Legal Provisions for protection of health and safety at work in India

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Summary:

Laws regarding protection of health and safety at work in India have been looked at in this paper. Provisions of Factory Act, Mines Act, Construction workers Act, ESI Act, Employees Compensation Act, Shop & Establishment Act, Plantation Workers Act etc. have been examined. Several other have still been left out like Electricity Act, Boiler Act, Explosive Act, Petroleum Act and so on. Limitations of the legal provisions have been spelled out at the end.

Historical background:

It was in 1881 that under the pressure of British mill owners that British government ruling India then, enacted this law. The British Mill Owners argued to provide them fair and equal conditions for business, as the British mills were supposed to follow provisions of Factory Act enacted in 1833 while for the Indian mill owners there were no legal provisions to follow. First mill in India was set up in Mumbai in 1854. First strike was reported in 1877 in Empress Mill, Nagpur. Bombay Mill Hands Association was established by Narayan Lokhande in 1890 which demanded for weekly leave on Sunday for textile mill workers. The Factory Act was amended several times. Major changes came in 1987 following Bhopal tragedy.

7th edition of “Labor Problems and social Welfare” (R.C.Saxena) published in 1959 reports: “....the employers do not report occupational diseases and many times no compensation is paid in deserving cases, because a cause of disablement or death due to occupational disease is not properly diagnosed..” (P.535). We are still struggling with the same problem. It adds,”.... the Industrial Health Research Unit of the Indian Research Fund Association has also undertaken some surveys regarding occupational diseases, specially in case of lead intoxication in printing presses and toxicity of industrial dust. In Bombay also a Research Laboratory has already been set up for the purpose. The All India Institute of Hygiene and Public Health has also compiled “A Re-
view of Occupational Health Research in India" which contains a summary of various technical Committee of 12 members to advise on adding to and revision of the list of Occ. Disease. The organization of Chief Advisor, Factories also carries out surveys for locating occupational hazards in certain specified industries. It may be mentioned that the occupational diseases are one of the important causes of bed health of industrial workers."(P.536). Now, we do not know which of these institutions have survived and what impact have they left.

**Major Legal Provisions:**

**Factory Act:**

The Act is applicable to the manufacturing activities as defined by the Act. It is applicable to whole of India. Provisions are equally applicable to ALL workers – casual, contract, permanent or temporary as Act do not make any differentiation. Major provisions are regarding health, safety and welfare. State Governments notify State Rules and have adequate powers to apply law to the industry and the number of employees as they wish. Normally law is applicable to unit employing 10 or more workers but for certain industries it is made applicable to the units employing 5 or more or even 1! In 1987 Ch.IV-A was introduced for hazardous units. Threshold limit values were introduced for the first time in the Act then for 117 substances. But the list has neither been reviewed nor expanded. It was expected that the workplace environment will be monitored but in most cases that is not done. In absence of data on work environment it becomes difficult to correlate impact on health of workers. There is no provision to employ Industrial Hygienist. There is also no clear provision for the monitoring of workplace environment. Major problem is with enforcement. Administration lack adequate manpower. Particularly after 6th pay commission implementation, erosion in manpower has picked up a fat pace. In Gujarat, presently only 40% of the sanctioned staff is in place. Another problem is that of corruption. Both the problems can be over come to some extent by giving powers to the workers/TUs/civil society organizations to prosecute units for violation. Presently the power rest with Government only. Private complaints may be filed with prior permission from Government. In Hazardous units it is mandatory to employ Factory Medical Officers (FMO) who are qualified in Industrial/Occupational health. Medical Practitioners/owners are expected to notify incidents of occupational diseases listed in Sch.III of the Act but that has remained very very poor and State is not making any efforts to resolve the problem. Positive incentive for notification may be one of the changes that may be made in the Act. Civil society too has done nothing on its own to generate reliable data. Data on occupational disease is altogether a different subject is not dealt with here in depth. Profes-
sional medical associations have been protecting interests of business. Individual workers, too, know their interest well and help in hide the facts on occupational diseases. Labor laws and judicial system have failed in instilling trust among the workers. Trade Unions have developed as labor wings of political parties and they might be waiting for the political power to come in their hands when they can influence. Left rule in W.Bengal for more than 25 years have not left any encouraging results with regard to diagnosis, reporting and recording of occupational diseases. Exemplary fines or jail are not imposed on violators. In most cases workers are made to work for 12 hours with tacit state approval, without being paid for overtime wages and in violation of total hours for overtime permitted. Data on serious injury remain largely under-reported.

