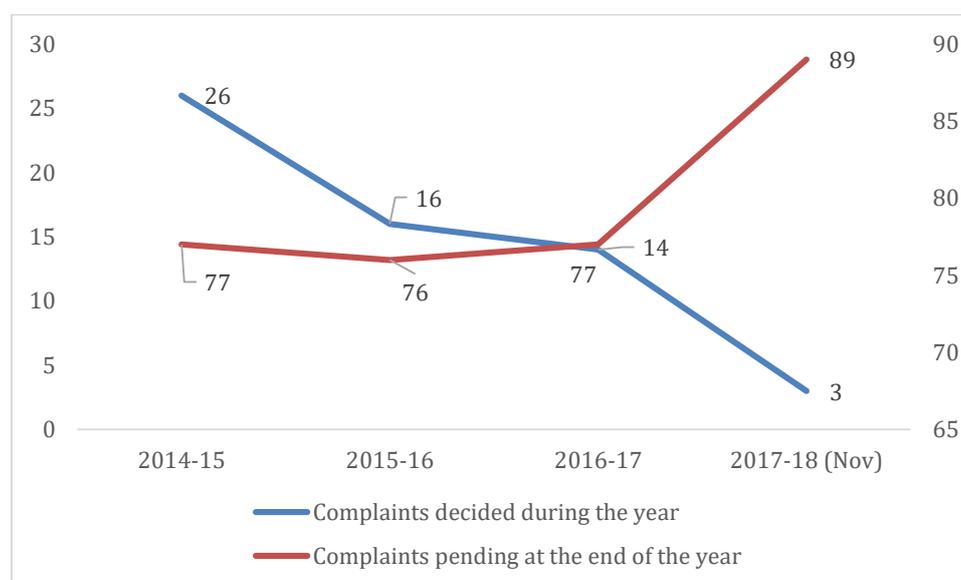
There is no corresponding provision at present under the Act.

## 10.2 Intended objective

Compounding or composition of offences is usually a mechanism to arrive at an early closure of a matter through mutual consensus between parties involved. It is typically intended to avoid often lengthy and expensive litigation process. It appears that the rationale for introducing the proposed Section 35A is similar.

As indicated earlier, the average annual disposal rate of complaints under Section 28A of the Act since 2013-14 to 2016-17 has been 19.09 percent. At least 25 percent of the matters pending as on November 2017 were also pending in April 2013. Moreover, the rate of disposal has been decreasing since 2014-15.

**Figure 14: Reduction in Disposal Rate**



Source: Data obtained from the Rajasthan labour Department up to November 2017

The situation with respect to closure of prosecutions is no different. The total number of cases decided during January-October 2017 period was 153. Total prosecutions launched from

January 2013-October 2017 were 97. Consequently, it might be reasonably assumed that in 2017, at least 56 cases decided (36.60 percent of total cases decided) were instituted prior to 2013, and thus were pending for at least five years.

This can be presumed to have adversely impacted stakeholders involved in such matters, such as government, establishments and employees, who would have been required to invest significant resources (financial and otherwise) in pursuing such matters. Consequently, it appears that the government has proposed insertion of a new Section to reduce the cost ascribed to litigation under the Act. Absence of a compounding related provision under the Act might have adversely impacted interests of such stakeholders who would have liked to resolve such matters outside court but were unable to do so for the lack of an enabling provision.

Thus, it seems that in order to speedily dispose matters under the Act with minimal litigation, government has proposed to insert a new provision on compounding of offences in the Act. The proposed provision also appears to be in line with provisions (Section 24) under the Model Bill, authorising a prescribed authority to compound an offence, subject to the direction, control and supervision of the state government.

### 10.3 Estimated impact of proposed amendment

The sections below discuss costs and benefits likely to be incurred by relevant stakeholders i.e. establishments, employees and government, should the proposed amendment comes into force.

#### **Impact on establishments**

##### Costs

The proposed amendment provides that composition will be possible upon payment of composition fee equal to the maximum amount of the fine provided for the offence. At times, in order to save opportunity cost, establishments might be willing to compound offences even when the probability of imposition of maximum fine subsequent to prosecution seems unlikely.

**Table 28: Average Maximum Fine**

<b>Violation</b>	<b>Average Maximum Fine (INR)</b>
First time non-compliance under Section 33(1)	250
Second time non-compliance under Section 33(1)	500
Non-compliance under Section 33(2)	50
<b>Average fine (INR)</b>	<b>267</b>

##### Benefits

Interactions with the stakeholders brought forth that prosecution procedures add to hassles for employers, in terms of costs associated to litigation, and opportunity cost. Thus, the proposed amendment, once operationalised, is expected to fast track the process of disposal of cases and reduces the burden on employers.

#### **Impact on employees**

##### Costs

If matters in which labour welfare is involved are compounded without involving employees, the employees might remain dissatisfied.

### Benefits

Employees are often the aggrieved parties in the matters contested under the Act. The proposed provision provides that the composition may be permitted if the offender pays a composition fee equal to the maximum amount of the fine provided for such offence. Employees can benefit from composition if provisions are made to reimburse/compensate the employees in matters being compounded in which employees are involved. Similarly, interests of employees can be protected if their prior consent is obtained for compounding of matters in which their interests are involved.

### **Impact on government**

#### Benefits

As indicated earlier, government/quasi-judicial and judicial machinery is currently unable to dispose matters within a reasonable time frame. Possibility of compounding is expected to reduce such burden. Also, given that compounding is permitted only upon payment of maximum fine possible under the relevant section under the Act, government revenue is expected to increase if the proposed provision is adopted. The average maximum fine likely to be collected by the government is around INR267.

