

Laws Regarding Health and Safety of Hazardous Waste Handlers

**A Dissertation submitted to the National University Of Advanced Legal
Studies, Kochi In partial fulfilment of the requirements for the award of
L.L.M Degree in Constitutional and Administrative Law**



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Submitted by:

Karthik Sarangan

(Register Number : LM 0119002)

Under the Guidance and Supervision of

Dr. Balakrishnan K

October 2020

NUALS ,Kochi

CERTIFICATE

This is to certify that **Karthik Sarangan**, Reg. No: LM 0119002 has submitted his Dissertation titled, “**Laws Regarding Health and Safety of Hazardous Waste Handlers**”, in partial fulfillment of the requirement for the award of Degree of Master of Laws in Constitutional and Administrative Law to the National University of Advanced Legal Studies, Kochi under my guidance and supervision. It is also affirmed that, the dissertation submitted by his is original, bona-fide and genuine.

Date:

Place: Ernakulam

Dr. Balakrishnan K

Guide and Supervisor

NUALS

DECLARATION

I declare that this dissertation titled, “**Laws Regarding Health and Safety of Hazardous Waste Handlers**”, researched and submitted by me to the National University of Advanced Legal Studies in partial fulfillment of the requirement for the award of Degree of Master of Laws in Constitutional and Administrative Law, under the guidance and supervision of **Dr. Balakrishnan K** is an original, bona-fide and legitimate work and it has been pursued for an academic interest. This work or any type thereof has not been submitted by me or anyone else for the award of another degree of either this University or any other University.

Date:

Karthik Sarangan

Place: Ernakulam

Reg no: LM 0119002

LL.M (Administrative & Constitutional Law)

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ABBREVIATIONS

HW (M&H)	The Hazardous Waste (Management & Handling) Rules
MOEF	Ministry of Environment, Forests and Climate Change
E(P) Act	Environment (Protection) Act
WHO	World Health Organisation
UNEP	United Nations Environment Programme
SPCB	State Pollution Control Board
CPCB	Central Pollution Control Board
TSDF	the Treatment Storage Disposal Facility
MSHC	The Manufacture, Storage and Import of Hazardous Chemical Rules,
CA Rules	The Chemical Accidents (Emergency Planning, Preparedness and Response) Rules
CCG	Central Crisis Group
DCG	District Crisis Group
LCG	Local Crisis Group
PCC	Pollutions Control Committees
HCE	Health Care Establishments
NIP	National Implementation Plan for the Stockholm Convention
POP	Persistent Organic Pollutants
DPSP	Directive Principles of State Policy
MOLE	Ministry of Labour and Employment
NPSHE	National Policy on Safety, Health and Environment

ILO	International Labour Organization
DGMS	Directorate General of Mines Safety
DGFASLI	Directorate General of Factory Advice Service & Labour Institutes
SCR	Supreme Court Reports
SCC	Supreme Court Cases
CriLJ	Criminal Law Journal
AIR	All India Reporter

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Introduction

Wastes are classified as being hazardous when they display one or more radioactive or hazardous properties, including explosive, oxidizing, flammable, irritant, harmful, toxic, carcinogenic, as well as harmful effects on the environment and human health¹. Hazardous wastes are materials which are discarded after use from e-products, vehicles, clinical and medical products, fuel products (e.g. oil), gas exploration and extraction. Scientific research indicates that these include materials such as industrial solvents, waste oils, industrial sludges and chemical wastes. Households, small businesses, farms, and the healthcare and construction sectors also generate quantities of hazardous waste including batteries, electrical equipment, healthcare risk waste, solvent based paint and varnish waste, sheep dip, and fluorescent lamps². Hazardous waste not only poses risks to the surrounding air, water, and soil, but also do harm to the ecological environment and human health through diversified channels³. The management of hazardous wastes is of great importance due to environmental health, social, and economic impacts. During the past two decades the world experienced a dramatic increase in the amount of hazardous waste generated.⁴ In developing countries, the management of hazardous waste is exacerbated by lack of comprehensive legislation, unauthorized scrap yards dealing with e-waste, and end of life vehicles. Poor conduct and inappropriate disposal methods exercised during the handling and disposal of hazardous wastes are increasing significant health hazards and environmental pollution due to the harmful nature of the waste.⁵

In recent decades, researchers have defined and classified hazardous waste as waste with inherent chemical and physical characteristics, such as toxicity, ignitability, corrosivity, carcinogenicity, or other properties⁶. A useful listing of hazardous characteristics is that

¹ Kummer, K., 1999. *International Management of Hazardous Wastes: The Basel Convention and Related Legal Rules*. Oxford University Press. Great Britain

² Bauer, M.J., Herrmann, R., 1997. Estimation of the environmental contamination by phthalic acid esters leaching from household wastes. *Science of the Total Environment* 208 (1), 49–57.

³ Li, L., Wang, S., Lin, Y., Liu, W., Chi, T., 2015. A covering model application on Chinese industrial hazardous waste management based on integer program method. *Ecological Indicators* 51, 237–243.

⁴ Couto, N., Silva, V., Monteiro, E., Rouboa, A., 2013. Hazardous waste management in Portugal: An overview. *TerraGreen13 International Conference. Energy Procedia* 36, 607–611.

⁵ Gu, B., Zhu, W., Wang, H., Zhang, R., Liu, M., Chen, Y., Wu, Y., Yang, X., He, S., Rong Cheng, R., Yang, J., Bi, J., 2014. Household hazardous waste quantification, characterization and management in China's cities: A case study of Suzhou. *Waste Management* 34, 2414–2423.

⁶ Fan, Z., Liu, Y., Wang, J., Ren, G., Le, W.E., 2013. *China: Experience of radioactive waste*

provided by the United Nations as part of recommendations relating to the transport of dangerous goods.⁷ The UN classifies hazardous wastes as Explosive, Flammable, Oxidizing, Poisonous/infectious, Radioactive, Corrosive, Toxic (delayed or chronic)/ecotoxic.

Waste generated from industrial sources can have non-hazardous and hazardous components, with non-hazardous waste usually representing the greater part of the volume. The hazardous component of this waste is relatively small in volume⁸. This type of waste was identified as hazardous waste when proceeds toxicity test, corrosively test, ignitability test, and some special character test. As a hazardous pollutant, it may impose serious impacts on surrounding environment and such impacts should be quantitatively examined to assess the influence on human health⁹.

Households generate small quantities of hazardous wastes such as oil-based paints, paint thinners, wood preservatives, pesticides, insecticides, household cleaners, used motor oil, antifreeze, and batteries. It has been estimated that household hazardous waste in industrialized countries such as the United States accounts for a total of about 0.5% (by weight) of all waste generated at home, while in most developing countries, the percentage probably is even lower.¹⁰

There are some of hazardous medical and dental wastes that, when disposed improperly, could cause harm to the environment. It also presents an occupational health hazards to the healthcare personnel who handle these wastes at the point of generation and those involved with their management, that is, segregation, storage, transport, treatment, and disposal.¹¹

Nuclear applications have been rapidly developed recently, and several nuclear power plants started to work throughout the world. The potential impact of released radioactive contaminants into the environment has received growing attention due to nuclear accidents.

(RAW) management. Processes, technologies and international experience A volume. Woodhead Publishing Series in Energy. 697–722, 723e–725e

⁷ United Nations, Recommendations of the UN Committee of experts on the transport of dangerous goods. United Nations, New York, (1989)

⁸ Solid Waste Management (Vol. I) United Nations Environment Programme, CalRecovery, Inc. USA (2005).

⁹ Li W., Huang Q., Lu S., Wu H., Li X., Yan J., Life cycle assessment of the environmental impacts of typical industrial hazardous waste incineration in Eastern China. Aerosol and Air Quality Research,

¹⁰ *Supra* at note 8

¹¹ Thareja P., Singh B., Singh S., Agrawal D., Kaur P., Biomedical waste management: need for human civilization. Indian Journal of Clinical Anatomy and Physiology,

contamination of soil and water by radionuclides due to natural processes, global fallout from nuclear weapon testing, discharges from nuclear installations, disposal of nuclear waste, and occasional nuclear accidents (i.e., Chernobyl in 1986 and Fukushima in 2011) poses serious problems to biological systems. Radioactive waste includes a variety of radionuclides and occurs in a variety of physical and chemical forms. It can be generally classified as low-intermediate-level radioactive waste and high-level radioactive waste.¹²

Waste management is an important component of environmental policy all over the world. Priority of hazardous solid waste for environmental protection is formulated on source reduction and reuse, recycling, treatment, and landfilling¹³. The objective of radioactive waste management is to deal with those wastes in a manner that protects human health and the environment now and in the future without imposing undue burden on future generations.¹⁴ The overall waste management generally includes the following steps: segregation and sorting of the wastes, treatment, conditioning, storage, transport, and final disposal. To achieve a satisfactory overall waste management strategy, component steps must be complementary and compatible with each other¹⁵. Some wastes may require treatment for safety, handling, or stability for interim storage reasons. Treatment methods can be generally classified as chemical, physical, and/or biological. The Government of India has promulgated the Hazardous Waste (Management & Handling) Rules [HW (M&H)] in 1989 through the Ministry of Environment and Forests (MOEF) under the aegis of Environment (Protection) Act [E(P) Act], 1986. Under the HW (M&H) Rules, the hazardous wastes are divided into 18 categories: 1. Cyanide waste, 2. Metal finishing wastes, 3. Waste containing water soluble chemical compounds of lead, copper, zinc, chromium, nickel, selenium, barium and antimony, 4. Mercury, arsenic, thallium, and cadmium bearing wastes. 5. Non-halogenated hydrocarbons including solvents, 6. Halogenated hydrocarbons including solvents, 7. Wastes from paints, pigments, glue, varnish, and printing ink, 8. Wastes from Dyes and dye intermediates containing inorganic chemical compounds, 9. Wastes from Dyes and dye intermediates containing organic chemical compounds, 10 Waste oil and oil emulsions, 11. Tarry wastes from refining and tar residues from distillation or pyrolytic treatment, 12 Sludges arising from

¹² Saleh H.M., Water hyacinth for phytoremediation of radioactive wastes simulate contaminated with cesium and cobalt radionuclides. Nuclear Engineering and Design

¹³ EPA (2013) Municipal solid waste in the United States: facts and figures, United States Environmental Protection Agency, Office of Solid Waste (5306P) EPA530-R-13-001 May 2013.

¹⁴ International Atomic Energy Agency, TECDOC-851, Radioactive waste management practices and issues in developing countries, IAEA, Vienna, (1996).

¹⁵ Saleh H.M., Treatment and solidification of hazardous organic wastes: radioactive cellulose-based wastes. LAP Lambert Academic, Germany.

treatment of waste water, containing heavy metals, toxic organics, oils, emulsions, and spent chemicals, incineration ash, 13. Phenols, 14. Asbestos, 15. Wastes from manufacturing of pesticides and herbicides and residues from pesticides and herbicides formulation units, 16. Acid/alkali/slurry wastes, 17. Off-specification and discarded products, and 18. Discarded containers and container liners of hazardous and toxic Hazardous.

Hazardous waste also contributes to many diseases caused in humans. Studies have been extensively conducted to ascertain the adverse health effect of hazardous waste. In 2007, a study conducted by the WHO revealed that exposure of hazardous waste has adverse effect to reproductive health of a person and also can expose them to cancer. Studies done on population residing near landfills where hazardous wastes was disposed revealed that they were at a larger risk than the general population to be exposed to diseases like cancer. And they were also reported to have higher chance of genito-urinary birth defects, and low birth weights.¹⁶ Studies have also revealed that exposure to Hazardous Waste can also cause genetic mutations, physiological malfunction, physical deformation and birth defects.