**ESI Act & E.C.Act:**

The Act is applicable to the units employing 10 or more workers in geographical notified area. Again, in the unit where it is applicable, employees earning Rs. 15,000 or less are covered. In some States, Act is applicable to the educational institutions, cinemas and so on. It is observed that units do not cover all of their workers- temporary, contract and some permanent workers are not covered violating the law. For those who are covered, employers play trick with the records by showing lesser attendance so as to pay less amount of contribution towards insurance. As a result workers are not able to get benefits as all the benefits have attached conditions. Several examples may be quoted. Most glaring example is that of tribal workers from Gujarat, Rajasthan and Madhya Pradesh working in quartz crushing units in Gujarat. More than 2-3,000 workers might have died of silicosis over last 30 years but none could claim compensation from ESIC for lack of coverage or lack of adequate attendance. In case of occupational diseases workers are paid compensation from the date of their examination by Medical Board and not from the date of onset of the disease. Workers who get diseases after leaving employment find it extremely difficult to claim compensation. Also, the workers who do not full fill the condition of employment for specified period also can not get compensation. Because employers play with the records, workers can not prove the complete employment period and then are deprived of the benefit. Standards for evaluating the disability due to diseases are not developed and are being done arbitrary by the Medical Board. Assessment by the Board are in most cases most dissatisfactory and unscientific. ESI dispensaries and hospitals are run by the State health departments. These facilities are often understaffed and lack most basic equipments. ESI Medical manual is not well enforced and ESI Corporation has failed in monitoring these facilities. ESI Act and rules need to be amended to give powers to the workers/TUs/civil society organizations to prosecute units for violation. In Employees Compensation Act
in last few years welcome changes have been made. Still, the list of occupational disease in Sch.III need to be changed in both the Acts (is common in both) to include list of occupational diseases prepared by ILO. In case of Employees not covered under ESI Act can claim compensation under Employees Compensation Act. If the unit has not bought insurance for E.C. Act if becomes difficult for employee to claim compensation as one is afraid of being fired. There are few who take risk, get fired and file claim. When the Compensation Commissioner pass order in favor of the claimant, the employer would refuse to pay or simply not pay. There are large numbers of such claims when workers are not paid despite favorable orders. Some legal provision need to be taken to prevent such action on part of employers.

**Mines Act:**

In India the Mines Act was first enacted in the year 1901. The original Mines Act was replaced in 1923 and subsequently in 1952 the Parliament has enacted the present Mines Act. The Act was last amended in 1983. It has provisions for safety, health and welfare. In 1983 it was amended to prohibit laborers below 18 yrs of age, inspection of mines by workers representatives, safety committees and to regulate the use of machinery to take care of the hazards associated with the introduction of new types of machines. In 2011 the Act was again amended mainly to keep pace with the liberal policy for investment and increase penalties for violations. In statement of objective for amendment it stated that “Operations are getting more and more mechanized with introduction of heavy machines, shallow deposits are getting depleted and mines are becoming deeper and complicated and operators from other parts of the world have started acquiring mining rights and managing mining operations within our country. This has created a new safety and health risk scenario at the work places in these sectors.” But when you look at the amendments, you do not see any amendment regarding safety as such. These amendments in the Mines Act, 1952 envisage extending the Act to the whole of India including territorial waters, continental shelf, exclusive economic zones and other maritime zones of India substituting the definition of owner so as to make it more comprehensive and specific; define the ‘foreign company’ with reference to the Companies Act, 1956; provide for appointment of officials in addition to agent of employer in the mines; increase in the penalties provided in various sections and to shift the burden of proof upon the person who is being prosecuted or proceeded against. Here, too, identification of occupational dieses and compensation for the same have remained a matter of concern. Still, it may be stated that comparatively DGMS is better than DGFASLI as DGMS has better data on Occ. diseases than DGFASLI. There is huge number of illegal mining and workers engaged in such mines remain out of purview of the legal provisions.
Plantation Act, 1951:

In this Act there are provisions for health and welfare like drinking water, sanitation, medical facilities for workers and their families, hours of work, weekly holidays. It provides for reporting of accidents at work. No provisions for safety, i.e. prevention of accidents or occupational diseases.

The Motor Transport Workers Act:

The Act provides welfare of motor transport workers and to regulate the conditions of their work. It is applicable to any motor transport undertaking employing more than 5 and State Govts are empowered to make it applicable to the units employing even less. The Act provides for hours of work, first-aid facility, medical facility, uniforms, rest rooms, daily interval of rest, restrict employment of young persons, wages for overtime, annual leave, etc. There are no provisions to maintain safe conditions in the vehicle. Transport workers are exposed to heat (of engine as well as environment), vibrations (whole body), glare of light, illumination, fuel fumes and dust, noise and so on. There are no threshold limit values to maintain the vehicles in safe condition.

The Beedi and Cigar Workers (Conditions of Employment) Act, 1966:

This Act provides for welfare of the workers and regulate conditions of work. For health and welfare it provides for cleanliness, drinking water, latrines and urinals, washing facility, crèches, first aid, canteens. It also provides to regulate working hours, weekly holidays, leave with wages etc. Here, too there are no provisions to regulate tobacco dust or monitor work environment to prevent accidents or occupational disease.

The Bombay Shops and Establishment Act, 1948:

The Act applies to local areas mentioned in the schedule. The State Government has powers to apply provisions to such other local areas having population of 25,000 or more and may also apply to such local areas having population less than that. The Act provides for monitoring hours of work and wages including daily and weekly hours, holidays, interval of rest, wages for overtime, leave with pay, cleanliness, ventilation, illumination. No standards have been set for these. No provisions to prevent accidents or occupational diseases. In-
terestingly there are no provisions for sanitation, drinking water, access, lifting of weight, provision for seating etc. Now in Mall culture workers are exposed to several hazards. No exposure limits prescribed. In shops various different activities are carried out like restaurants, aatta-chakki (workers are exposed to grain dust and silica dust), hair cutting (workers are exposed to hair and filth with it, powders, solvents, soap etc), glass (exposed to glass dust). Standing for long hours, dealing with public has hazard of violence and so on. There are no studies of health conditions of these workers.

The Building and other Construction workers (Regulation of employment and conditions of service) Act, 1996:

The Act provide for establishing Advisory and Expert Committees at Central and State level. It applies to establishment employing 10 or more construction workers but do not apply to residential houses for own cost not exceeding Rs. 10 lakh. It provides for drinking water, latrines and urinals, free accommodation, crèche, canteens. For safety and health it provides for appointing safety committee and safety officers (for units employing 500 or more employees), notifying accidents and 15 occupational diseases listed in sch.II. State Governments are empowered to make rules for preventing accidents. The Act provide prosecution powers to the Inspectors appointed under the Act, Trade Union and any NGO registered under Societies Registration Act. Still, individual worker is not given such power. State rules provide detail rules for prevention of accidents, provide safe work condition, personal protective equipments etc. The Gujarat rules provide for TLV only for noise and Carbon monoxide. There is cursory reference to vibration but does not even refer to national standards. In rule 73 it talks of monitoring dust and fumes but no safe levels have been prescribed but refer to ‘National standards’. Similarly for illumination, rules refer to national standards without giving any safe levels. Sch.XII gives TLVs for chemicals which is replication of Sch.II of the Factory Act. But there is no provision to maintain record of the noise levels. Rules provide for periodical medical examination and in some case pre-employment medical examination, appoint medical officer, working hours, weekly holiday and payment of overtime wages, equipments for communication. Interestingly no specific provisions to prevent exposure to asbestos or silica dust.