# Chapter 11: Comparison of Impacts and Recommendations

Earlier chapters of this report have highlighted in detail the costs and benefits of select provisions of the Act on different stakeholders and how such costs and benefits are expected to change should proposed amendments to the Act be adopted and operationalised.

This chapter summarises the findings of previous chapters and compares costs with benefits of a particular scenario to ascertain the net impact on stakeholders in such scenario. It further examines the change in costs and benefits to stakeholders, should the proposed amendments to the Act be adopted. The chapter also provides recommendations to enhance net benefits of stakeholders. Such comparison and analysis is presented in tabular format.

## 11.1 Application for registration

The proposed amendment will provide an option to the establishments to apply for registration through physical mode. To the extent establishments opt for such mode, the impact is likely to change, as presented in Table 30.

**Table 29: Impact Comparison of Application Related Provisions**

Stakeholder	Type of Impact	Impact in Baseline Scenario	Impact if Amendment Enacted	Change in Impact
Establishments	Costs (monetary)	Average cost per application: INR265	Average cost per application: INR200	Positive Reduction in average cost per application: INR65
	Costs (non-monetary)	Higher possibility of submitting incorrect/incomplete application	The possibility of submitting incorrect/incomplete application reduces	Positive Reduction in possibility of submitting incorrect application
	Benefits	Speed, accountability and transparency	Reduction in benefits related to speed, accountability and transparency	Negative Reduction in speed, accountability and transparency related benefits.
Government	Costs (monetary)	No storage cost	Storage cost per application: INR10	Negative Additional storage cost per application: INR 10
		Employee cost of reviewing one application: INR 108	Employee cost of reviewing one application: INR108	No change
		LDMS cost per transaction/application	LDMS cost per application is likely to	No change

Stakeholder	Type of Impact	Impact in Baseline Scenario	Impact if Amendment Enacted	Change in Impact
		<b>(March 2018): INR17</b>	<b>fluctuate throughout the year,<sup>78</sup> thus is assumed at INR17</b>	
	Costs (non-monetary)	Higher possibility of receiving incorrect/incomplete application	The possibility of receiving incorrect/incomplete application reduces	<b>Positive</b> Reduction in possibility of submitting incorrect application
	Benefits	Speed, accountability and transparency	Reduction in benefits related to speed, accountability and transparency	<b>Negative</b> Reduction in speed, accountability and transparency related benefits.
<b>Net impact</b>	<b>Monetary</b>	<b>Total cost per application: INR 390</b>	<b>Total cost per application: INR335</b>	<b>Positive</b> <b>Reduction in average cost per application by INR 55</b>
	<b>Non-monetary</b>	High possibility of submitting incorrect/incomplete application in electronic mode but benefits of speed, transparency and accountability are available	Reduction in possibility of submitting incorrect/incomplete application in physical mode but consequent reduction in benefits of speed, transparency and accountability	<b>Positive</b> <b>Establishments not having access to Internet/ electronic services or for whom such access is prohibitively costly are most likely to use physical mode. Unavailability of physical mode might mean losing such potential applicants.</b>

While the stakeholders are likely to be benefitted should the proposed amendment be implemented; several areas remain wherein costs to stakeholders could be further reduced or benefits to stakeholders could be further increased. Some of these areas are discussed below.

1. *Costs to establishments:* To the extent establishments are likely to adopt physical mode of application, they are likely to avoid impediments related to electronic mode. This does not mean that such impediments are resolved. Such impediments include high intermediary cost and process related challenges. In order to address these challenges, following measures are suggested:

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<sup>78</sup> LDMS cost per transaction/application is likely to reduce till November 2018, as the total number of transactions will increase. Post November, new estimates for LDMS cost will be drawn, resulting in increase in per application LDMS cost.

- Reducing the cost of electronic registration through intermediaries by opening free registration and renewal kiosks, especially in months of December and January.
- Generating awareness and building capacity of establishments to reduce reliance on intermediaries.
- Strengthening enforcement to ensure intermediaries do not charge more than the prescribed amount as commission.
- Incentivising registration by linking with other benefits like credit at low cost, fast tracking other approvals, and rationalising cost of registration, especially for small and medium enterprises.<sup>79</sup>
- Making electronic registration user friendly. For instance, the website of Rajasthan Labour Department provides for mobile application of LDMS, but the same has not been launched as yet.
- In case of electronic submission, no information should be requested twice, size limitations should be done away with, information must be requested in a machine readable format, all information previously provided must be pre-filled and establishments must be able to preview the application prior to submission. The application must not be accepted by the system unless all required fields are filled.
- The server capacity and bandwidth of LDMS portal should be periodically reviewed, and the same should be made subject to surprise stress tests to examine and ensure its resilience.
- Establishments should receive alerts<sup>80</sup> about their imminent expiry of their registration and the need to apply for renewal.

2. *Costs to government:* To the extent establishments are likely to adopt physical mode of application submission, the government will be required to bear the cost of collecting, processing and safe keeping of the application and annexed documents. To compensate such increased cost, the fees for making application in physical mode could be made higher than the fees for application in electronic mode, especially for medium and large establishments presumably having the resources to adopt the electronic mode of submitting the application. Further, providing an option to make the application physically does not address issues faced by establishments in electronic submission. As indicated earlier, these issues relate to lack of availability of real time clarification from the government resulting in submission of incorrect application. To address such limitations, the government could deploy a chatbot to provide real time assistance to the applicants.<sup>81</sup> Such chatbot could also help establishments navigate the application process, while collecting data of major pain points faced by applicants in the process. Such data will be available to senior officers and policymakers to review the application process for making necessary changes. Frequently asked questions could be prepared based on this data and released in public domain to help establishment avoid common mistakes during application.