Some hazardous waste produce toxic effects in humans as much as in the environment after a single, episodic release. These toxic effects are referred to as the acute toxicity. Other hazardous waste. Other hazardous substances produce toxic effects in humans or the environment after prolonged exposure to the substance, which is called chronic toxicity.¹⁷

The practice of dumping waste in ponds, quarries, agricultural soil and other inappropriate locations has characterized the developing nations for a long time and India is not free from this. And due to the developing nations taking a more stringent regulations in regards to the disposals of Hazardous Waste there has been even more outflow from the developed nation into the developing nations like India. And in a country like India landfill are most common way of disposing such wastes and it has been show that a number of chemical agents such as benzene, vinyl chloride, chlorinated solvents, polycyclic aromatic hydrocarbons and heavy metals, and that chemicals released by landfill sites may accumulate in soil, contaminate groundwater through leachate and also be dispersed in air, if soil and water protection are not adequately ensured by the landfill technology.

¹⁶ Hazardous waste and health impact: a systematic review of the scientific literature, L. Fazzo1, F. Minichilli, M. Santoro, A. Ceccarini, M. Della Seta, F. Bianchi, P. Comba1 and M. Martuzzi

¹⁷ <https://www.epa.gov/emergency-response/health-and-ecological-hazards-caused-hazardous-substances>

These waste products are shipped to countries like India for their availability of labour cheaply and also because of lack of accountability that the owners of the establishment face in India. On top of the imported waste, as a rapidly developing nation, India also produces a fair share of hazardous waste in house and all this waste have to disposed of somehow. Unlike developed nations where the regulations make it very costly and technologically demanding to deal with these wastes, in India, the situation is not as complicated or demanding as there because half of second largest population lives under the poverty line and lack any sort of information as to the adverse effects of the hazardous waste. They find very willing and cheap labour to handle and dispose of these wastes. There has been innumerable studies regarding the health hazards relating to municipal solid waste collectors and these studies has shown that Municipal solid waste collection workers or refuse collectors, generally are exposed to number of work related health hazards and safety risks, notably allergic and other diseases of respiratory systems. Health impacts could also entail musculoskeletal, gastro-intestinal and infectious diseases as well as injuries caused by work related accidents. Waste collectors are exposed to a number of pathogens (bacteria, fungi, viruses, parasites and cysts), toxic substances (endotoxins and betaglucans), chemicals that come from waste itself and from its decomposition, as well as vehicle exhaust fumes, noise, extreme temperature and ultraviolet radiation. As a result of their exposure to multiple risk factors, municipal solid waste collecting workers suffer from high rates of occupational hazards

In India landfills are the most used way to deal with the hazardous waste, Though it is considered most cost-effective means of waste disposal, poor management practices specially in developing countries like India are the major causes of environmental pollution. Recently several studies have been carried out to understand the effects of landfill pollution on human health as well on the environment. Toxic gas emissions from landfills pose a serious threat to the environment as well as on human health. Some studies have shown that toxic gases released from landfill sites are even responsible for lung and heart diseases in humans. Landfills also generate a toxic soup known as leachate, formed when waste is subjected to biological and physiochemical transformation. Leachate is highly toxic and causes land and groundwater pollution.

In India 17 waste treatment plants exist of which none of them have proper mechanism for disposal of hazardous waste¹⁸. Absence of such proper disposal and infrastructure has

¹⁸ 1D. Vasudevan, Dr. A. G. Murugesan, Hazardous Waste Management in India : Current Scenario and Future Opportunities, Volume 3, Issue 8, IJSRST

resulted in the poor handling of hazardous waste in India causing various environmental and health problems. Burning remains the most popular method of disposal of hazardous waste, which is done in an uncontrolled environment, leading to the release of highly toxic substances into the atmosphere.

The workers as well as the population is subjected to contact with these toxic substances. Waste collectors and handlers are ill equipped and untrained and exposed to poisonous chemicals, contracting several diseases. 90% of the people that are involved in such work come from poverty stricken and lower caste backgrounds and exposing these people to the innumerable hazardous is inhumane and exploitative hence need for some sort of litigation to prevent these exploitation is not only necessary but also critical for a civilized society. It also goes against the constitutional values that have been set up by our nation's founders. This study looks into the various steps and legislations that the government has taken to prevent this exploitation and to ensure the safety of the workers involved in the handling and disposal of hazardous wastes.

Objective of the study

The main objective of this study is to

1. Identify the Legislations, if any, that regulate the handling and disposal of the hazardous waste products
2. Evaluate whether these legislations provide sufficient protection to the workers involved in handling the hazardous waste
3. Identifying and evaluating the mode of enforcement of these legislations
4. Do the existing Labour laws extend their protection to the workers involved in the handling and disposal of hazardous waste
5. How far is the constitutional provisions applicable to the protection of the Right of workers?

Hypothesis

The research and other ancillary works on the dissertation are initiated based on the hypothesis that the current legal framework is ineffective in protecting the labour force engaged in the handling and disposal of hazardous waste

Research Questions

A few research questions are posed and attempts have been made to answer the same

1. What are the legislations that are present in the handling and disposal of Hazardous waste?
2. Do these legislations provide sufficient protection to the workers involved in this area of labour?
3. How are the various provision that are present to protect the right of these labours enforced?
4. Do the existing class of various labour laws extend its protection to the workers involved in the handling and disposal of hazardous waste?
5. How effectively are the relevant Constitutional provision been fulfilled by the Government?
6. How can the Government better protect the rights of these people?

Chapter Overveiw

The Second chapter “Rules regarding Hazardous Waste Management in India and its Enforcement” examines what are the legislation that regulate the hazardous waste management. The chapter also looks into the Basel Convention, and how it has influenced the law regarding how the Hazardous waste is managed in India. The chapter also examines how the various laws regarding the management of hazardous waste has been enforced in India.

The Third Chapter “Labour laws in India and the Protection it affords to the Hazardous Waste Handlers” looks into the various labour laws made for the benefit of the workers in India and how these laws and to what extent these law can be made applicable to the workers involved in the handling and management of the Hazardous waste. It also looks into the legislations protecting the Unorganized Sectors in the nation.

The Fourth Chapter “Constitutional framework and the Labour policy of the Government” looks into various provisions of the Constitution such as Articles 14, 19, 21, 23,

24 and also the Part IV of the Constitution and how these provision have played a part in ensuring that the rights have been protected of the workers engaged in the Hazardous Waste Management Industries. Also looks at the National Policy on Safety, Health and Environment at Workplace and the new proposed code of Occupational Safety Health and working Conditions drafted to fulfil the new policy.

The Fifth and the final chapter provide the conclusion that can be drawn from the study and also the recommendations to fix the current state of exposure that these workers face.

Rules regarding Hazardous Waste Management in India and its Enforcement

Introduction

Waste production and management generally has been associated with mankind since prehistoric times. People have managed to produce waste and dispose of the same in the surroundings with little concern for the environment. But after the Industrial revolution the nature of the waste produced has drastically changed, new ways and process of disposal and management of the waste was a need of the hour. Waste had to properly managed for the preservation of the planet for the coming generation

Waste generated is generally associated with the quantum of human activities such as agriculture, industrial, residential, institutional, municipal, commercial, mining, recreational and others. Rapid trend in industrialisation and high technological process has led to the creation of a new type of waste called hazardous waste. These waste generally contain toxic substances that are released from industries, hospitals and some type of household waste. These waste could be corrosive, inflammable, explosive or react when exposed to other materials. Some hazardous waste are highly toxic to the environment including humans, animals and plants. The inadequate management of waste lead to contamination of environment and also its impact can bet see on public health.

Saving of environment and human health from the effects of hazardous waste is achieved by a proper implementation of waste management programs. In India, the Ministry of forest environment and climate change is responsible for making rules and regulations regarding handling and management of hazardous waste. In India, the situation is much worse as India has witnessed a large expansion in its industrial sector and with that a huge expansion of the amount of hazardous waste that has been produced. As a developing nation, India lacks the technical know how to deal with hazardous waste and also it has an obligation to protect the environment, a proper balance should be struck between the development needs and protection of environment hence the rules and regulations implemented by the ministry of forest environment and climate change should also reflect this. Added to this, India is a party to the Basel Convention on transboundary movement of hazardous waste. The Basel

Convention aims at reducing the transboundary movement of hazardous waste and other waste products , prevention and minimization of their generation, environmentally sound management of such wastes and active promotion of the transfer and use of cleaner technologies. As a party to the Convention, India has an obligation to regulate and minimize the import of hazardous waste or other waste.

Basel Convention

In the 1980's many developed countries began enacting laws relating to the treatment and disposal of waste which aimed at taking care of the environment. This led the increase in the cost of treating hazardous waste. It had also become clear that the industrialized nations were the primary producers of hazardous waste and these countries exported the waste to developing countries where the waste was disposed of without proper care. In the wake of such discoveries it was felt essential to enact a Convention that dealt with such issues.

The Basel Convention on Control of Transboundary Movements of Hazardous Waste and Their Disposal, popularly known as the Basel Convention, is an International treaty aimed to reduce the transboundary movement of hazardous waste to curb the transportation of waste from the developed to least developed nations. It also aims to minimize the amount of toxic waste generated, to ensure their environmentally sound management as closely as possible to the source of generation and to assist least developed nations to manage the hazardous waste in an environmentally sound manner

The management of hazardous waste has been on the international agenda since 1980s, it was included, one of the three priority areas in United Nations environment programme on environment law in 1981. As a result of public outcry regarding the news that in Africa, and other parts of the developing world, of disposal of toxic waste imported from abroad. One such incident was the Khian sea waste disposal incident in which ship carrying incinerator ash from the city of Philadelphia in the United States dumped half of its load on the beach in Haiti before being forced away. It sailed for many months changing its name several times unable to unload cargo in any port, the crew was believed to have dumped much of it at sea. Another such incident is the 1988 Koko case in which five ships transported 8000 barrels of Hazardous waste from Italy to small town of Koko in Nigeria in exchange of \$100 monthly rent which was paid

to a Nigerian farmer for the use of his farm land.¹⁹ These practices are deemed toxic colonization by many developing countries. Due to the rise of environmental awareness in the developed countries they enacted regulations and rules regarding waste disposal which also resulted in escalating the cost of disposal of hazardous waste in the operators' home nation, seeking cheaper ways to dispose waste. They had resorted to exporting the hazardous waste to developing countries where the environmental awareness was not as much as in their home country and also the regulations and enforcement mechanisms were weak. It was against this background that the Basel Convention was negotiated in the late 1980s, it was adopted 1989 and came to force in 1992.

In 1987, the Governing Council of United Nations Environment Programme approved the Cairo Guidelines, a non-binding legal instrument primarily designed to assist government in development and implementation of the national policies for management of hazardous waste²⁰. Based on the proposal by Switzerland and Hungary, the Governing Council of UNEP mandated the Executive Directors to form a working group with the task of elaborating a global Convention on the control of transboundary movement of hazardous wastes, drawing on Cairo Guidelines and relevant national, regional and international bodies. The Council also authorised the Executive director to convene in early 1989 a conference for the adoption and signing of the Convention. This resulted in the negotiations which were endorsed by the United Nations General Assembly.

