Occupational Health and Safety in India:
Legislations Inadequate

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THE DIRECTIVE: Principles of State Policy in the Constitution of India calls upon the government to direct its policy "towards securing that the health and strength of workers are not abused and the citizens are not forced by economic necessity to enter avocation unsuited to their age and strength". It also directs the state to "make provisions for securing just and human conditions of work". However, in India, many highly polluting and hazardous industries, some of which are banned in Western countries, like blue asbestos, DDT, BHC, etc., are under production and causing many reversible to irreversible, short-term to long-term, health hazards and diseases to the workers. Many work environments are continuously posing a threat to the health of the workers and environment. Even our existing legislations do not have sufficient potential to ensure the workers good health.

It is often discussed that personal injuries and illnesses arising out of work situation impose a substantial burden upon, and are a hindrance to national income in terms of lost production, wage loss, medical expenses and compensation payments. Still then nothing substantial has been done to prevent the occupational hazards. Occasional and isolated reviews of the existing laws have lead to some hotch-potch amendments here and there, but in general, have never succeeded in building up a regulative scheme to control occupational hazards.

The occupational hazard, till sometime back, was a non-issue in India. But with the growing industrialisation and use of very highly toxic chemical substances, occupational hazard has become an issue amongst the communities concerned. Unlike the Western countries, there have been no movements in India to build up a public opinion against this. Black lung being movement of coal miners, brown lung being movement of textile workers are some of the examples in USA. However, in India, some of the government sponsored institutes, like National Institute of Occupational Health and Safety (NIOHS), Industrial Toxicological Research Centre (ITRC), National Labour Institute (NLI), etc., and some non-government organisations are working in exposing the potential health hazards associated with various work processes. The existing industrial legislations even have serious limitations to make any dent in the sphere of occupa-
tional health and safety.

The provisions present in the existing laws are too scattered and even many types of work are not covered by any occupational health law. It may be noted that during the last decade, Western countries, like the USA, Canada, Sweden, etc., have revised their Industrial Acts and formulated comprehensive laws on occupational health and safety. These legislations do not challenge the global occupational hazards, but at least, it ensures small protection of work environment in their respective countries.

Keeping in view, the growing industrial disasters, it seems important to analyse our existing legislations on safety, so that some measures can be taken to build up a comprehensive legislation that at least ensures a safety regulated workplace. In India, the legislations that regulate the safety of the work environment and occupational hazards can be divided into three categories: Prescriptive-protective, Curative and Compensative. The prescriptive-protective acts are The Factories Act, 1948. The Mines Act 1952, The Plantation Labour Act 1951, The Beedi and Cigar Workers Act 1966 for various types of work processes. The Central Water (Prevention and Control of Pollution) Act, 1979 and the Central Air (Prevention and Control of Pollution, Act, 1981 prescribes limits of pollution coming out of the industries.

The Workers Compensation Act of 1923 is compensative and the Employees State Insurance Scheme Act of 1948 is curative and compensatory in character.

PREScriptive-PROTECTive LAWS

The Factories Act, 1948, The Mines Act 1952, Plantation Labour Act 1951 and Beedi and Cigar Workers Act, 1966 are the four acts which specifically prescribe standards for working conditions in factories, mines, plantations and beedi making industries. It may be noted at the outset that the classification of all the variety of works and all the related occupational hazards are not covered by these four broad categories.

The Factories Act, 1948

It has laid down provisions for the general health of the workers by prescribing details about cleanliness, disposal of wastes and effluents, ventilation and temperature, dust and fume, artificial humidification, overcrowding, lighting, drinking water, latrines and urinals and spitters (Ch.III). Chapter IV of the Act provides for the safety of the employees by laying down specifications for fencing of machinery work on or near machinery in motion, employment of young persons on dangerous machines, striking gear and devices for cutting off power, prohibition of employment of women and children near cotton opening, hoists, lifts, chains, ropes, revolving machines and any other hazardous operations. It also provides laws for providing protection of eyes, protection against fumes, explosives and inflammable gas; precaution against fire, standard
safety specification for building, machinery are also mentioned in the Act.

Chapter IX of the Act empowers the state government to declare a manufacturing process as dangerous operation. Any dangerous manufacturing process has to take up extra precaution for safety like periodical medical check ups, prohibition of employment of women and children. It also makes mandatory for the employer/owner to employ a safety officer to periodically assess the hazard and to remove the condition of dangerous operations.

The Chief Inspector of factories has the highest authority to inspect and recommend the safety and health measured. Any bodily injury or accident occurred in a factory which results in absence from work for 48 hours by the injured worker has to be informed to the Inspector’s Office. To check the violation of any provision of the Act, an inspector may take samples of substance used in the factory. He can also take up safety and occupational health surveys.