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<sup>79</sup> The Model bill exempts registration for establishments below 10 employees. Also, recently adopted Maharashtra Shops and Commercial Establishment Act, 2017 requires intimation from establishments with less than 10 employees, and does not envisage their registration. The legislation is available at <http://bombayhighcourt.nic.in/libweb/acts/Stateact/2017acts/2017.61.pdf>. Last accessed on January 17, 2018). Keeping establishments with less than ten employees out of the purview of the registration provision under this Act might not be advisable. Small establishments register under this Act not only to obtain a registration certificate, but also to avail auxiliary benefits associated to registration, like opening of current accounts with banks. Depriving such establishments of a formal registration certificate will make difficult for small establishments to avail such benefits.

<sup>80</sup> SMS/email

<sup>81</sup> The use of technology in regulation is increasingly becoming relevant. For instance, the Telecom Regulatory Authority of India recently released draft regulations which envisage use of distributed ledger technology, among other things.

## 11.2 Grant of registration

In case the deemed approval related amendments are implemented, the likely change in costs and benefits to stakeholders are set out below.

**Table 30: Impact Comparison of Grant of Registration Related Provisions**

Stakeholder	Type of Impact	Impact in Baseline Scenario	Impact if Amendment Enacted	Change in Impact
Establishments	Costs (monetary)	<b>Cost of follow up per application: INR200</b>	NA	<b>Positive- Reduction in average follow up cost per application: INR 200</b>
	Costs (non-monetary)	Higher possibility of request of unnecessary clarifications	The possibility of unreasonable clarifications reduces	<b>Positive-</b> Reduction in unreasonable clarifications
		N.A	Difficulty in availing ancillary benefits	<b>Negative-</b> Difficulty in availing ancillary benefits
	Benefits	Average time taken for processing much lesser than statutorily prescribed	The average time taken for processing might increase	<b>Negative-</b> Likely increase in average time for processing applications
Government	Costs (non-monetary)	Labour inspectors working under pressure	Reduction in pressure for labour inspectors	<b>Positive</b>  Reduction in pressure for labour inspectors
Net impact	Monetary	<b>Total cost per application: INR 200</b>	NA	<b>Positive</b> <b>Reduction in average cost per application by INR 200</b>
	Non-monetary	Labour inspectors work under pressure but process applications quickly. Also, they may issue unnecessary clarifications, often unintentionally	The pressure on labour inspectors is likely to reduce and they are unlikely to issue unnecessary clarifications. However, time taken for processing might increase.	<b>Positive</b> <b>Labour inspectors will get more time to review the applications. The requirement to process applications within 30 days remains.</b>

While the stakeholders are likely to be benefitted should the proposed amendment be implemented; several areas remain wherein costs to stakeholders could be further reduced or benefits to stakeholders could be further increased. Some of these areas are discussed below, along with related recommendations.

1. In order to avoid unnecessary delays in case clarifications are issued near 30-day deadline period, it is suggested that the time period for grant of registration should be reduced from 30 to 15 days, post which registration may be deemed to be granted. This should not put additional pressure on labour inspectors as average time to dispose of applications at present is seven-eight days.
2. Labour inspectors should be required to provide clear reasons for issuance of clarifications/ rejection of applications.
3. To ensure that establishments are in a position to obtain auxiliary benefits from deemed registration, it is suggested that an automatically generated registration certificate be issued in case of deemed registration which can be utilised by establishments for obtaining auxiliary benefits.
4. In order to further improve efficiency and reduce pendency, it is suggested that government fills the 61<sup>82</sup> vacant posts of labour inspectors. This is expected to cost the government approximately INR27,709,128<sup>83</sup> annually. The likely benefits include shorter timeframes for review of applications under the Act, increased efficiency and fewer errors. In addition, efficiency in other tasks conducted by labour inspectors is likely to increase.

### 11.3 Maintenance of records and registers

The proposed amendment authorises labour inspectors to request for hard copies of extracts of records and registers. This is likely to result in manner highlighted below.

**Table 31: Impact Comparison of Record and Register Maintenance Related Provisions**

Stakeholder	Type of Impact	Impact in Baseline Scenario	Impact if Amendment Enacted	Change in Impact
Establishments	Costs (monetary)	Average monthly costs per establishment: INR2575	Average monthly costs per establishment: INR 2575	No change
		NA	Additional cost to furnish hard copy extract: INR10	Negative Increase in cost to extract by INR10
	Benefits	Freedom to maintain record in manner deem fit and furnish a copy to labour inspector such manner	Reduction in benefits of maintaining records in electronic form as labour inspector can mandatorily ask for physical copies.	Negative- Reduction in benefits related to electronic maintenance of records.
Government	Costs (monetary)	Average cost per establishment:	Average cost per establishment:	No change

<sup>82</sup> 180 sanctioned posts – 119 posts currently filled

<sup>83</sup> INR 454,248 (annual salary cost per labour inspector) \* 61 additional labour inspectors