The Basel Convention aims at regulating the transboundary movement of hazardous and other waste materials. The major provision of the Convention addresses the definition of hazardous waste, transboundary movement of hazardous waste between signatories, international cooperation, and establishment of a conference of the parties. Each of the provisions represents a significant increase in the protection of human health and the environment through management of hazardous waste.²¹ The Convention also substantially improved the cooperation between nations regarding hazardous waste trading. Article 1 of the Convention establish that the Conventional regulate and brings within its scope extensive quantity of hazardous waste. The Annexe I of the Convention sets out list of types of wastes that are regulated under the Convention. When the waste type comes under any category set

¹⁹ Maureen Y. Walsh, *The Global Trade In Hazardous Waste; Domestic and International Attempts to cope with a Growing Crisis In Waste Management*, 42 vol Catholic University Law Review.103 (1992)

²⁰ History of the negotiations of Basel Convention, [basel.int, http://www.basel.int/TheConvention/Overview/History/Overview/tabid/3405/Default.aspx](http://www.basel.int/TheConvention/Overview/History/Overview/tabid/3405/Default.aspx)

²¹ id , at note 1

under Annexe III, it will constitute hazardous waste and must be dealt with under the provisions of the Convention when subjected to transboundary movement²². Annexe II of the Convention extended the definition of hazardous waste to include some household materials as hazardous²³. Article 6 of the Convention addresses the transboundary movement of hazardous waste between the signatories. As per the terms the State of export must ensure that a competent authority is present in the import state and in each of the transit states and receive notification of any proposed shipment of hazardous waste or other waste. The state of import may then choose to consent to the shipment with or without conditions, refuse the import or request additional information. Transit country similarly have the option to prohibit movement of the waste to their territory, request additional information or conditional consent to the movement. Only when the state of exporters received the confirmation of the consent from the importing and transit countries as well as written confirmation of the contract between the exporter and party that will ultimately dispose of the waste specifying the environmentally sound manner in which the wastes will be managed, may the export proceed²⁴.

Article 10 of the Convention provides for international cooperation between the signatories to provide any information regarding the environmentally sound disposal of hazardous and other waste materials. Also under the article it aims for cooperative efforts for monitoring the effects of management of hazardous waste on human health and the environment²⁵. By ratification of the Convention the parties agree to provide technical assistance in transfer of hazardous waste technology and management systems particular with those parties that need or request assistance. In effect, this will provide the developing nations access to technology for environment and sound management of hazardous waste which in situations absent of such a Convention they might not have access to²⁶.

The Government of India has ratified the Basel Convention on the control of transboundary movement of hazardous wastes and their disposal. Hence the provisions of the

²² ²² Annexes I, III, IV and related aspects of Annexes VIII and IX, basel.int, <http://www.basel.int/Default.aspx?tabid=6269>

²³ Annexes II, VIII, IX, basel.int, <http://www.basel.int/Implementation/LegalMatters/LegalClarity/ReviewofAnnexes/AnnexesII,VIIIandIX/tabid/6270/Default.aspx>

²⁴ Id , at note 1

²⁵ The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, March 22nd 1989

²⁶ id at note 1

Convention has to harmonised with the domestic laws of India according to the commitment to the Convention. After ratification of this Convention, India will be unable to source hazardous wastes for treatment from Organization for Economic Co-operation and Development (OECD) countries because of the ban. The Convention requires specialized treatment facilities in order to ensure an environmentally sound recovery or disposal. Therefore, transboundary shipment of hazardous waste is regulated by the Convention. Import of hazardous waste is legally prohibited in India but the import may be allowed for the purpose of recycling, recovery or reuse. However, the Convention is unable to prevent inflow of hazardous wastes into India from countries that have not ratified the agreement (USA and other northern developed countries). Industrialized countries want to dump their wastes in developing countries such as India due to strict regulations of disposal and management of such wastes in their own country. Restrictions imposed by the Convention aim at encouraging signatory countries to reduce generation and disposal in safe manner.

Indian Legal Framework

India's first legislation regarding environmental aspect was the Factories Act 1881 which was subsequently amended in 1891, 1911, 1922 and 1934. The Stockholm Conference, 1972 and 42nd amendment of the Indian Constitution has impacted the environment related laws in India. After 1972, India enacted the Water Act 1974, Air Act 1981, and Environment Protection Act 1986. The Bhopal gas tragedy had a great impact on the environmental legislation in India. The Environment Protection Act aims at establishing a system to protect the environment. It gives the power to the central government to regulate all forms of waste and tackle specific problems that may present themselves in different regions of India.²⁷ The national Environment Policy lays emphasis on adopting clean technology, encourage reuse and recycling, strengthening of informal sector and establishing system for collection and recycling of materials along with environmentally sound waste disposal.

²⁷ Prof. Dr. Sadhan Kumar Ghosh, *State of the 3Rs in Asia and the Pacific*, United Nations Centre for regional development, (2017)

The Ministry Of Environment and Forest has promulgated Hazardous Waste Management Handling Rules 1989 which was amended in 2000 and 2003 for properly management and handling of hazardous waste. These rules define hazardous waste as any wastes by virtue of its physical chemical, reactive, toxic, flammable, explosive or corrosive characteristics cause danger or is likely to cause danger to health or environment alone or on contact with other substances or wastes. Wastes which contains mercury, waste asbestos, waste oil ect.; are in the list of banned waste for import and export. The 2003 amendment of rules excluded biomedical based multiple solid waste and base related with batteries from list of hazardous waste as these are covered under special rules like municipal solid waste rules, battery rules, biomedical waste rules Merchant Shipping Act, Water Act.

In 2008 the Ministry of Environment Forest and Climate Change enacted the Hazardous Waste Handling And Transboundary Movement Management Rules 2008 which replace the above-mentioned rule. The 2008 rules was later replaced by the Hazardous Waste Management Rules 2016, which is now the primary regulation addressing the management of hazardous waste in India. It is established under the Environment Protection Act of 1986 which gives the central government all the power to take any measures as deemed necessary or expedient for the purpose of protection and improvement of environment and preventing, controlling and abating environment pollution including making rules regarding handling of hazardous waste. The 2016 rules follow the same classifications as the 1989 rules with regards to classifying wastes as hazardous. But the new rule has distinguished hazardous waste from tyre paper waste, metal scrap, and used electronic items. The hazardous waste rules set out various functions, duties and powers of different actors at various stages in a facilities operation. The stages can be grouped into 3 categories: (1) establishment of the facility; (2) operation of the facility; and (3) disposal and transport of hazardous waste.²⁸

The Hazardous Waste Rules set out various requirements that have to be met before a person can set up a facility to handle hazardous waste. The person first must approach the SPCB (State Pollution Control Board) for a grant of authorisation. This includes any person who is interested in setting up a facility which is involved in the “generation, processing,

²⁸ Mahesh Menon and Manjeri Subin Sunder Raj, *Enforcing Hazardous Waste Rules in India: Strategies and Techniques for Achieving Increased Compliance*,

treatment, package, storage, transportation, use, collection, destruction, conversion, offering for sale, transfer or the like of hazardous waste²⁹

After receiving the application from the person interested in establishing a facility for the above mentioned processes the SPCB may choose to grant the authorisation if it has convinced itself that the applicant has “appropriate facilities, technical capabilities, and equipments to handle hazardous waste safely.”³⁰ The application must be considered within 3 months of receiving the application and if granted the application will be valid for a period of 5 years.³¹ In case if the SPCB chooses to deny the application then before doing so they are inclined to give the applicant a reasonable opportunity to be heard.³²

²⁹ India. Ministry of Environment and Forests. The Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2016 Rule) Rule 6. Ministry of Environment and Forests Notification G.S.R No. 395 (E)

³⁰ *Supra* note 11 Rule 6

³¹ *Id* note 10

³² *Supra* note 11 Rule 6(4)

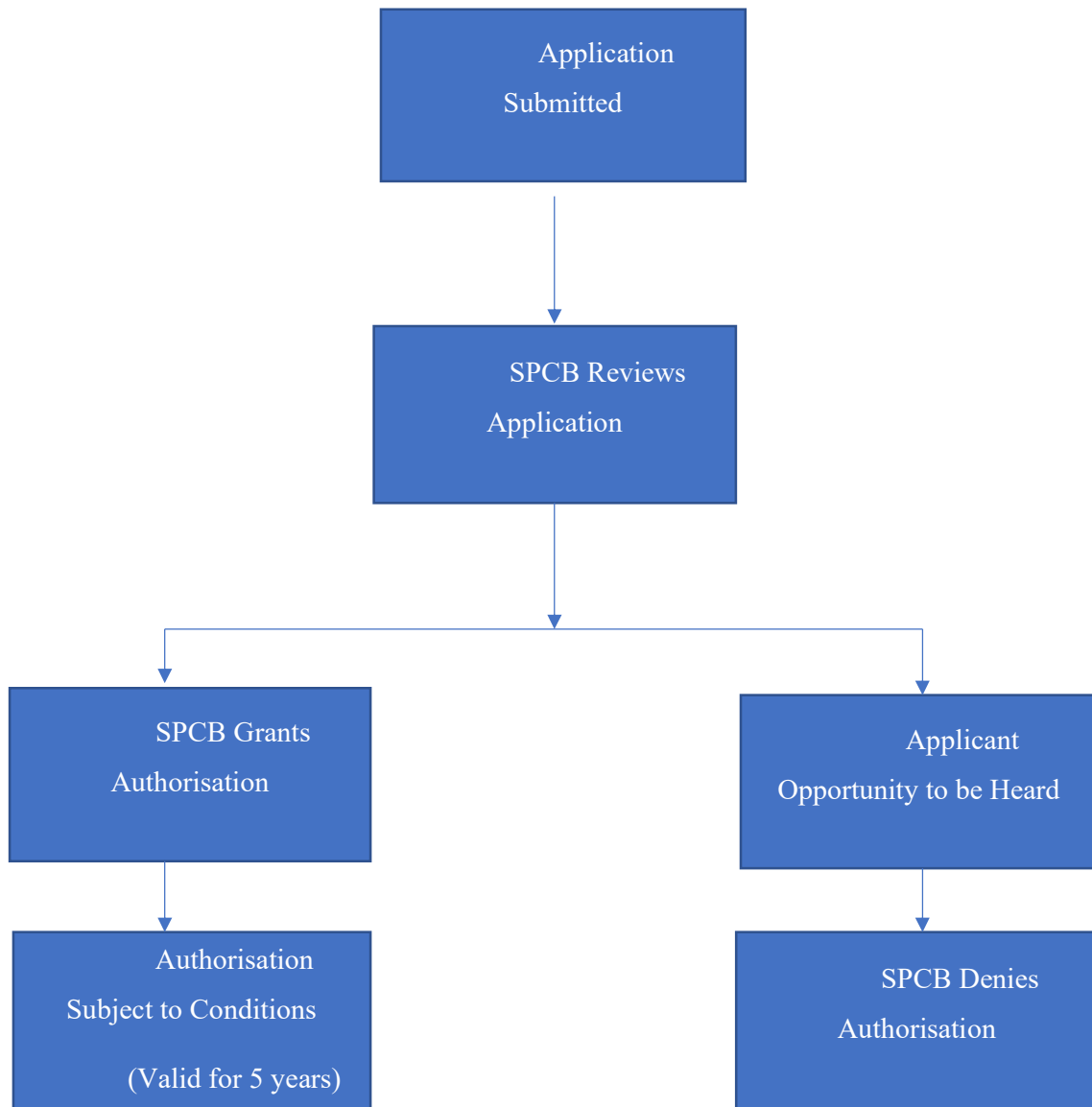


Figure 1: Grant of authorisation³³

³³ *Supra*, at note 28

Not only the person who is interested in setting up the facility but also any person who is recycling and reprocessing the hazardous waste must apply to the SPCB for a grant of registration. The SPCB may grant this authorisation if it is satisfied that the applicant possess and utilises environmentally sound technologies and possess adequate technical capabilities, requisite facilities, and equipment to recycle, reprocess or reuse hazardous waste.³⁴ As same as before the SPCB may choose to deny the grant of registration if it does so they are obliged to give the applicant reasonable opportunity to be heard. The SPCB is required to consider the application within 120 days of its submission and if accepted by the SPCB the grant lasts for 5 years.³⁵