The most recent amendments identify hazardous processes. These amendments give certain rights to the workers and the citizens around the factories. Both the sections now have right of information about hazardous processes. Earlier the reports of medical check ups of workers were the property of the management. Now the workers have a right to get the medical report. There is a duty cast on the manufacturers of supplying information about hazards. The employers have to develop a safety policy and form safety committees. The workers are given a guarantee that about any complaint they lodge with the factory Inspector, identity of the worker won’t be disclosed. The major lacuna in these rights is if violated they don’t give any right to the workers for seeking remedies. The Factory Inspectorate is the only authority which can seek legal action against the erring employers. The rules under this Act are framed by the state governments separately. So we get situations where use of chromium is strictly controlled in one state but not in some other state. The rules should be framed at the Central level so that they bring a uniformity all over India.

The Mine Act, 1952

This Act includes all activities related to excavation (both underground and open cast), where the operation is carried on for the purpose of searching and obtaining minerals.

The prescriptive and recommending authority for the matters related to the work process and health and safety is the Mines Inspector. Of course, the power of the Inspector does not stand in certain work processes where the number of labourers are 50 and the purpose of the work is not profit oriented.

A special section on Occupational Health and Safety in Mines was included in the Act only in 1983. But this (section 9A) only talks of "Facilities to be provided for occupational health survey". It delegates all power to the Inspector and his office to undertake OH&S survey with due notice to the manager/owner. It clearly says that if the worker is found suffering
from any occupational disease caused due to the prevailing work condition, it is the responsibility of the owner/manager to provide compensation as permissible under the Workmen's Compensation Act. But it is shocking to note that neither in Factories Act nor in Mines Act there is any mention of time interval of medical check up for the workers.

The Mines Act, like the Factories Act, mentions about the minimum provisions, like drinking water, provision of latrines and other aspects, like lighting, ventilation, adequate pillars for underground mining, roads, etc.

Section 10 of the Act mentions about the secrecy of information obtained from occupational health survey. No report of the safety survey and medical examination report can be revealed to the public or the individual workers whose health is being checked up for the purpose of survey. But these can be revealed only on demand by the court, superior official, inquiry commission, Workmen's Compensation Commission, Controller and the recognised and registered trade unions.

A very progressive amendment was made in 1983. It mentions about the formation of a committee consisting of representatives of government, owners and workers and qualified engineers to recommend to Central Government for formulating rules and regulations to enquire into different aspects of the mines, including the health and safety issue. This Committee can be formed at the national level, zonal level and even at the level of a mine or group of mines. The Act empowers the Committee to exercise much of the powers of an Inspector as it deems necessary or expedient to exercise for the purpose of discharging its functions. However, in the absence of trained safety steward of worker representatives in the committee, it does not deliver the goods as it is supposed to do. Chapter III and IV empowers the committee to intervene and stop the process of work in the case of perceived danger.

As in the Factories Act, the Mines Act specify provisions to notify all types of accidents to the Inspector. However, unlike the Factories Act, it is obligatory for the owner to notify to the trade unions by putting a notice about the accident on the notice board. In case of any major accident, the Central Government has authority to appoint a court of inquiry under Code of Civil Procedures, 1908.

Section 25 is about the occupational diseases. A Government notification declares two diseases, viz. M, Silicosis and Pneumocnosis as occupational diseases. Other occupational diseases caused by noise, vibration, heat, etc., are not mentioned in the Act. This section also specifies that if a doctor detecting and declaring any occupational disease fails subsequently to diagnose and prove the same to the Chief Inspector, he is punishable under the Act. The Act itself is a deterrent for the practicing physicians to diagnose the health problems of the workers from occupational hazard point of view. It is often seen that many occupational bronchial diseases and skin diseases are treated as non-occupational health problems.

With regard to health and safety standards, the Act gives blanket power to the Central Government without any specification. These include very important aspects, like prevention of dust, noxious fumes, provision of safe
pillars to prevent premature collapse, water logging and lighting arrangement. The nature of mining work is so diverse that the absence of a clear-cut specification poses problem for implementing the specific safety standards. Some part of the mines are also controlled by the Indian Explosives Act.

_The Plantation Labour Act, 1951_

This Act seeks to regulate the conditions of plantation labour in tea, coffee, rubber and cichona plantations and other plantations wherever the government feels necessary. This Act makes provisions for ensuring necessary amenities, like drinking water, medical, education, creches, housing, etc., for the plantation labour. This Act applies to the plantation work where the work place is more than five hectares and 15 or more persons are employed.