Stakeholder	Type of Impact	Impact in Baseline Scenario	Impact if Amendment Enacted	Change in Impact
		INR645	INR645	
		NA	Storage cost per extract per establishment: INR2	Negative Increase in cost to store extract by INR 2
	Benefits	Reasonable reliability on extracts of records	Possibility of greater reliability on extracts of records.	Positive Increase in presumed reliability of records
Net impact	Monetary	Average cost per establishment per month: INR3220	Average cost per establishment per month: INR3232	Negative Increase in cost per establishment by INR12
	Non-monetary	Freedom to maintain the records in manner deem fit	The plausibility of furnishing hard copy of records takes away some benefits of electronic record keeping.	Negative Electronic records should be as reliable as hard copy records

While the proposed amendment is well intentioned and intends to benefit employees, it appears to impose additional costs on stakeholders, without proportionately increasing benefits to stakeholders. In order to address the limitations of proposed amendments, following is being suggested:

1. The establishments should not be in a position to edit the records and registers maintained electronically after a reasonable time period of entering the same.
2. Under the Information Technology Act, 2000 (IT Act), electronic records are admissible as evidence subject to fulfilment of relevant conditions mentioned under the Indian Evidence Act, 1872.<sup>84</sup> Consequently, the labour inspectors should be authorised to obtain electronic copies of records so maintained. Instead of reverting to the requirement of furnishing extract of record and register in hard copy, efforts must be made to ensure electronic records and registers are admissible as evidence.
3. Labour inspectors should be required to provide adequate reasons in writing for requiring extracts of records and registers.

<sup>84</sup> Section 65B of the Indian Evidence Act, 1872 provides that “... any information contained in an electronic record which is .....stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein or which direct evidence would be admissible.” The conditions for information to be admissible as evidence include requirements with respect to the computer (section 65B(2) and (3)) and certificate signed by a person occupying responsible official position (section 65(B)(4)). It has been recently ruled by the Supreme Court that wherever interest of justice so justifies, a certificate is not mandatorily required to make electronic evidence admissible in Court. See, <http://www.livelaw.in/party-not-possession-device-electronic-document-produced-need-not-produce-sec-65b-certificate-sc-read-order>. (last accessed on April 24, 2018)

4. Maintenance of records and registers should be incentivised. For instance, a record of regular payment of wages to employees can be one of the indicators to ascertain creditworthiness of establishment, and may prove helpful in accessing credit.<sup>85</sup> Awareness must be generated on utility of maintaining records and registers. In addition, potential lending institutions should be roped in to provide credit support to such establishments.
5. Given that establishments with two or less employees have limited utility of record and register maintenance, such establishments could be exempted from this requirement.

## 11.4 Closing of establishments

Table 33 highlights costs and benefits on different stakeholders if amendments related to recording closure of establishment based on reliable information by labour inspectors, come into force.

**Table 32: Impact Comparison of Provisions Related to Closing of Establishments**

Stakeholder	Type of Impact	Impact in Baseline Scenario	Impact if Amendment Enacted	Change in Impact
<b>Establishments</b>	Costs (monetary)	<b>Average cost for intimating closure: INR200</b>	NA	<b>Positive Reduction in average intimation cost: INR200</b>
	Costs (non-monetary)	High pressure to intimate closure within 10 days	Reduction in pressure to intimate closure	<b>Positive Reduction in pressure to intimate closure</b>
	Benefits	Negligible possibility of removal of name from register of establishment without intimation to establishment	High possibility of removal of name from register of establishment without intimation to establishment	<b>Negative Increase in possibility or unilateral removal of name from register of establishment</b>
<b>Government</b>	Costs (monetary)	NA	<b>Cost to ascertain reliability of third party information about closure of establishment: INR860</b>	<b>Negative Additional cost to ascertain reliability of third party information: INR860</b>
	Benefits	High probability of register of establishment being correct.	Reduction in probability of correctness of register of establishment	<b>Negative Reduction in possibility of register of establishment being correct</b>
<b>Net impact</b>	<b>Monetary</b>	<b>Total cost per</b>	<b>Total cost per</b>	<b>Negative</b>

<sup>85</sup> Already lending institutions are examining use of alternative credit data such as recurring payments (such as monthly utility bill payments etc.) to determine credit worthiness of potential borrowers, and consequently lending to such individuals/entities (see, <http://www.cgap.org/news/cgap-and-harvesting-explore-use-alternative-data-credit-scores>).

Stakeholder	Type of Impact	Impact in Baseline Scenario	Impact if Amendment Enacted	Change in Impact
		establishment: INR 200	establishment: INR860	Increase in average cost per establishment by INR 660
	Non-monetary	While there is high pressure on employers to intimate closure to government, without such intimation the register of establishment is unlikely to change.	While the establishments need not necessarily report closure and save cost, the name may be removed from register unilaterally by inspector if the inspector confirms having 'reliable information' about closure	<b>Negative</b> The risk of unilateral removal of name of establishment from the register is high

The proposed amendments are likely to have net negative impact on stakeholders, primarily owing to adverse impact on government. Suggestions to reduce the negative impact are provided below:

- Clear indicators should be provided on constitutes of 'reliable information', and the process of recording them. This should happen after adequate consultation with stakeholders.
- The time period provided to establishments to intimate closure may be extended from 10 days to one month to release some pressure of the establishments.
- It should be ensured that establishment is provided an opportunity of hearing before its details are removed from register of establishment based on 'reliable' third party information.
- Before initiating inspection, adequate checks should be conducted by the government to ensure inspection of a closed establishment is not initiated.

### 11.5 Extra wages of overtime work

Table 34 highlights the impact of proposed amendment which increases the overtime wage rate from one and half times to double the ordinary wage rate.