In addition to the above the requirements there are also various other requirements that should be met before they are allowed to handle hazardous waste. Before setting up the facility The occupier, operator of facility, or any other association of occupiers are responsible individually or severally for identifying the sites to establish the facilities that treat, store, and dispose of hazardous waste.³⁶ After they have identified the sites for the facilities they have to get the approval from the SPCB for their design and layout. The SPCB also has the responsibility of setting up the facilities.³⁷

If any facility intends to convert the hazardous waste to energy then the facility must first get the approval of the CPCB (Central Pollution Control Board).³⁸

The Hazardous Waste Rules set out responsibilities to people who are involved in handling the hazardous waste after the initial grant of approval including responsibilities to the handlers which includes:

- Handling generated hazardous waste in a safe and “environmentally sound” manner;
- Taking all adequate steps to contain contamination and prevent accidents;
- Providing employees with training, equipment and information for their safety³⁹

The operators of the Treatment Storage Disposal Facility (TSDF) are responsible for the environmentally safe and sound operation of the facility. In addition to this the occupiers and operators have the general responsibility to take all the steps necessary for the reduction

³⁴ *Id* note 28

³⁵ *Id* note 28

³⁶ *Supra* note 29 Rule 5

³⁷ *Id* note 28

³⁸ *Supra* note 29 Rule 11

³⁹ *Supra* note 29, Rule 4

and prevention of waste generated or for recycling or reuse and must comply with all the conditions set out in their authorisation.⁴⁰

Aside from the above mentioned general responsibilities, the Hazardous Waste Rules also set out specific responsibilities regarding the package and labelling of the Hazardous waste, the Rules state that the occupiers, operators, and recyclers must ensure that hazardous wastes are properly packaged and labelled for their safe handling and storage.⁴¹ They are allowed to store the waste for a period of 90 days⁴², the SPCB are well within their power to extend the duration of the storage on conditions outlined in Rule 7(1) of the Hazardous Waste Rules. The Rules also states that any accidents involving hazardous waste must be reported to the relevant SPCB immediately.⁴³

The Rules state that any person who has received the authorisation must file an annual return and maintain a record on handling hazardous waste. Recyclers, re-processors, and operators of TSDFs must also maintain similar records and file annual returns with the SPCB.⁴⁴ SPCB utilises the information from the annual reports for maintaining an inventory on the hazardous waste and compile other relevant information which includes the details of the disposable waste received by the TSDFs, detail of co processed hazardous waste and the details of hazardous waste recycled by the registered recyclers⁴⁵.

As mentioned earlier, the grant of authorisation is for a period of 5 years. After the expiry, the grants for authorisation must be got renewed by the applicant. The SPCB may renew the application if it is found that there is no violations of the Environment Protection Act or other related Acts and Rules, or violation of any of the conditions given in the original grant of authorisation. The SPCB has complete discretion when it comes to renewal of the grant of authorisation but in practice the SPCB usually grants authorisation if it is found that there has not been any violation of the above mentioned conditions.⁴⁶

SPCB are responsible for monitoring the TDSFs. If the SPCB finds that any of the conditions mentioned in the grant of authorisation or any relevant Acts or Rules are violated,

⁴⁰ *Supra* note 28, Rule 5(8)

⁴¹ *Supra* note 28 Rule 8

⁴² *Supra* note 28 Rule 7(1)

⁴³ *Supra* note 28 Rule 19

⁴⁴ *Supra* note 28 rule 8(7), 18(5), 22(1)

⁴⁵ *Id* note 28

⁴⁶ *Id* note 28

the SPCB can take appropriate actions as per the Hazardous Waste Handling Rules⁴⁷ and also deny the renewal of the grant of authorisation after the expiry of its validity period.

The hazardous Waste Management Rules set out responsibilities for the people involved in the disposal and transport of hazardous waste, this includes the general responsibility of the occupier who is expected to:

- Sent or sell the hazardous waste only to a registered recycler or an authorized disposal facility
- Transport hazardous waste in accordance with the rules
- Provide required information to an operator of a TSDF⁴⁸

Aside from these general responsibilities, the Rules also set out specific responsibilities with respect to the disposal and transport of hazardous waste. As a general matter, hazardous waste may only be “collected, treated, re-cycled, re-processed, stored or disposed of” at facilities authorized by an SPCB.⁴⁹

The hazardous Waste Management Rules set out regulations regarding transport of hazardous was within a state, between two or more state and between two or more countries.

In case of transportation of hazardous waste within a State, the procedure includes properly packaging and labelling hazardous waste before they are transported⁵⁰ and must follow the provisions under rule 19 of the Hazardous Waste Management Rules, which includes preparation of a manifest, which must be forwarded to the SPCB of the relevant States, if any accidents occur during the transport the accident must be immediately reported to the relevant SPCB.⁵¹

For transport between two or more states the procedure followed when transporting hazardous waste within the state must be followed in addition to that the person transporting the waste must obtain a no objection certificate from the SPCB of the state from which the

⁴⁷ *Supra* note 29 Rule 18(3)

⁴⁸ *Supra* note 29 Rule 4 and 9

⁴⁹ *Supra* note 29, Rule 18

⁵⁰ *Supra* note 29 Rule 19

⁵¹ *Supra* note 29 Rule 19(3)

waste was produced and also from the SPCB of the state in which the waste is intended to be disposed⁵².

For the transport of hazardous waste between two or more countries the provision in rule 13-16 must be followed. This was done so that the domestic legislation of India will be brought in compliance with the Basel Convention which is mentioned earlier. The Convention mainly deals with the transport of hazardous waste across national boundaries. The Ministry of Environment Forest and Climate Change is the authority in charge with dealing these provisions. The other authorities like the SPCB also play a role in enforcing certain provisions like for importing hazardous waste the importer must send a copy of the application to the SPCB of the State to which the waste is imported and the SPCB may send any comments or observations to the MOEF (Ministry of Environment Forest and Climate Change) within 60 days. In case of export of the hazardous waste the application must be considered within 60 days of submission of the application.⁵³ If the MOEF grants permission for the import and export of the hazardous waste then the said grant of permission must be forwarded to concerned port and Customs authorities, CPCB (Central Pollution Control Board) and the concerned states SPCB.⁵⁴ For any waste that is imported the sample of the waste imported must be produced for testing or research and development purpose⁵⁵, and also the ports and customs authority must ensure that the shipment is accompanied by movement documents and test report of the waste, consignment, from a laboratory accredited or recognised by the exporting country⁵⁶. The same documents are required for the export of hazardous waste from India⁵⁷.

In addition to Hazardous Waste Management Rules there are other rules that address the issue of management of hazardous wastes like the Manufacture Storage and Import of Hazardous Chemical Rules, 1989; Batteries (Management and Handling) Rules 2001; Chemical Accidents (Emergency Planning, Preparedness and Response Rules); E-Waste (Management and Handling) Rules, 2010; Bio-Medical Wastes (Management and Handling) Rules 1998 and National Implementation Plan for Stockholm Convention on Persistent Organic Pollutants.⁵⁸

⁵² *Supra* note 29 Rule 20(4)

⁵³ *Supra* note 29, rule 14(2)

⁵⁴ *Supra* note 29 Rule 13(4),14(3)

⁵⁵ *Supra* note 29 Rule 13(9)

⁵⁶ *Supra* note 29 Rule 13(10)

⁵⁷ *Supra* note 29 Rule 14(5)

⁵⁸ *Id* note 28

The terms hazardous waste is defined in the rules in accordance with its schedule similar to the Hazardous Waste Management Rules. The definition of “hazardous chemicals” include those chemicals that are included in Part 1 of the 1st Schedule and the second column of the second part of that schedule.⁵⁹

The main purpose of the MSIGC rules is to prevent major chemical accidents by establishing requirements for the occupiers to identify, prevent, and limit any potential chemical accidents.⁶⁰ The occupiers are required to prepare and maintain an emergency plan and provide reports regarding intended activity before they start operations, provide detailed reports following any major accidents, and maintain accurate labels on containers of hazardous chemicals.⁶¹

There are various authorities tasked with different function under the rules. The powers and responsibility of each authorities are given in the 5th Schedule of the rules. The concerned authority is required to work in collaboration with the occupier to develop an off-site emergency plan that address how an emergency situation on a particular site will addressed. This plan must be kept up-to-date.⁶²The authorities can request any information from the occupier for the development of the plan which can include the nature, extend, and any off-site effects if any that may result from an accident. The authorities then will inform the occupier of his responsibility under the rules. The authorities must prepare a plan for any accidents before the operation of the facility begins.⁶³

The occupier is required to submit a number of reports to the authorities that are mention in the 5th schedule of the rules. The authorities can ask for additional information in case the occupier is producing any chemical that is mentioned in the Column 4 of the 2nd Schedule, an amount excess of the specified amount in the 4th column of that schedule.⁶⁴ The State Crisis Group which is headed by the Chief Secretary of the Government must forward a report to the chairman of the central Crisis Group i.e. the secretary of the MOEFC in case of an accident⁶⁵

⁵⁹ *Id* note 28

⁶⁰ India. Ministry of Environment and Forests. Manufacture, Storage, and Import of Hazardous Chemical Rules, 1989 Rule 4(2)(b)(i). Ministry of Environment and Forests Notification S.O. 966(E).

⁶¹ *Supra* note 50, rule 13, Rule 7, Rule 5(1), Rule 17(4)

⁶² *Id* note 28

⁶³ *Supra* note 50 Rule 13, Rule 7

⁶⁴ *Supra* note 50 Rule 12

⁶⁵ *Id* note 28

The information given to the authorities cannot be used for any other purpose other than for what it was disclosed for, the authorities must disclose to the person who discloses the information.⁶⁶

If the authorities believe that any imported chemical is likely to cause a major accident then the authorities can ask the importer to take the necessary step required and even ask the importer to halt the import of the chemical.⁶⁷ The authorities then must inform the port authorities to take the appropriate action regarding the safe handling and loading of the chemical within the port premise.⁶⁸

If there is any violation on part of the provision of the rules then the authorities can serve a notice to the violator specifying the measures to be taken within a time period to remedy it.⁶⁹

The Batteries (Management and Handling) Rules, 2001 (the “Batteries Rules”) apply to the handling of batteries and their components. Batteries are defined under the rules to include lead acid batteries that contain metal and are a source of electrical energy.⁷⁰ Manufacturers, importers, assemblers, and re-conditioners have specific responsibilities under the rules including stated procedures for collection, recycling, and transportation.⁷¹

Under the Batteries Rules, SPCBs are responsible for ensuring that regulated parties comply with the rules and with the conditions imposed by their registrations. SPCBs must file annual compliance status reports to the CPCB by April 30 each year.⁷² The Joint Secretary, Ministry of Environment and Forests (or any officer designated by the Ministry or other agency) will ensure that recyclers possess appropriate facilities, technical capabilities, and equipment to recycle used batteries and dispose of any hazardous wastes generated during the recycling process.⁷³

⁶⁶ *Supra* note 50, rule 16

⁶⁷ *Supra* note 50 Rule 18(2)

⁶⁸ *Id* note 28

⁶⁹ *Supra* note 50 Rule 19(1)

⁷⁰ India. Ministry of Environment and Forests. *Batteries (Management and Handling) Rules*, 2001 Rule 2(e). Ministry of Environment and Forests Notification S.O. 432(E).