Chief Inspector of Plantation is vested with the authority to ascertain the regulation of the Act. Chapter III, which deals with the health, does not mention any occupational disease except the provision of medical facilities to the labourers and their family members at their place of work.

In case of any injury, the compensation is to be paid under the Workmen’s Compensation Act. It may be noted here that though there is a mention about the medical examination of the workers at the instruction of the Inspector, the Act does not recommend any provision for the regularity of the checkup and other provisions are similar to the provisions present in the Factories Act and Mines Act. The Plantation Act prescribes for reporting of accidents and maintenance of reports of all accidents.

_The Beedi and Cigar Workers (Conditions of Employment) Act, 1966_

This Act is applied to all the processes of manufacturing of beedi, cigar, i.e., making, finishing, packing, transport and delivery of the goods related to the manufacturing process, use and sale. Chief Inspector is the highest authority to go into the details of the manufacturing process. The Act obligates the owner to make provisions for cleanliness, ventilation, drinking water, washing facilities, latrines, urinals, creches, first aid and to check over-crowding. But in each case, the specifications are given by the state governments. This Act does not have any other section or chapter on occupational health and safety. It is assumed that the minimum amenities provided in the Act are sufficient enough to combat all occupational health problems.

The other prescriptive-protective law which does not cover any type of work process but is applicable to the work process that pollute the environment is the Central Water and Air (Prevention and Control of Pollution) Act 1979 and 1981. It makes mandatory for industries to seek the approval of the effluent disposal design and concentration of pollutant in the waste. This Act is particularly applicable to the chemical and other industrial processes.
The Curative Legislations

Employees State Insurance Act provides benefits in case of sickness, maternity and employment injury to the workers whose monthly income is less than Rs. 1,500. The ESIS Act is applicable to all the units where 20 or more workers are employed. In case of employment injury, the Act guarantees sick leave without loss of wage. Schedule III of the Workmen’s Compensation Act is applicable to the ESIS Act for claiming compensation. This schedule lists a number of diseases for which workers/employees can claim compensation.

The ESIS scheme is regulated by a committee whose members are nominated by the Central Government, representatives of state governments and Union Territories, representatives of employees, employer and from the medical profession. The committee implements the ESI Acts with the help of officers at the state level. The finances are drawn from compulsory contribution by employers and employees and one-eighth of the total expenditure is borne by the state government. The sickness benefits do not apply only to the diseases related occupation. They apply to all types of sickness problems of the insured workers.

Compensatory Legislation

The Workmen’s Compensation Act, 1923 guarantees compensation in case of occupational injuries and diseases. Diseases listed in Schedule III of the Act are compensable. The compensations paid under this Act are mainly for injuries caused due to accidents. Even in case of accident injuries, the litigation under this Act may go on for many years.

The Act covers a wide range of workers who are not covered by the ESIS Act. Under this Act, are not entitled to benefit if: workers/employees, (1) their employment is temporary in nature, and (2) the work on which they are employed is not for profit or trade of the employer. Agricultural workers also have won their claims under this Act. Even temporary workers employed for trade can claim compensation.

The procedure for claiming compensation is lengthy. In case of the diseases in Schedule III the worker only has to prove the necessary period of employment (as given by the Act) and that the worker is affected by a disease in Schedule III related to the worker’s occupation. Only in case of occupational diseases, not listed in Schedule III, the burden of proof is on the worker to show that the disease is directly related to ones occupation.

The doctors are not trained to identify occupational diseases. Public hospitals, clinics, private practitioners do not even note the occupation of the patient. Generally, under occupation, they write employee and in case of women invariably they write house wife without bothering to ask about the actual occupation. Unless the doctors are specifically trained and are concerned how the workers are going to know about occupationally related diseases?

Two-thirds of the cancer causing chemicals were first noticed in occupational environment. How many cancer patients know about the
origin of cancer? How many doctors try to trace this and record it?

Even the ESIS has become a scheme as if only about the general health of the workers. ESIS hospitals do not have doctors trained in diagnosing occupational diseases. Dermatitis, a skin disease, is related many times to the chemicals at the work places but, in the ESIS forms, no where this fact is recorded. In the absence of clear technical legal knowledge and knowledge related to the work process, the position of workmen remain very disadvantageous.