**Table 33: Impact Comparison of Overtime Wage Related Provisions**

Stakeholder	Type of Impact	Impact in Baseline Scenario	Impact if Amendment Enacted	Change in Impact
Establishments	Costs (monetary)	Overtime wage per employee: INR25	Overtime wage per employee: INR50	<b>Negative</b> Increase in overtime wage per employee of around INR 25.
	Costs (non-monetary)	Possibility of non-compliance owing	Reduction in possibility of non-	<b>Positive</b> Reduction in

Stakeholder	Type of Impact	Impact in Baseline Scenario	Impact if Amendment Enacted	Change in Impact
		to regulatory inconsistency.	compliance with regulations.	possibility of non-compliance
	Benefits	Employee productivity consequently benefiting establishments	Increase in employee productivity with additional benefits to establishments	<b>Positive</b> Increase in productivity positively impacting business.
<b>Employees</b>	Costs (non-monetary)	Possibility of informal employment	Possibility of increase in informal employment	<b>Negative</b> Possibility of increase in informal employment
	Benefits	<b>Per employee incentive of INR25 to work overtime</b>	<b>Incentive of INR 50 to work overtime</b>	<b>Positive</b> <b>Increase in incentive by INR 25 to work overtime</b>
<b>Net impact</b>	<b>Monetary</b>	<b>Net cost per employee: INR0</b>	<b>Net cost per employee: INR0</b>	<b>No change</b>
	<b>Non-monetary</b>	<b>Inconsistency in overtime wage rates and low rate</b>	<b>Reduction in inconsistency and increase in overtime wage rate</b>	<b>Positive</b> <b>Greater clarity about overtime wage rate and its increase is likely to enhance productivity</b>

The proposed amendment is likely to increase the monetary costs for establishments while delivering corresponding benefits to employees. It may also impact stakeholders qualitatively. It is likely to have a net positive impact. The measures set out below may help in addressing some potential adverse impacts of proposed amendments:

- There is a need to generate awareness about benefits of paying overtime wages to employees. Labour welfare has a positive correlation between industrial productivity. Periodic advocacy and counselling sessions for employers should be organised.
- Establishments could be incentivised to pay overtime wages to employees. For instance, a record of regular payment of overtime wages to employees can be one of the indicators to ascertain creditworthiness of establishment, and thus can aid establishments in obtaining credit.<sup>86</sup> Potential lending institutions could be roped in to provide credit support to such establishments.
- Given that establishments with two or less employees are unlikely to employ non-family members, they may be exempted from this requirement.
- Government should invest resources to ensure enforcement of the requirement to pay overtime wages to employees.
- Government should focus on reducing cost of doing business for establishment, so that they have adequate margins to pay for increased overtime wage rate. Also, it should facilitate creation of adequate re-skilling opportunities for employees to reskill themselves and re-enter formal workforce.

<sup>86</sup> *Ibid*

## 11.6 Employment of women at night

Table 35 highlights the potential impact on stakeholders of the proposed amendment with respect to allowing women employment at night.

**Table 34: Impact Comparison of Provisions Related to Women Employment at Night**

Stakeholder	Type of Impact	Impact in baseline scenario	Impact if amendment enacted	Change in impact
<b>Establishments</b>	Costs (monetary)	<b>Monthly cost for employing women at night: INR29,500</b>	<b>Monthly cost for employing women at night: INR 29,500.</b> However, this may decrease over time if several establishments start employing at night.	<b>No change</b> However, this cost is likely to decrease in medium to long term.
	Benefits	Ability to choose from wider pool and given precedent to merit and increase in productivity	Greater ability to choose from wider pool and additional productivity related benefits.	<b>Positive</b> Increase in productivity positively impacting business.
<b>Employees (women)</b>	Benefits	Limited employment opportunities at night	Increase in employment opportunities for women at night	<b>Positive</b> Increase in employment opportunities for women at night
<b>Net impact on stakeholders</b>	<b>Monetary</b>	<b>Net cost per establishment: INR0</b>	<b>Net cost per establishment: INR0</b>	<b>No change-</b>
	<b>Non-monetary</b>	<b>Limited employment opportunities at night</b>	<b>Increase in employment opportunities at night</b>	<b>Positive</b> <b>Increase in employment opportunities for women at night</b>

The endorsement of women employment at night by amendment in the Act is likely to generate greater awareness among stakeholders, and more establishments are likely to come forward to employ women at night. However, given that the costs of women employment are required to be borne by establishments, small and medium establishments might face difficulties in employing women at night, despite interest. Consequently, it is suggested that the government should initiate an internal thought process on sharing the cost of women employment with such establishments which are facing genuine difficulties in bearing such costs.

In addition, women employment at night may be incentivised by the government, in terms of tax breaks or government sponsorship of insurance of women employed at establishments. Several venture capitalists and investors rank diversity in workforce and management highly, while deciding investment options. The government may act as a bridge between such interested investors and establishments employing women at night.

## 11.7 Complaint against Wrongful Dismissal or Discharge

Table 36 highlights the potential impact on stakeholders of the proposed amendment to increase the timeframe of complaint against wrongful dismissal and discharge from 30 days to six months of receipt of such order.