⁷¹ *Supra* note 76, Rule 2(l), 2(k), 2(b), 2(n), 4

⁷² *Supra* note 76, Rule 12

⁷³ *Id* note 28

A recycler must register with an SPCB for a five-year license. To obtain a registration as a battery recycler, an applicant must possess consents under the Air and Water Act, valid authorization under the Hazardous Wastes Rules, registration with their District Industries Centre, and documentation of their installed capacity. Under the Rules, registration is granted by the joint secretary of the MOEF, while the SPCBs are responsible for ensuring compliance with the Hazardous Wastes Rules and the Air and Water Acts, as well as certifying installed capacity. A registration may be cancelled by an SPCB if it is found that a registered recycler has failed to comply with any of the conditions of his or her registration, or with any provision of the Act or Rules. However, a cancellation may only occur after a hearing of the regulated party. Renewal of registration will depend on the recycler's compliance status. Recyclers must also submit annual returns to the SPCB using a specific form set out in the rules, along with all records relating to the receipt of used batteries. These records include a list of sources, quantities, and metal yield. SPCBs are also responsible for inspecting records produced by other regulated parties, including bulk consumers (which must file biannual returns) and auctioneers (which must make their auction records available to SPCBs for inspection).⁷⁴

The Chemical Accidents (Emergency Planning, Preparedness and Response) Rules (the "CA Rules") address accidents "involving a fortuitous, or [s]udden or unintended occurrence while handling any hazardous chemicals resulting in continuous, intermittent or repeated exposure to death, or injury to, any person or damage to any property." They do not address accidents that involve radioactivity or war.⁷⁵

The Central Crisis Group (CCG) is the lead organization for dealing with chemical accidents.⁷⁶ The CCG provides expert guidance, as well as assistance with funding and infrastructure in the event of an accident.⁷⁷ The State Crisis Group (SCG) is the second-highest authority, and is the lead organization within the state where an accident occurs.⁷⁸ The State Government will also establish District and Local Crisis Groups (DCG and LCG) to handle all

⁷⁴ *Id* note 28

⁷⁵ India. Ministry of Environment and Forests. *The Chemical Accidents (Emergency Planning, Preparedness, and Response) Rules*, 1996 Rule 2(a). Ministry of Environment and Forests Notification G.S.R.347(E).

⁷⁶ *Supra* note 81 , Rule 3

⁷⁷ *Supra* note 81 , Rule 5

⁷⁸ *Supra* note 81 , Rule 7

major chemical accidents at the local level and prepare coordinated emergency plans.⁷⁹ The chairman of the SPCB is a member of the crisis groups envisaged under these rules.

The E-Waste (Management and Handling) Rules, 2010 (the “E-Waste Rules”) apply to the disposal of electronics, either in whole or part.⁸⁰ Under the E-Waste Rules, producers of equipment listed in the rules, collection centres, recyclers, and dismantlers must all obtain authorization from the relevant SPCB before commencing their activities. The application must be made with a form included in the rules, and submitted to the relevant SPCB or PCC. Following an inspection and investigation, the SPCB or PCC may grant the authorization. A decision must be given within 90 days of submission of the application. An authorization may only be refused after the applicant has had a hearing. Any regulated party that has been granted an authorization must maintain records of all wastes handled, and file an annual return detailing the information in those records. Any application for renewal of the authorization must be made 60 days before the expiration of the current authorization.⁸¹

Applications for registrations of dismantlers or recyclers may be made by submitting Form 4 to either the SPCB or PCC. Registrations are valid for two years. Dismantlers or recyclers that are granted registration must maintain records of all wastes handled, and file annual returns with the SPCB (or PCC as the case may be).⁸²

The Bio-Medical Waste (Management and Handling) Rules, 1998 (the “Bio-Medical Rules”) apply to the generation, collection, receipt, storage, transport, treatment, disposal, or handling of biomedical waste.⁸³ Bio-medical wastes are defined under the rules to include wastes that are” generated during (1) the diagnosis, treatment, or immunisation of human beings or animals”; (2) related research activities; or (3) “the production or testing of biologicals.”⁸⁴ The rules also list categories that will be considered biological waste.⁸⁵

Under these Rules, the State Government shall establish a prescribed authority for granting authorization and implementing these rules. The duties of such a prescribed authority

⁷⁹ *Supra* note 63, Rule 9

⁸⁰ India. Ministry of Environment & Forests. *The E-Waste (Management and Handling) Rules, 2010* Rule 3(k). Ministry of Environment and Forests. New Delhi: 2010

⁸¹ *Supra* note 68, Rule 9

⁸² *Id* note 10

⁸³ India. Ministry of Environment and Forests. Bio-Medical Waste (Management and Handling) Rules, 1998 Rule 2. Ministry of Environment and Forests Notification S.O. 630(E). New Delhi: 1998. <<http://www.scribd.com/doc/128698726/Bio-Medical-Waste-Management-and-Handling-Rules-1998>>.

⁸⁴ *Supra* note 71, Rule 3(5)

⁸⁵ *Supra* note 71, Schedule I

include granting authorizations to Health Care Establishments (HCEs) to handle bio-medical wastes and renewal of authorizations. To the extent HCEs violate any of the rules, the prescribed authority may issue directions or take necessary legal actions. The prescribed authority may also cancel or suspend an authorization after hearing the occupier/operator. In addition, the prescribed authority is required to compile annual reports submitted from HCEs, which include the categories and quantities of biomedical wastes that the HCE handled during the year. These reports must then be forwarded to the CPCB.⁸⁶

National Implementation Plan for Stockholm Convention on Persistent Organic Pollutants

India ratified the Stockholm Convention on January 13, 2006. Under the Convention, parties are required to develop a national implementation plan to show how they will implement their obligations under the Convention. To meet this requirement, the MOEF drafted the National Implementation Plan for the Stockholm Convention (“NIP”) in 2011. The NIP takes a comprehensive approach to handling issues related to persistent organic pollutants (“POPs”), and sets out certain priorities. These priorities are divided into three phases: (1) immediate priorities; (2) medium-term priorities; and (3) long-term priorities. These priorities are to be achieved by 2022.

Under the NIP, SPCBs have several responsibilities. These include:

- Monitoring emission levels of POPs
- Ensuring multi-sectoral compliance with the NIP, including by the industrial and agricultural sectors
- Advising state governments on prevention, control and abatement of water and air pollution in establishing industries. This would also involve advising the state governments on the dangers posed by POPs and how to respond to them
- Providing consents to establish industries, operations or processes
- Providing consents to industries to manufacture, use or store chemicals

⁸⁶ *Id* note 10

- Advising industries on pollution prevention

The NIP also requires SPCBs to establish certain bodies, including: (1) bodies to provide authorization to facilities that process, dispose, and/or handle hazardous waste, and oversee compliance with the Hazardous Wastes Rules; and (2) emergency response centers to manage chemical disasters in coordination with the CPCB. Currently, the SPCBs are revising the inventory of generated hazardous wastes, in light of the shortcomings of an earlier inventory.⁸⁷

Conclusion

All though Indian has rectified the Basel convention and other similar Convention and as result of this made legislations to bring the nations legal frame work within the Basel Conventions requirements. The Basel convention mainly looks in to the handling and transport aspect of the hazardous waste with an view to protect the environment , and does not require the nations to make legislations with regards to the safety of the workers that are employed in the handling of the hazardous waste.

Looking at the Hazardous waste Management and Handling rule and other similar laws it is clear that these legislation gives weight to the protection of the environment and not too much protection to the worker that are involved in the handling and disposal of the waste and also the main drawback as having an establishment such as SPCB as the enforcement authority of the act make the enforcement of the Act near impossible due to the lack financial and human resources made available to it.

⁸⁷ India. Government of India. National Implementation Plan: Stockholm Convention on Persistent Organic Pollutants. Ministry of Environment and Forests. New Delhi: 2011 <<http://nipindia.gov.in/pdf/NIP.pdf>>.

Labour laws in Indian and the Protection it affords to the Hazardous Waste Handlers

Introduction

In last chapter we discussed about the various legislations and their implementation on Hazardous waste and their management. It is pertinent to our study to note that none of the above mentioned legislation talk about provisions that guarantees the safety of the workers that are involved in the handling of the said hazardous material. So the question that comes to mind is what are the legislations that are in force to ensure the safety of the workforce force involved?

The mode in which the hazardous waste is managed is usually done by the separate agencies that specialize in the waste management and not by the establishments that usually create them. The agencies like Chokhavatia associates, Veolia, Vermigold, Synergy Waste Mngement Pvt Ltd, boast a client list of the major company involved in pharmaceuticals, food beverage Industries and others. This chapter aims to investigate into the extent to which the existing labour law provide protection and if these agencies comes under the purview of these Acts.

The law relating to labour and employment in India is primarily known under the broad category of "Industrial Law". The prevailing social and economic conditions have been largely influential in shaping the Indian labour legislation, which regulate various aspects of work such as the number of hours of work, wages, social security and facilities provided. The labour laws of independent India derive their origin, inspiration and strength partly from the views expressed by important nationalist leaders during the days of national freedom struggle, partly from the debates of the Constituent Assembly and partly from the provisions of the Constitution and the International Conventions and Recommendations. The relevance of the dignity of human labour and the need for protecting and safeguarding the interest of labour as human beings has been enshrined in Chapter-III (Articles 16, 19, 23 & 24) and Chapter IV (Articles 39, 41, 42, 43, 43 A & 54) of the Constitution of India keep in line with the Fundamental Righrs and Directive Principles of Sate Policy. The Human Rights and Standards that emerged from the United Nations also played a huge role in influencing the labour laws in India. The labour laws in India was also influenced by the Sessions of the Labour Conference and the International Labour Conference. The recommendations of the First and the Second National

Commissions on Labour under the Chairmanships of Justice Gajendradadkar and Shri Ravindra Varma respectively, the recommendations of Nation Commission on Rural Labour and the Judicial pronouncements on labour related matters specifically matters relating to minimum wage , bonded labour, child labour and contract labour all shaped the Labour law in India as we know it. Labour is a subject that the Constitution of India has put in its Concurrent list this means that both the Central and the State Legislature as capable of making the laws on this subject, a large number of labour laws have been enacted catering to different aspects of labour namely, occupational health, safety, employment, training of apprentices, fixation, review and revision of minimum wages, mode of payment of wages, payment of compensation to workmen who suffer injuries as a result of accidents or causing death or disablement, bonded labour, contract labour, women labour and child labour, resolution and adjudication of industrial disputes, provision of social security such as provident fund, employees' state insurance, gratuity, provision for payment of bonus, regulating the working conditions of certain specific categories of workmen such as plantation labour, beedi workers etc has been enacted as result of this flexibility.⁸⁸

The legislations regarding the health and safety of the workforce can be found in the Acts such as:

- i. The Factories Act 1948, amended 1954, 1970,
- ii. The Mines Act, 1952
- iii. The Dock workers (safety, health and welfare) Act, 1986
- iv. The Plantation Labour Act, 1951
- v. The Explosives Act, 1884
- vi. The Petroleum Act, 1934
- vii. The Insecticide Act, 1968
- viii. The Indian Boilers Act, 1923
- ix. The Indian Electricity Act, 1910
- x. The Dangerous Machines (Regulations) Act, 1983
- xi. The Indian Atomic Energy Act, 1962
- xii. The Radiological Protection Rules, 1971.

⁸⁸ A study on Labour Laws In India, CA Rajkumar S Adukia.

In these chapter, I aim to study the relevant provisions in depth and understand if they in anyway provide the required safety that the workers involved requires and to what extent these legislations provide protection to workers involved in the handling such hazardous waste.