LEGISLATIONS INADEQUATE

All the legislations discussed above are fragmented in nature. There is not even a single act which looks into the health and safety issues completely. Moreover, only the Factories Act and Mines Act have mentioned about the health issues in separate chapter and section. Other acts only make oblique reference to it without making the health aspects very clear. Keeping in view the benefits of Participatory Management, the developed countries are reviewing their legislations for workers’ participation in management of work environment, whereas our legislations at no point give any right to the workers to have a say on his work related issues. The Canadian Occupational Health Act is based on three basic safety rights, viz., the right to know, the right to participate and the right to refuse. But our laws are governed by age old concepts of protective, curative and compensative legislations that does not give any substantial right to workers. The workers are the frontliners to get affected by the occupational hazards and they are also the first person to recognise the problems. So, unless the present legislations are viewed from a purely workers’ perspective, no breakthrough can be made in providing a safe work place to the workers.

Narrow Coverage

The Factories Act and the allied Acts, which specify about the health issues involved in the different work processes, do not cover all types of work. The workers in small sweet shops, construction workers, office workers, telephone operators, VDT operators, agricultural labourers, to mention a few, do not come under many of these acts. Even the ESIS Act and Compensatory Act do not cover the thresher worker, construction labourers, etc. The agate workers of Kambhat in Gujarat, thresher operators of Punjab, Rajasthan, Bihar and UP, are some of the examples of this. Last year, about 1,000 labourers in Punjab, Haryana and Western UP got amputated either of their limbs while working on wheat threshes. These workers are covered under the ESIS Act only if their insurance dues are paid by the employer. They can claim compensation under the Workmen’s Compensation Act, (1923). The agate workers, who cut, grind, polish and carve agate stones into ornamental items at their home are exposed to silica dust which causes high incidence of various lung diseases. They are not covered under any Act. One such survey of agate workers
puts the incidence of these diseases at 63.5 per cent compared to 35.6 per cent in the control group. Even children, as young as 11 years, were found to be suffering from serious lung diseases. This is because the workplace do not come under any type of work processes as mentioned under the acts.

The ESIS Act which provides curative services to the workers has also a very limited scope. The compensatory legislation has also have some in-built limitations. The labourers, who work in unorganised sector and change their work very frequently, receive very little legal support to claim a compensation in case of injury or disease. Moreover, in the unorganised sector, the employer is invisible, and therefore, compensation Act and ESIS Act bear little relevance for the workers. This problem is glaring in the case of construction workers, quarry workers and beedi and cigar workers.

Large sections of workers, mainly women, are working in the informal sector. Women, who are already at a disadvantage within the family, are in a more disadvantageous position in case of their employment in informal sector. The whole section of self-employed women and children, such as rag pickers or pappad makers, are not covered by any Act. Uncanny employers give women work to be done at a piece rate and to be done at home. They are not listed as employees anywhere and are working in hazardous conditions. There should be a scheme on the lines of ESIS which insures them about their occupational and other health problems.

Lack of Regulation

All the prescriptive-protective acts list down a series of specifications to be implemented to ensure a safe workplace. But in the absence of, clear cut specified standards and regulations, most of the work places run with certain degree of hazardous operations. As noted earlier, the Factories Act does not give any right to workers for seeking remedies if the employers violate the regulations. The scheme of regulating the production processes is very weak. Lack of specifications leads to lack of proper regulation of the Act. It may be mentioned here that as the time interval of the health and safety survey is not specified, many factories work for years without a proper survey. The occurrence of serious accidents causing death should not be kept as an indicator for survey, as by the time many work processes might have turned hazardous, which will be difficult to control. In our factories, hardly the level of dust, noise, moisture, humidity, toxic gases are measured regularly. It is even shocking to note that many plants, that use and produce very toxic substances, do not have proper instruments to measure the permissible level of exposure of gases (T.N.V).

The supporting industrial research institutions that are supposed to recommend on various aspects of occupational health and safety are also suffering from serious limitations.

The Central Water and Air (Prevention and Control of Pollution) Act provides specification to limit the concentration of pollutants in the effluent and emissions. But it has been observed empirically that once a unit starts
functioning, it is very difficult on the part of the Pollution Control Board to regulate the standards or enforce any punitive measure in case of violation unless the situation becomes grave. The whole story of Sri Ram Food and Fertilizer Plant in New Delhi is the best example of it.

In the absence of clear-cut regulation, many times the recommendations remain at the level of paper only. It may be mentioned here that the Union Department of Environment had prepared in July 1984 a list of all hazardous industries which must submit environmental impact assessment report, before sites for new plants can be cleared. But due to the absence of any strong regulative approach, the restriction has been reduced to 18 hazardous industries.