**Table 35: Impact Comparison of Provisions related to Wrongful Dismissal and Discharge**

Stakeholder	Type of Impact	Impact in Baseline Scenario	Impact if Amendment Enacted	Change in Impact
<b>Establishments</b>	Benefits	Limited possibility of filing frivolous complaints by employees	Increase in possibility of filing frivolous complaints by employees	<b>Negative</b> Increase in possibility of filing frivolous complaints by employees.
<b>Employees</b>	Costs (monetary)	<b>Court fee stamp of INR5</b>	<b>Court fee stamp of INR5</b>	<b>No change</b>
	Costs (non-monetary)	Limited time availability to overcome procedural constraints	Increase in time available to overcome procedural constraints.	<b>Positive</b> Increase in time availability with employees
<b>Government</b>	Costs	High pressure to adjudicate matters due to high pendency	Likely reduction in pressure as employees get more time to evaluate options before filing cases	<b>Positive</b> Likely reduction in pendency and pressure
	<b>Benefits</b>	<b>Collection of stamp fee of INR5</b>	<b>Collection of stamp fee of INR5</b>	<b>No change</b>
<b>Net impact on stakeholders</b>	<b>Monetary</b>	<b>Net cost per employee complaint: INR0</b>	<b>Net cost per employee complaint: INR0</b>	<b>No change</b>
	<b>Non-monetary</b>	<b>Limited time availability with employees in filing complaints</b>	<b>Employees are likely to get more time to evaluate options before filing complaints</b>	<b>Positive</b> <b>Employees can evaluate all options. Existing checks to prevent frivolous complaints are likely to be sufficient.</b>

While the proposed amendment is likely to result in net benefits to stakeholders, there is also a need to relook at the process of filing complaint with the prescribed authority. At present, employees are required to swear in affidavit before the magistrate that contents of the

memorandum in which complaint is presented are true to the best of the knowledge and belief of the complainant. This process is extremely cumbersome. To avoid this process, an alternative may be explored wherein employees may be required to annex a self-declaration of correctness of contents of complaint as an affidavit to the complaint. In case the prescribed authority finds that the self-declaration was incorrect, it may be authorised to impose heavy penalties on the complainant.

In addition, there is a need to generate awareness about the opportunity with employees to file complaint against unlawful dismissal and discharge. To ensure employees have adequate support to file complaint, adequate information in simple language should be made available at popular labour meeting centres.

## 11.8 Penalties

The proposed amendment which increases the maximum penalties for violation of different provisions of the Act is likely to impact stakeholders in a manner set out below.

**Table 36: Impact Comparison of Provisions Related to Penalties**

Stakeholder	Type of Impact	Impact in Baseline Scenario	Impact if Amendment Enacted	Change in Impact
<b>Establishments</b>	Costs (monetary)	Average maximum penalty of INR267	Average maximum penalty of INR5167	<b>Negative</b> Average increase in maximum penalty by INR4900
<b>Employees</b>	Benefits	Low compliance with the Act limits labour welfare	Increased compliance with the Act enhances labour welfare	<b>Positive</b> Increase in compliance with provisions of the Act and labour welfare
<b>Government</b>	Benefits (monetary)	Average maximum penalty collected of INR267	Average maximum penalty collected of INR5167	<b>Positive</b> Average increase in maximum penalty collected by INR4900
	Benefits (non-monetary)	Low penalties are unlikely to act as low deterrent and result in limited compliance	Increase in penalties is likely to increase deterrence and increase compliance	<b>Positive</b> Increase in deterrence and compliance with provisions of the Act.
<b>Net impact on stakeholders</b>	<b>Monetary</b>	<b>Net cost per violation: INR0</b>	<b>Net cost per violation: INR0</b>	<b>No change-</b> Increase in penalty paid by employer will be collected by establishment
	<b>Non-monetary</b>	<b>Limited employee welfare and low penalty collection by</b>	<b>Increase in employee welfare and penalty collection by the</b>	<b>Positive</b> Increase in deterrence, compliance with Act, employee

Stakeholder	Type of Impact	Impact in Baseline Scenario	Impact if Amendment Enacted	Change in Impact
		government	government	welfare and penalty collection by government

In case the proposed amendment is implemented, the stakeholders are expected to experience net benefits. However, the government will need to generate awareness about the benefits to comply with provisions of the Act. In addition, it will need to strengthen enforcement to deter non-compliance.

The government should also identify major non-compliances, identify reasons and work towards addressing any genuine challenges that may be faced by small and medium establishments in complying with provisions of the Act.

### 11.9 Composition of offences

There is no provision in the Act at present which authorises composition of offences. The proposed allows for composition of offences, either before or after institution of the prosecution, on payment of a composition fee equal to the maximum amount of the fine provided for such offence.

**Table 37: Impact of Proposed Provision on Composition of Offences**

Impact	Proposed Amendment
<b>Costs to establishments</b>	Payment of fee equal to maximum amount of fine, at times, before institution of prosecution. <b>Average maximum fine of approximately INR267</b>
<b>Benefits to establishments</b>	Saving of litigation and opportunity cost
<b>Benefits to government</b>	Reduction in burden on quasi-judicial/judicial arm of the government and <b>collection of maximum possible fine of INR267</b>
<b>Net impact</b>	<b>Positive</b> <b>Establishments and government are likely to benefit from reduction in litigation costs. The Government is also likely to collect high fees.</b>

While the proposed amendment is likely to result in net benefit to the stakeholders, it is suggested that in matters in which interest of employees is involved, the compounding should be subject to their consent and employees should be compensated for the hardships they might have experienced, from the compounding fees collected by the Government from the establishments.

## Chapter 12: Conclusion and Way Forward

The Act as well as proposed amendments are likely to have monetary as well as non-monetary impacts on stakeholders. The sections below provide a consolidated picture of such monetary as well as non-monetary impacts.