The Indian legal system is built around the Constitution of India which with regards to health and safety of the workforce have certain provision to guarantee it. These can be seen in the Directive Principles of State Policy which are the principles that the government has to follow to administer the country. The Directive Principle aims at giving security to the health of the workers, and it extends to both men and women make sure that children are not taken advantage at a very young age, that they are not force in to works that are not suitable for their health and age due to financial reasons, that just and humane maternity reliefs are provided to the workplace; the government by legislation or nay other means secure the participation of the workers in the management of the undertaking, establishment or other organizations engaged in the industry.⁸⁹

Occupational safety is a subject that is allotted to the Ministry of Labour and employment under the government of India allocation of business rules. On the basis of the directive Principles as well as international instruments the government of India Ministry of Labour and Employment has declared the National policy on Safety, health and Environment at workplace Policy.⁹⁰

This policy aims to establish a safety and health culture in the country through elimination of the incidents of work related injuries diseases fatalities disasters and to enhance the wellbeing of the workers.

Based of the directive principles and other international instruments the government of India has enacted the statutes for the purpose of ensuring the occupational safety and health at workplace. At present there are regulation regarding the sectors of manufacture, mining, ports and construction.

There are four main legislations that cover occupational Safety and Health at workplace. (i) The Factories Act, 1948 , covering factories wherein the enforcement of safety at workplace is by the Chief Inspector of Factories in the respective states, (ii) The Mines Act,

⁸⁹ National Occupational Safety and Health (OSH) Profile, Directorate General Factory Advice Service and Labour Institutes in collaboration with International Labour Organization (ILO)

⁹⁰ *Id* at note 88

1952 and Mines Rules, 1955 for mining industry where the enforcement is by the Directorate General of Mines Safety (DGMS) under Ministry of Labour & Employment, Government of India, (iii) The Dock Workers (Safety, Health and Welfare) Act, 1986 followed by notification of the Dock Workers (Safety, Health and Welfare) Regulations, 1990 dealing with the major ports of India and the enforcement is by the Directorate General of Factory Advice Service & Labour Institutes (DGFASLI), under Ministry of Labour & Employment, Government of India, and (iv) The Building & Other Construction Workers (Regulations of Employment and Conditions of Service) Act, 1996, covering construction workers at construction sites wherein the enforcement is by the Directorate General Labour Welfare in the central sphere and by the Labour Commissioners/Factory Inspectorates in the States/UTs⁹¹

The Factories Act 1948

The Factories Act in India was first passed in 1881, it over the time developed into a welfare legislation with wide contents and coverage through innumerable amendments and re-enactments. The scope especially with regards to health, safety, welfare, proper working hours, leaves, working conditions and benefits for the workers employed in factories as noted by the Supreme Court in the famous Nagpur Electric Light and Power Company.⁹²

Under the present Act, any premise in which 10 or more workers are working and a manufacturing process is carried on with the aid of power; any premise in which 20 or more workers are working and a manufacture process is carried on without the aid of power are brought under the definition of Factories.⁹³ In some states this definition has undergone changes with the number of workers being increased to 20 in place where the manufacture process is done with the aid of power and 40 people in places where the manufacture process is done without the aid of power.

This legislation was enacted with the prime objective of protecting the workmen employed in factories against industrial and occupational hazards. To achieve this aim the Act imposed upon the occupiers and owners certain obligations to protect unwary as well as negligent workers and to secure employment for them which is safe and conducive. It stipulates

⁹¹ *Id* at note 88

⁹² 1967 AIR 1364, 1964 SCR (3) 92

⁹³ Section 3, Factories Act

that the workers be allowed to do their work in a safe and sanitary environment as far as the manufacturing process allows and also to take precautions for their safety and to prevent accidents and for this the local governments are also allowed to appoint inspectors to call for returns and to ensure that the prescribed registers are maintained.⁹⁴ It also empowers the State government to frame rules so that the local conditions prevailing in the states are appropriately reflected in the enforcement, to make the punishments provided stricter.

Chapter IV A was added to the Act in 1988 after the Bhopal gas Tragedy in which the gas leaked out of the Union Carbide India Limited pesticide plant in Bhopal in which over 500,000 people was exposed to the methyl isocyanate gas and other chemicals. This chapter of the Act deals with Provisions relation to Hazardous Processes.

-Section 41 A – Dealing with Constitution of Site Appraisal Committees

-Section 41 B – Dealing with Compulsory disclosure by occupier

-Section 41 C – Dealing with Specific responsibility of the occupier in relation to hazardous processes

-Section 41 D – Dealing with Power of Central Government to appoint Inquiry Committees

-Section 41 E – Dealing with Emergency Standards

-Section 41 F – Dealing with Permissible limits of exposure of chemicals and toxic substances

-Section 41 G – Dealing with Workers participation in safety management

-Section 41 H – Dealing with Right of workers to warn against imminent danger.

Chapter VII of the Act deals with employment of young persons and prohibits the employment of any persons below the age of 14.

Chapter IX of the Act has Special Provisions with Section 85

– Dealing with Power to apply the Act to certain premises wherein the State Government by notification declare that all or any of the provisions of the Act will apply to any place where a manufacturing process is carried out with or without the aid of power

⁹⁴ Occupational Health and Safety: Legal and Operational Guide, PRIA International Academy (2014)

- Section 87– Dealing with Dangerous operations, wherein the State Government is of opinion that any manufacturing process or operations carried out in a factory is dangerous then it can restrict employment of women, provide for periodical medical examination , prohibit / restrict / control use of any specified material / process

-Section 88– Dealing with notice of certain accidents;

-Section 88 A– Dealing with notice of certain dangerous occurrences

-Section 89– Dealing with notice of certain diseases

-Section 90– Dealing with Power to direct enquiry into cases of accidents and certain disease

-Section 91– Dealing with Power to take samples

-Section 91A– Dealing with safety and occupational health surveys.⁹⁵

The Mines Act

The Mines Act is an amalgamation of the statutes regulating to the regulation of labour and safety in mines and extends to the whole of India.

In the earlier times the mining activities were modest and simple hence safety problems too were simple. With the more complex exploitation of the mining resources this also has led to more complex matters regarding the safety of the workers. The legislations regarding the safety of the worker evolved as a result of the various accidents that has occurred in the course of mining. Firstly in 1897 in the Kolar mining fields killing 52 people, followed by the Khost Coal Mine disaster in Baluchistan killing 47 people these two disasters hastened the need of more safety laws in India as a result of which the Mines act was enacted in 1901. The Act was superseded by the Mines Act 1923 which was later replaced by the Mines Act in 1952 and further amended in the year 1959. The Mines Act 1952 applies to all the mines in India which extract any kind of minerals except for the mines in Sikkim, including off shore mine in the territorial waters. For the implementation of the Act the Government has established the “Bureau of Mines Inspection” on the 7th January 1902 with headquarters at Calcutta. The name of the bureau was changed to the Department of Mines in 1904 and its headquarters was

⁹⁵ *Id* at note note 88

changed to Dhanbad in 1908. On 1.1.1960 the organization was renamed as “Office of Chief Inspector of Mines”. In 1967 it was further predesignated as Directorate-General of Mines Safety.

The Mines Act deals with the matters of safety, health and welfare of people employed in mines including oil mines. The Act specifies the provisions for regulating employment of persons, leave with wages, duties and responsibilities of owner, agent and manager, drinking water, First-Aid and rest shelters, medical examinations and occupational health surveys, notice of accidents and occupational diseases in addition to framing of rules, regulations and byelaws on specific subjects including the penalty provisions for violations of this Act.⁹⁶

The following Laws dealing with Safety and Health are applicable to Mines: Mines Act, 1952 Coal Mines Regulations, 1957 Metalliferous Mines Regulations, 1961 Oil Mines Regulations, 1984 Mines Rules, 1955 Mines Vocational Training Rules, 1966 Mines Rescue Rules, 1985 Mines Creche Rules, 1966 Electricity Act, 2003 Factories Act, 1948: Chapter III & IV Manufacture, Storage & Import of Hazardous Chemicals Rules, 1989 – under Environmental Protection Act, 1986 Land Acquisition (Mines) Act, 1885 The Coal Mines (Conservation & Development) Act, 1974⁹⁷.

Other Related Legislations

Other than the general legislations mentioned above there are other more specific legislations that deals with Safety of workers dealing with certain specific substances machinery, environment, which also addresses certain issues of health. These statutes are applicable to even the unorganised sectors.⁹⁸

The Indian Boilers Act

This act aims to consolidate the regulations regarding the steam boilers, the India Boilers Regulation 1950 and the Boilers Rules of respective States. This Act prescribes the various safety measures enforced to ensure the safety of the workers working in the boilers.

⁹⁶ *Id* at note 88

⁹⁷ *Id* at note 88.

⁹⁸ *Id* at note 88

The Dangerous Machines Act

This Act regulates the trade and commerce in production, supply, distribution and use of products of any industry producing dangerous machines. This act aims at procuring the welfare of labours operating such machines and for the payment of compensations for death or bodily injury suffered by any labours while operation any such machine.

The Motor Transport Workers Act 1961

The Act aims to regulate the welfare of motor transport workers and to regulate the conditions of their work.

The Plantation Labours Act 1951

The Act provide for the welfare of labours and to regulate the conditions of work in plantations

The Beedi Cigars Works Act 1966

The Act regulates the welfare and safety of workers involved in the beedi and cigar establishments and to regulate the conditions for their work and for matters connected there within

The Shops and Commercial Establishment Act

This Act come under the State list and hence legislated by the State Government and usually covers the areas of cleanliness, ventilation, lighting, precaution against fire and provision of first aid box

The Explosive Act 1884

This Act provides for the regulation of the manufacture, possession, use, sale, transport, imports and export of explosives

The Petroleum Act 1934

This Act aims to consolidate existing act regarding the laws relating to the import, transport, storage, production, refining and blending of petroleum.

The Inflammable Substances Act,1952

The Act not only notifies certain substance as dangerously inflammable and to provide for the regulations for their import, transport, storage, and production by applying there to.

The Insecticides Act 1968

The Act regulates the import, manufacture, sale, transport, distribution and use of insecticides with a view to prevent risk to the people handling it.

The Oil Fields Act 1948

The Act regulates the oil fields and the development of mineral oil resources.

Importance of Labour Law

The effect of these legislation is that they all aim at ensuring the welfare of the workers involved in the various sectors. A more widespread legislation is the Factories Act which provide safe work environments for labourers involved in the manufacture process. The term manufacturing process is defined in the Factories Act in section 2(k) : “manufacturing process” means any process for—

(i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal,

2 [(ii) pumping oil, water, sewage or any other substance; or]

(iii) generating, transforming or transmitting power; or

3 [(iv) composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding;] [or]

(v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; [or] [(vi) preserving or storing any article in cold storage;]

The Factories Act only cover those who are involved in the manufacturing process under this definition. The protection provided under the Factories Act is not extended to the people who work outside this closed definition. There are also specific Acts that protect labourers of the other specific sectors. Hence, the workers who handle hazardous waste in the factories obtain the protection under the Factories Act, but the reality is that the vast majority of the hazardous waste is handled by the independent agencies such as Bharath Oil and Waste Management and other waste management agencies who clearly don't conduct any manufacturing process and hence do not come under the definition of factories. Hence the workers who are involved in the handling of hazardous waste in these agencies do not get the protection of the Factories Act. Neither are there any specific legislations that help to protect the welfare and safety of the those workers, except the Hazardous Waste Handling And, Management Rule which is mainly in the nature of a legislation that deals with the ways to dispose and transport hazardous waste materials.