Regulations provide for cleanliness, access, stairs, escape in case of fire, excessive noise, fire protection, illumination, life saving appliance, fencing, lad-
ders, working space, protection from dangerous and harmful environment, safety of lifting appliances, dock railway, conveyors, loading-unloading, personal protective equipments, handling of dangerous goods and tetraethyl lead, solvents, notification of accidents and occupational diseases, (owner is required to inform family of the employees - No other law has such provision which is required), employing safety officers, drinking water and sanitation, ambulance room, pre and periodical medical examination, OH services, safety committee. Sch.IV lists 11 notifiable occupational diseases which includes pneumoconiosis. No TLVs except noise has been prescribed.

**Limitations:**

As seen above we have laws for protection of H & S at work for workers in manufacturing, mines, construction and docks. There are laws for beedi and cigar workers, plantation workers, motor transport workers, shop workers and may be many more occupations- but as seen above these laws do not have adequate provisions to protect H & S at work. Generally it is believed that there are no laws for workers in unorganized sector but as far as protection of H & S at work there are no laws for workers in organized sector. Workers in service sector in particular like health care, education, bank and insurance, municipal workers, telecommunication, post and courier etc are not governed by any law. In manufacturing sector, workers employed in units employing less than 10 workers have no law for their protection of H & S at work and there is huge number of such workers. In Gujarat pesticide formulations, dyes & intermediates and many more hazardous chemicals are manufactured by such units.

Major workforce is in agriculture where there is no law for protection of these workers from snake bite, pesticides, tractor accidents and injuries by other implements, infectious diseases etc. In Gujarat since last 15 years, each year, on average 200 agriculture workers die of Leptospirosis. The Insecticide Act, 1968 and Rules 1971 provide for notification of cases of poisoning. It does not provide for protective equipments for the workers engaged in it use. The Dangerous machines (Regulation) Act, 1983 and Rules 2007 apply to the manufacture of threshers, chaff cutters, sugar cane crushers etc. The Act provide for the standard specifications of the machines which need to be adhered to by the manufacturer. Such machines are then, by design prevent accidents in agriculture. These are two legislations which may be said to have some connection with protection of health and safety of these workers at work.
Violence at work, sick building syndrome, repetitive strain injury (RSI), bullying at work have remained out legal purview. Criterion for assessment of disability due to occupational diseases has not been well developed. Sexual harassment at work has been taken care of to some extent by way of Supreme Court ruling in Vishakha Vs. State of Rajasthan. ILO convention 155 deal with protection of H & S at work for workers in all economic sectors irrespective of number of workers employed. All BRICS countries except India have ratified this convention. When we talk of UHC we will have to think of establishing OHS services for workers in all economic sectors. There are several laws but implementing agencies are different. E.g. Factory Act is enforced by state labor department, Boiler Act is enforced by separate wing of Labor department (in Gujarat), Electricity Act is enforced by State industry department, Explosive Act, Petroleum Act and Rules framed under it like SMPV Rules, Gas Cylinder Rules, Calcium Carbide Rules are enforced by Central Ministry of heavy industries and Public Enterprise and so on. Several organizations have recommended to rationalize and simplify these laws to avoid duplication and more effective enforcement. In year 1990 National Labor Law Association recommended to set up National Commission of H & S as well as Central and State Boards of OSH and later Second labor commission in year 2000, recommended to set up OHS Commission and OHS Committee. The Commission recommended to enact new law called OSH Bill and included draft of the Act in its report (Ch.11)


The Bombay Mill Hands Association was formed in 1890, which highlighted the terrible conditions and misery of workers caused by excessive work load, long working hours, low wages and horrible working conditions.¹

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