### 12.1 Consolidated monetary impact if proposed amendments are enforced

Table 39 highlights the costs and benefits likely to be imposed on different stakeholders in baseline scenario and a scenario wherein proposed amendments are likely to come into force.

**Table 38: Consolidated Monetary Impact of Proposed Amendments**

Provision	Impact on Establishment (INR)			Impact on Government (INR)			Impact on Employee (INR)		
	Baseline	Amendment	Net	Baseline	Amendment	Net	Baseline	Amendment	Net
Per Application	(265)	(200)	65	(125)	(135)	(10)	-	-	-
Per Approval	(200)	0	200	-	-		-	-	-
Per extract	0	(10)	(10)	0	(2)	(2)	-	-	-
Records per month	(2575)	(2575)	0	(645)	(645)	0	-	-	-
Closure per establishment	(200)	0	200	0	(860)	(860)	-	-	-
Overtime wage per employee per hour	(25)	(50)	(25)	-	-	-	25	50	25
Women employment per month	(29500)	(29500)	0	-	-	-	-	-	-
Wrongful dismissal per employee	-	-	-	5	5	0	(5)	(5)	0
Average Penalty per violation	(267)	(5167)	(4900)	267	5167	4900	-	-	-
Average composition per violation	-	(267)	(267)	-	267	267	-	-	-
Total cost (per unit)	(33032)	(37769)	(4737)	(498)	3797	4295	20	45	25

#### Note

- Figures in (red) indicate costs
- Figures in green indicate benefits
- Figure in yellow indicate no change in impact

The total cost imposed per establishment in baseline scenario is INR33032 which is likely to increase by INR4737 (around 14 percent) to INR37769, should the proposed amendments are likely to come into force. Most of this increase is on account of substantial increase in maximum penalties in case of violation of provisions of the Act. If such increase is disregarded, the cost per establishment is likely to marginally reduce by INR163 (around 0.5 percent).

If the proposed amendments come into force, the government is likely to be benefitted by INR4295. As indicated above, this is on account of substantial increase in penalty likely to be collected by government in case of non-compliance by establishments. Disregarding the

increase in penalties, the cost to government is likely to increase substantially by INR605 (around 79 percent) from INR765 to INR1370. This is largely on account of cost to establish 'reliable information' about closure of establishments and the need to ensure safe keep of physical applications and hard copies of extracts of records collected from establishments. The proposed amendments are likely to have positive impact on employees as their overtime wage rate is likely to substantially increase.

## 12.2 Net monetary impact if proposed amendments are enforced

Table 40 highlights the net monetary impact on specific stakeholders as well as the ecosystem in general if the proposed amendments come into force.

**Table 39: Net Monetary Impact of Proposed Amendments**

Amendment	Impact on Establishment (INR)	Impact on Government (INR)	Impact on Employee (INR)	Net Impact (INR per unit)
Application for registration (INR per application)	65	(10)	-	55
Grant of approval (INR per approval)	200	-	-	200
Furnishing of extract (INR per extract)	(10)	(2)	-	(12)
Closure of establishment (INR per establishment)	200	(860)	-	(660)
Overtime wage rate (INR per employee per hour)	(25)	-	25	0
Average maximum penalty (INR per violation)	(4900)	4900	-	0
Average composition fees (INR per violation)	(267)	267	-	0
<b>Net impact (INR per unit)</b>	<b>(4737)</b>	<b>4295</b>	<b>25</b>	<b>(417)</b>

Notes:

1. Figures in **red** indicate costs
2. Figures in **green** indicate benefits
3. Figures in **yellow** indicate no change in impact

In case the proposed amendments come into force, net increase in monetary cost on all stakeholders is likely to be INR417, i.e. an increase of around 1.24 percent from INR33510<sup>87</sup> to INR 33927.<sup>88</sup> This increase is primarily on account of provisions relating to use of discretion of labour inspectors in: i) requiring establishments to furnish extracts of records and registers in hard copy; and ii) cancelling the name of an establishment from the register of establishments. There is no clear indication on instances and manner in which such discretion may be exercised,

<sup>87</sup>  $-(33032 + 498) + 20 = - 33510$

<sup>88</sup>  $-37769 + 3797 + 45 = - 33927$

thereby resulting in significant compliance cost for establishment and administration cost for government.

### 12.3 Non-monetary impact if proposed amendments are enforced

In addition to the monetary impact, enactment of proposed amendments is likely to have significant non-monetary/qualitative impact on different stakeholders. Such qualitative/non-monetary impact can be positive as well as negative in nature. Table 41 compares the non-monetary impact of provisions under the Act in baseline scenario with non-monetary impact of proposed amendments.