Even more, the research and commission's findings on hazardous process are not utilised properly because of the absence of legal statutory body to take follow up actions. In December 1984, the Government of Maharashtra set up an environmental safety committee headed by Dr. R.K. Garg to examine the safety standards in 15 large scale units in Bombay in the first phase and 200 units in the second phase. The report of the committee revealed appalling safety standards in industries manufacturing, handling, storing and processing hazardous chemicals. But in the absence of regulative scheme, the manufacturers are going for relocation of plant in some backward areas without making any substantial change in the safety standards.

It is very clear that the prescriptive-protective legislations do not have any regulatory device. At the administrative level there are also different departments besides the Inspector. The Department of Environment, Controller of Explosives and Mines are also directly incharge of safety standards. But the scope of these different departments are so divergent that it creates confusion in regulating the standards. The Pollution Control Board is only connected with the factories to the extent they affect the environment, the Factories Inspectorate feels responsible only to the extent that workers are affected. While the Inspectorate is connected with occupational safety, contravention of the rules regarding the storage of most hazardous gases under pressure is the responsibility of the Controller of Explosives. This artificial division of responsibility for controlling hazards emanating from the same source invariably leads to lack of coordination.

Lack of Standards for Protective Equipment

Use of protective equipment by the workers in the hazardous processes is generally considered as a devise to keep the workers away from the hazard. The thinking often keeps the management/owner non-concerned about the control of the source of hazard. Moreover, the safety acts do not have any provision to regulate the quality of protective equipment so that it does not stand as a barrier between the worker and his work. In the quarry works, nearby Delhi the protective equipments given to the workers against dust are so cumbersome to breathe while at use that the workers
prefer to work in dusty work environment rather than using it.

No Right to Information

Right to information should become a wider right about all hazardous processes and there should be a remedy provided for if this right is violated. A study conducted by PRIA shows that workers have greater knowledge about their work process and with the support of some technical knowledge they can identify the hazardous process much earlier than the technical persons as they are in the front-line of the work. Our workers do not know what are the chemicals they are using for their work, what are its hazardous effects and what are the precautions they can take at the time of danger. Moreover, the exposure level of the toxic fumes, gases, dusts, level of risk, etc., are not provided to the workers.

All the information related to the work process is considered confidential or trade secret, even if the results of research studies and recommendations of Industrial units by Commissioner appointed by the government are considered confidential. One copy of the study is sent to the concerned management and the other to the Chief Inspector's Office of the State. The latter then determines which recommendations are 'realistically' enforceable. Copies of the research reports, with the name of the factory nearly deleted, are made available to the public.

Not only at the level of toxic chemicals, but also at the time of storage, transportation and delivery for use, the composition of the chemicals are not revealed. The revelation of trade names create many confusions and improper handling leading to major mishap. In the absence of complete information, if a worker mishandles, he is dubbed as a "careless worker".

Lack of Worker Involvement

In the industrial work process, the workers do not have any legal right to participate and recommend for better safety and hazard-free work condition. It is shocking to note that in the whole Factories Act, there is no mention about the Trade Union. The shop floor workers have no legal right to work as safety representative and to inspect the physical conditions and identify situations that may be a source of danger of hazard to the workers, as it is present in the Canadian, American and Swedish Occupational and Health and Safety Act. It may be noted that the provision of safety delegate from workers in Occupational Safety Law of Sweden, Safety Committee of OI law of Saskatchewan and Ontario of Canada is the strongest point of their Act. The Act has provisions for special training to build up an effective health and safety steward so that they can participate in the safety analysis and make recommendation at the shop floor level. Workers should have a right to have their own safety representatives and should get a right to sue the erring employers. The relevant Act in UK gives wider rights to workers.
Occupational Health: A Legal Perspective

The health of the workers can only be protected if the philosophy and approach to occupational health and safety is broad and universal along with scientific and candid classification of work process so that all type of occupations come under one umbrella. Occupation-wise safety acts need to be developed, but if it is again divided by prescriptive-protective, curative and compensatory frame (in terms of law) it will lead to confusion and hence loose coordination.

Before building up a perspective on Occupational Health and Safety in Indian context the following points merit serious consideration:

1. The protective legislations should cover all the toilers.
2. There should be a unified authority concerning hazards related to work.
3. Right to know should be made mandatory.
4. Workers participation in Safety Committees should be by elected representatives. These representatives should have a right to inspect all work places in their premises.
5. Workers should have right to seek remedies.
6. In case of occupational diseases, the identification procedures should be strengthened by having special departments in hospitals for these diseases. Doctors need to be specially trained for diagnosing occupational diseases.
7. The compensation laws should be framed in such manner that there should be least time gap between the claim and the actual receipt of the compensation.

In short, legislations which cover all the sections of workers and which carry some guarantee of being actually implemented to protect their rights and envisage their participation are needed.