When we analyse the labour legislations in India we find that most of them aim at protecting the workers economic and social justice⁹⁹, to make the case if the Hazardous waste Management and handling rules play this role we need to make the case that this law provide the workers with economic and social justice.

Labour law is very varied body of law that applies to matters as employment remunerations, conditions of work, trade unions and industrial relations. In a more comprehensive sense it also includes social security and disability insurance as well.¹⁰⁰ The demands of the workers for better condition, the rights to organize and the simultaneous demands of employers to restrict the powers of workers organizing to win higher wages, or by laws imposing costly requirements, such as health and safety or equal opportunities conditions. Workers' organizations, such as trade unions, can also transcend purely industrial disputes, and gain political power - which some employers may oppose. The state of labour law at any one time is therefore both the product of, and a component of, struggles between different interests in society.¹⁰¹ This body of law primarily evolved to protect the manual workers in industries

⁹⁹ Necessity and Importance of Labour Law and Principles, Smriti Chand, <https://www.yourarticlelibrary.com/law/necessity-and-importance-of-labour-law-and-principles/34381>

¹⁰⁰ Labour Law, C. Wilfred Jenks, <https://www.britannica.com/topic/labour-law>

¹⁰¹ CA. Rajkumar S Adukia , A study on labour laws in India

and gradually transformed to encompass various other sectors of the economy. Labour law as we know it today is by product of the industrial revolution which took place on the 18th century, the law had to take its shape to prevent the abuse of the labours by large profit driven factory owners and also by the introduction of the new and more dangerous machines that helped the Industrial Revolution, the introduction of the machines in large complexed dedicated toward production and also the economic potential that it had brought with it all but encouraged the exploitation of the working sector of the society by the more wealthy owners whose only aim was to tap into the new economic potential and make fortunes that couldn't even be previously dreamt about. The customary restrains and the intimacy of employment relations that previously protected the labourers from abuse all but ceased to exist in the new industrialized world.¹⁰²

The International Labour Organisation was the first organization to deal with Labour issues, it was established as an agency of the League of Nations following the treaty of Versailles.¹⁰³ The first annual conference of the ILO was held in Washington DC and adopted six international Labour Conventions, which dealt with hours of work in industry, unemployment, maternity protection, night work for women, minimum age and night work for young persons in industry.¹⁰⁴

Indian Perspective

India's colonial past plays a huge role in the development of the Labour Law in the nation, the Britishers passed the first labour law in Indian in the form of the Factories Act, which brought eight hour work days, abolished Child Labour, and restriction of women in night employment.¹⁰⁵ The earliest Indian Statute that deals with the regulations between employer and his workmen was the Trade Dispute Act 1929. Provision regarding the rights of lock out and strike was provided in this Act but there was an apparent lack of machinery to enforce it.

India's independence led to a change in the labour law in India due to ideology of independent India calling for better relation between the workmen and their employer, this was backed by the agreement between the Employees, Employers and the government. This tripartite agreement between the Employees, Employer and the Government was signed in

¹⁰² *Id* note 90

¹⁰³ *Id* note 91

¹⁰⁴ *Id* Note 91

¹⁰⁵ *Id* note 91

December 1947 agreed that the labourers would be given fair wages and fair working conditions in return the employers would receive the full cooperation of the labours for uninterrupted production and higher productivity. Ultimately the Industrial Dispute Act brought into force on 01/04/1947 replaced the Trade Disputes Act 1929.

The Indian labour policy has a twofold objective to maintain industrial peace and promoting the welfare of labour.¹⁰⁶ The main highlights of the labour policy in India are, it aims to create new jobs, new social security schemes for workers, attract public and private investment, prioritize the allocation of the funds to benefit vulnerable workers, social security cards for workers, vital industries and establishments declared as public utilities and labour law reforms in tune with the times¹⁰⁷. Empowered body of experts to suggest required changes, statutory amendments for expediting and streamlining the mechanism of labour judiciary, Amendments to Industrial Disputes Act in tune with the times, Efficient functioning of Labour Department, More labour sectors under Minimum Wages Act, Child labour act to be aggressively enforced, Modern medical facilities for workers, Rehabilitation packages for displaced workers, Restructuring in functioning of employment exchanges. Computerization and updating of data base, Revamping of curriculum and course content in industrial training, Joint cell of labour department and industries department to study changes in laws and rules.

The labourers employed in dealing with hazardous waste are employed under a contract and they come under the unorganized sector. Hence this means that the protection made out by the Factories Act and other welfare legislations do not cover these labourers.

The agencies that deal with hazardous waste management frame their policies based on the Hazardous Waste Handling and Management Rules which only provide provision for the transport and disposal of such hazardous wastes. They do not specify any provisions for the welfare of the workers that are employed in these industries and as mentioned earlier the provisions of the Factories Act only apply to labourers employed in the manufacturing process.

[Employers Provident Funds and Miscellaneous Provisions Act 1952](#)

In India the act that mainly applies to the employees to protect them from the accidents is the Employees Provident Fund Act 1952 that makes provision to set up provident funds,

¹⁰⁶ *Id* at note 14

¹⁰⁷ Report of the 2nd National Commission on Labour

pension funds and deposit link insurance funds for the employees in factories and other establishments, the Act specifically provide for the institutions where this Act is applicable. Section 1(3) of the Act reads as follows:

“ Subject to the provisions contained in section 16, it applies—

(a) to every establishment which is a factory engaged in any industry specified in Schedule I and in which [twenty] or more persons are employed, and

(b) to any other establishment employing [twenty] or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in this behalf:

Provided that the Central Government may, after giving not less than two month's notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act to any establishment employing such number of persons less than [twenty] as may be specified in the notification.

It is clear from this section that the Act only includes those industries that are specifically mentioned in the Act and falls under the definition of factories , the Central Government is also given the power to add new establishment employing 20 or more person by a notification through the official Gazette or by the provisions of subsection (4) of the section the Central Provident Fund Commissioner can on application of the employers and the majority of the employees in relation to the establishment that the provisions of the Act should be made applicable to that establishment and he may by notification in the official gazette apply the provisions of this Act to that establishment. These two provision doesn't make it mandatory on the part of the establishment to set up funds in accordance with the provisions of this Act. Also these agencies are not mentioned in the 1st Schedule of the same Act

As mentioned earlier, waste disposals are usually carried out by Waste disposal agencies and rarely by the factories or the establishments themselves that produce them. These are independent entities that are employed to take care of the management of the waste. Hence these entities usually do not come under the purview of the EPF or any other legislations that are put in place to ensure the safety and welfare of the workers.

Law Relating to Unorganised Sector

The problem with making a legislation specific to the unorganized sector is the fact that there is not clear defined limits to the who or what constitute the unorganized sector. These people usually are the ones that are in dire need of protective legislation, they are usually engaged in a variety of occupations or employments, ranging from those like forest workers, tribals trying to follow traditional vocations within their traditional habitats, and fishermen who venture out to sea in vulnerable canoes, to those who are working in their homes with software, or assembling parts for a highly sophisticated product.¹⁰⁸ The difficulty is identifying the unorganised sector is well documented. It was one of the main problems that was faced by the 2nd National Commission on Labour. Generally a negative definition of the term as a sector that is not the organized sector does not lead to much use either academically or practically. Since the workers in the unorganised sector is engaged in variety of works it would be also very impractical to define them in terms of the work that they are engaged in. The main problem with the unorganised sector is that it is usually very hard to identify the employer and hence the employer - employee relationship, which the law can attempt to channelise or influence by defining rights and responsibilities, and building up a system of social security on a contributory basis.¹⁰⁹

The concept of an informal or unorganised sector (as both terms may be and have been used interchangeably by the various committees and commission constituted to study then and hence is mainly accepted to used interchangeably) received worldwide attention in the early 1970s, as result the International Labour Organisation initiating a serious effort in identifying and studying the area through Programme Mission in Africa¹¹⁰. In 1987 the Director General of the ILO referred to the role of this sector in promoting employment and the absence of adequate laws for providing protection to the workers in this sector.

In India however the term informal sector is of recent origin, as recent as the last three decades, the First National Commission on Labour defined the unorganised sector as that part of the workforce 'who have not been able to organise in pursuit of a common objective because of constrains such as (a) casual nature of employment, (b) ignorance and illiteracy, (c) small size of establishments with low capital investment per person employed, (d) scattered nature of establishments and (e) superior strength of the employer operating singly or in combination.'

¹⁰⁸ Report of the 2nd National Commission on Labour

¹⁰⁹ *Id* at note 107

¹¹⁰ *Id* at note 107 at page 596

The Commission listed 'illustrative' categories of unorganised labour: 'These are: (i) contract labour including construction workers; (ii) casual labour; (iii) labour employed in small scale industry; (iv) handloom/ power-loom workers; (v) beedi and cigar workers (vi) employees in shops and commercial establishments; (vii) sweepers and scavengers; (viii) workers in tanneries; (ix) tribal labour; and (x) 'other unprotected labour'¹¹¹

To form a conceptual definition of the unorganised sector is not practicable or correct as the sector is too wide to be covered by a conceptual definition, hence a descriptive definition will be more apt way to tackle the problem, The term 'informal' per se, denotes the informal nature of work in the activity concerned, irrespective of the actual number of workers employed, and irrespective of whether it is within the purview of the requirements for registration.¹¹² The 2nd National Commission on Labour has identified certain characteristics to identify the unorganised sector:

“(a) low scale of organisation

(b) operation of labour relations on a casual basis, or on the basis of kinship or personal relations

(c) small own account (household) or family-owned enterprises or micro enterprises

(d) ownership of fixed and other assets by self

(e) risking of finance capital by self

(f) involvement of family labourers

(g) production expenditure indistinguishable from household expenditures and use of capital goods

(h) easy entry and exit

(i) free mobility within the sector

(j) use of indigenous resources and technology

(k) unregulated or unprotected nature

(l) absence of fixed working hours

¹¹¹ Report of The 1st National Commission on Labour at page 417

¹¹² *Id* at note 107 at page 599

- (m) lack of security of employment and other social security benefits
- (n) use of labour intensive technology
- (o) lack of support from Government
- (p) workers living in slums and squatter areas
- (q) lack of housing and access to urban services
- (r) high percentage of migrant labour”

The National Commission for Enterprises in the Unorganised Sector, in their Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector as "consisting of all unincorporated private enterprises owned by individuals or households engaged in the sale or production of goods and services operated on a proprietary or partnership basis and with less than ten total workers." This definition of the sector in terms of the number of workers also has its defects. The main argument against this definition is the vast masses of unorganised labour who work as agricultural, workers, cultivators, construction workers, self-employed vendors, artisans, traditional crafts persons, home-based workers, traditional service workers, workers depending on the common property resources such as forests and fisheries and others. Almost the entire non-agricultural activity in rural India is unorganised. All these sectors are mostly unorganised in terms of organisation, employment and labour participation.¹¹³

Workers in “the unorganised sector include all the workers of the unorganised sector as well as the casual and contract workers in the organised sector who, for one reason or another, have failed to get the benefits of protective legislation or laws on social security.” This was the definition that was finally settled upon by the 2nd National Commission on Labour

More than 90% of the India’s workforce come under the unorganised sector, the various definition especially the definitions that rely on the lack of the legal protection as a defining character of the unorganised sector shows a clear lack of proper legislative protection to the labourer engaged in this sector and also the fact that the labourers who are usually engaged in the Hazardous waste management is also as very serious issue.