**Table 40: Non-monetary Impact of Proposed Amendments**

Provision	Baseline	Proposed Amendment	Net Impact
<b>Application</b>	High possibility of submitting incorrect/incomplete application through electronic mode but benefits of speed, transparency and accountability are available in such mode.	Reduction in possibility of submitting incorrect/incomplete application owing to adoption of physical mode. However, consequent reduction in benefits of speed, transparency and accountability linked to electronic mode.	<b>Positive</b> Establishments not having access to internet/electronic services or for whom such access is prohibitively costly are most likely to use physical mode. Unavailability of physical mode might mean losing such potential applicants.
<b>Approval</b>	Labour inspectors work under pressure but process applications quickly. Also, they may issue unnecessary clarifications, often unintentionally.	The pressure on labour inspectors is likely to reduce and they are unlikely to issue unnecessary clarifications. However, time taken for processing might increase.	<b>Positive</b> Labour inspectors will get more time to review the applications. The requirement to process applications within 30 days remains, failing which deemed approval will be provided.
<b>Record and register maintenance</b>	Freedom to maintain the records in manner deem fit with establishments.	The plausibility of furnishing hard copy extracts of records to inspector may take away some benefits of electronic record keeping for establishments.	<b>Negative</b> Electronic records are as reliable as hard copy records and admissible as evidence. The requirement to furnish extracts in hard appears redundant.
<b>Closure of establishments</b>	While there is high pressure on employers to intimate closure to government, without such intimation the register of establishment is	While the establishments need not necessarily report closure and save cost, the name may be removed from register unilaterally by inspector if the	<b>Negative</b> The risk of unilateral removal of name of establishment from the register of establishment is high, as no guidance and process for use of discretion is

Provision	Baseline	Proposed Amendment	Net Impact
	unlikely to change.	inspector confirms having 'reliable information' about closure.	proposed.
<b>Overtime wage rate</b>	Inconsistency in overtime wage rates between Act and Rules.	Reduction in inconsistency and increase in overtime wage rate.	<b>Positive</b> Greater clarity about overtime wage rate and its increase is likely to enhance productivity.
<b>Women employment at night</b>	Limited employment opportunities at night for women	Increase in employment opportunities at night for women	<b>Positive</b> Increase in employment opportunities for women at night, have positive impact on establishments.
<b>Complaint against wrongful dismissal and discharge</b>	Limited time availability with employees in filing complaints	Employees are likely to get more time to evaluate options before filing complaints. Also, quasi-judicial authorities are likely to have time to review the complaints.	<b>Positive</b> Employees can evaluate all options before filing complaints. Existing checks to prevent frivolous complaints are likely to be sufficient.
<b>Penalties</b>	Limited employee welfare and low penalty collection by the government	Increase in employee welfare and penalty collection by the Government	<b>Positive</b> Increase in deterrence, compliance with Act, employee welfare and penalty collection by the government
<b>Composition of offences</b>	No provision	Establishments and government are likely to benefit from reduction in litigation costs. The Government is also likely to collect high fees	<b>Positive</b> Establishments and government are likely to benefit from reduction in litigation costs. The Government is also likely to collect high fees

The net non-monetary impact of proposed amendment on stakeholders is likely be largely positive. Such positive impact is likely to outweigh the miniscule increase in net monetary costs (by around one percent, as indicated the previous section) in case proposed amendments are enacted. However, different stakeholder groups may experience significant divergence in costs and benefits. Further, substantial scope remains to increase benefits and reduce costs across stakeholder groups.

## 12.4 Way Forward

As indicated earlier, this report captures the process and findings of a rapid cost benefit assessment exercise of select provisions of the Act and amendments proposed to such provisions. The objective of such exercise was to showcase merits in thinking about likely costs and benefits of regulatory proposals. Such assessment is part of the RIA exercise, which also

involves design of different regulatory proposals aiming to meet regulatory objective. RIA aids in answering if regulation is necessary and if answer to this question is positive, it helps in selecting the regulatory package which is likely to achieve the regulatory objective at least cost or maximum net benefits to the stakeholders.

The net monetary impact of proposed amendments is likely to be negative in nature, albeit marginally, which is likely to be outweighed by the substantial net non-monetary impact which is expected to be substantially positive. In order to further reduce costs and improve the benefits to stakeholders in a scenario wherein proposed amendments are implemented, following suggestions have been made.

**Table 41: Summary of Recommendations**

<b>Provision</b>	<b>Summary of Recommendations</b>
<b>Application</b>	Generate awareness, build capacity about electronic mode and incentivise its usage
<b>Approval</b>	An auto generated registration certification should be issued in case of deemed registration
<b>Furnishing hard copy extract</b>	Incentivise maintenance of records and allow extract to be collected in soft copy
<b>Closure of establishment</b>	Provide indicators to determine existence of 'reliable information' and follow due process for recording closure
<b>Overtime wage rate</b>	Incentivise overtime wage payment and take measures to bring employees in formal economy
<b>Women employment at night</b>	Share the cost of women employment with establishments facing genuine difficulties in bearing such costs, and provide incentives
<b>Wrongful dismissal</b>	Ease the process of filing complaint by allowing self-certification. Deter frivolous complaints through heavy penalties
<b>Penalty</b>	Strengthen enforcement. Identify reasons for violation and work with establishments, especially micro, small and medium enterprises, to address challenges
<b>Composition</b>	Compensate employees if they are negatively impacted by violation

In addition, there is a need to begin conversation about adoption of RIA in policy making especially at level of states, and experience of conducting this rapid cost benefit analysis exercise can help in doing the same. As it is evident from the study, RIA is not without limitations and based on several assumptions. However, it definitely provides a framework worth adopting to examine different regulatory proposals. As in this study, structured stakeholder consultation is integral to RIA, is the basis for collection of quantitative and qualitative costs and benefits, and is necessary for evidence-based policymaking. It also helps creating stakeholder buy-in for the regulatory proposals.

However, stakeholder consultation comes with its own limitations, such as limited understanding and appreciation of the RIA tool among stakeholder community, and apprehension about sharing of relevant data, among others. To overcome these and other limitations, greater awareness about RIA and its utility is required. Similarly, capacity building initiatives within government departments on RIA are essential.



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