¹¹³ *Id* at note 107 at page 602

Even though there is lack of proper legislations to protect the unorganized sector it not completely left exposed. There do exist some legislations and legal protection to the unorganised sector. One such legislation is the Unorganised Social Security Act 2008. The government enacted this Act to provide social security to the unorganised sectors. The mechanism of the Act provides a system for the implementation of the law

1. The Nation Social Security Board

The Union government constitutes the National Social Security Board with the Union Minister for Labour and Employment as the Chairperson, members nominated by the Union Government consisting of seven each representing workers and employers from unorganized sector, an eminent person from civil society, two members from the House of the People, one member from the Rajya Sabha and also five each members representing Ministries from the Central and the State Governments.

It does the following functions

- They give a recommendation to the Union Government about suitable schemes for the unorganised workers
- Advise the Union Government on matters arising out of the administration of the Act.
- To monitor the social security schemes which are formulated for unorganised workers
- Review the registration and issue identity cards to the unorganised workers.
- Review the record of functions performed by the State Government at the state level.

2. State Social Security Board

The State government at the state level constitutes the State social security Board. The function and the constitution of the social security board is same as the National Social Security Board

The Act also provides for the constitution of the Workers Facilitation Centres by the State Governments to disseminate information about the social security schemes, and also assist the workers for the registration and facilitate the enrolment of the unorganised workers for social security schemes

The judiciary has come forward in many case to fill the holes left by the legislature for the protection of the rights of unorganised workers. Indian Judiciary has tried to extend the benefits of labour welfare measure such as the Employees Compensation Act, Payment of Gratuity Act, Employees State Insurance Act, Employees Provident Funds etc.

In *Sanjit Roy v. State of Rajasthan*,¹¹⁴ it was held that payment of wages lower than the minimum wage to the person employed on famine relief work is violative of Article 23. Whenever any labour or service is taken by the state from any person, who is affected by drought and scarcity condition the state cannot pay him less wage than the minimum wages on the ground that it is given help to them to meet famine situation. The state cannot take advantage of their helplessness.

In *Rural Litigation and Entitlement Kendra, Dehradun v. Uttar Pradesh*¹¹⁵ the court stated that the right to life under Article 21 of the Constitution of India includes the right to livelihood

In *People Union for Democratic Rights v. Union of India*¹¹⁶ the court held that begar is also a kind of forced labour and it is a violation of the right to live with dignity, respect and fundamental human rights. If any person is taking the service of any labour and does not pay the minimum wages, then it is a violation of Article 23 of the Constitution of India.

In the case of *Bandhua Mukti Morcha v. Union of India*¹¹⁷ the court held that whenever the public interest litigation is initiated alleging the practice of bonded labour, the government needs to accept it as the opportunities and to examine the issues or problem of labour and make efforts to eradicate the practice of bonded labour and protect the labours. Article 23 of the Constitution of India, which prohibits the practice of bonded labour protects and helps the labours to earn for their livelihood.

In the case of *Deena vs Union of India*¹¹⁸ the court held that the labour work that is taken from the prisoners without paying sufficient wages is considered forced labour, and it is an infringement of Article 23 of The Constitution. The prisoners have the right to claim the reasonable wages for their service rendered, and the court must enforce the claim of labourers.

¹¹⁴ 1983 SCR (2) 271

¹¹⁵ 1985 SCR (3) 169

¹¹⁶ 1983 SCR (1) 456

¹¹⁷ 1984 SCR (2)67

¹¹⁸ WRIT PETITION (CRIMINAL) NO. 89 OF 2015

In *Neeraja Chaudhary v. State of Madhya Pradesh*¹¹⁹ Justice Bhagwati held that it is not sufficient for the Government to find about the existence of bonded labour, but it is also necessary that the labourers should be rehabilitated because if they are not rehabilitated, then they would be driven to despair, poverty and helplessness. Article 21 states that bonded labour should be identified and efforts need to be made by the Government to complete rehabilitation of the labourers. Directive Principles of State policy was enacted as the guidelines for the government. Under DPSP, the State Government needs to provide a basic human dignity to bonded labour and if it is not fulfilled, then it will result in the infringement of Article 21 of the Constitution.

In the case *M.C. Mehta v State of Tamil Nadu*¹²⁰, the Supreme Court of India gave order to the Government to do a survey and to stop the child labour in the matchstick and cracker factories. The court also directed that the minimum wage paid by the subcontractors under Minimum Wages Act should be directly paid and the provisions of section 21 of the Contract Labour Act, 1970 should be observed.

In the case *State of Gujarat V. Banwari*¹²¹, the High Court of Allahabad stated that “the person cannot refuse to render the services merely on the ground that such labours belong to the Scheduled Caste. This is done to protect the interest of weaker sections of society.

*Daily Rated Casual Labour V. Union Of India*¹²² it was held that whenever the employees are classified into the casual and regular employees, it leads to the infringement of Article 14 and Article 16 of the Constitution. It is also against the spirit of Article 7 of the International Covenant on Economic, Social And Cultural Rights, 1966. When the labourers are not paid minimum wages as prescribed by the Minimum Wages Act, then it amounts to exploitation of labour. The court also stated that the Government should be the model employer and not take advantage of its dominant position.

In *Delhi Jal Board v. National Campaign For Dignity and Rights of Sewerage and Allied Workers*¹²³ the court held that neither the lawmakers nor those entrusted with the duty of implementing laws enacted for the welfare of unorganized workers have put in place

¹¹⁹ (1984) 3 SCC 243

¹²⁰ (1996) 6 SCC 756

¹²¹ 1957 CriLJ 539

¹²² 1988 SCR (1) 598

¹²³ CIVIL APPEAL NO.5322 OF 2011

appropriate mechanism for the protection of persons employed by or through contractors to whom service meant to benefit the public at large are outsourced by state and its agencies for doing workers, which are inherently hazardous and dangerous to live nor have they made provision for payment of reasonable, compensation in the event of death. Therefore, judiciary is active to take all necessary steps for protection of the rights of unorganised workers and implementing social security welfare schemes and also extend the advantages of various labour welfare legislation.

Although there exist various schemes for the social security of the unorganised sector worker there is clear lack of the workplace safety law in India. Even though the Judiciary has taken an active step in bringing the sector under some welfare labour laws there is still a clear lack of protection to this class of the labours with regards to safety and health of these labourers.

Conclusion

The current state of Labour Laws in India provides no protection to Labours that are involved in establishment that's sole purpose is to Hazardous waste management , eventhought there is provision for the protection of the worker under the Factories Act the Act only applies to establishment that are involved in the manufacturing process. The ground reality of the mattes in issue these Factories that are involved in the manufacture process almost always outsource their waste management to such establishments that specializes in them this evident from the client list of various Hazardous Waste Management agency which boast the likes of major pharmaceutical and manufacturing companies.

Also the fact the unorganized sector that are involved in the handling the waste has no laws protecting them from the harms of hazardous waste is even more worrying as these people more exposed as they lack the information about the harms that can be cause to them by these wastes also the fact most of the unorganized sector comprises of the people from poor house holds makes them more perceptible to exploitation and a form of very cheap labour.

Constitutional framework and the Labour policy of the Government

Introduction

This chapter looks into the constitutional framework for the Labour Legislations in India and also examines the new draft of the Code of Occupational Safety and Work Conditions Bill 2019

The Constitution of India is the touchstone for any Act that has been passed in India. The Constitution is the largest in the world. The constitution has also played a very important role in the development in the Labour Law in our nation. The Fundamental Rights and Directive Principles of State Policy enshrined in Part III and Part IV mentions working class related laws.

Part III of the Constitution is one of the most important parts that has played an important role in the development of Labour Law. This part mainly covers the fundamental rights of the citizens such as equality before law, Religion, Sex, Caste, Place of birth, the abolition of untouchability, freedom of speech and expression and prohibition of employment of children in factories.

Article 14 of the Indian Constitution deals with the concept of equality before law. This concept does not imply absolute equality but of absence of special privileges by reasons of birth creed or like in favor of any individual or any groups. It only means that the person in similar circumstance shall be treated alike, all persons similarly circumstanced shall be similarly treated alike both in the privileges conferred and liabilities imposed by laws. Equal law should be applied in all the same situations, there should be no discrimination between one person and another.

Constitutional Frame work

Article 19 guarantees freedom of speech and expression, freedom to form associations or unions and freedom to practice any profession or to carry on any occupation, trade or business, subject to reasonable restrictions that may be imposed by law on the exercise of these freedoms. We also have Article 23 prohibiting traffic in human beings and forced labour, and Article 24 prohibiting employment of children in factories etc. These are constitutionally binding. Besides we have a very large number of Directive Principles of State Policy in Part IV of the Constitution. These principles are not enforceable by any court but are nevertheless fundamental in the governance of the country, and it is the duty of the State to apply these

principles in making laws. Articles 38, 39 39A, 41, 42, 43 and 43A are principles which are relevant to the work of our Commission. It is also relevant to remind ourselves that we now have moves to redefine 'right to work' which figures in the Directive Principles (Article 41) and invest it with the status and sanctity of a fundamental right.¹²⁴

Article 21 of the Constitution give every citizen of India a Right to life and liberty, right to work has been considered as an extension of this immutable right. David A Morse the Director General of ILO once state that "the term Human Rights will always remain an empty slogan for those deprived of opportunities for gainful and productive employment". Right to work is the right to productive and gainful employment that every citizen as a member of society is morally entitled to. The right to life under Article 21 not only recognizes the sanctity of human life but also the dignity of labour and the right to live decently as a member of a civilized society. The right to life also implied a right to the fullest development of a person's potential and personality. Thus being a fundamental socio economic right the Constitution imposes a duty on the State to secure to every citizen this right to work. The State has assumed an unquestionable obligation to ensure this right to all its citizens in order to make their lives meaningful in the existing stage of our civilization. Professor Laski said "The citizen has a right to work. He is born into a world where, rationally organized, he can only live by the seat of his brow. To leave him without access to means of existence is to deprive him of that which makes possible the realization of personality."

In *Olga Tellis & Ors. v Bombay Municipal Corporation & Ors.*¹²⁵ the Honourable Supreme Court consisting of bench of C.J., Y.V. Chandrachud, J., A.V. Varadarajan, J., O. Chinnappa Reddy, J., S. Murtaza Fazal Ali and J., V.D. Tulzapurkar held the right to work as a fundamental right. The court held that to make living life meaningful there had to be a means of making a living and that if the right was not treated as a part of right to life , the easiest way to deprive a person right to life would be to deprive him of his means of earning a living

The Court held that which makes life possible to live must be deemed to be an integral component to the right to life, for a person if he is deprived of his right to life there would be a mere animal existence.

¹²⁴ Report of the 2nd National Commission on Labour, Page 312

¹²⁵ AIR 1986 SC 18

In *State of Uttar Pradesh v Charan Singh*¹²⁶ again emphasis was laid on the importance to include right to work in right to life under article 21 of the Constitution of India

Because of its social importance the right to work has been recognized as a fundamental human right in the world community, international documents and national constitutions. The Universal Declaration of Human rights proclaims unequivocally that “Everyone has the right to work, to free choice of employment”. The United Nations Covenant on Economic, Social and Cultural Rights gives it, for the parties thereto, the force of treaty obligations. The ILO has acknowledged it by its various efforts to secure “the prevention of unemployment”. Hence to date this right forms the foundation of International Labour Standards.

The Constitution of India has made provision for freedom of profession and right to work in the chapters on Fundamental Rights and Directive Principles of State Policy. Article 19(1)(g) of the Constitution has given to all citizens “the right to practice any profession or to carry on any occupation, trade or business”. The freedom suggested by this clause grants to every citizen the right to choose his own employment or to take up any trade or calling, Article 19(1)(g) provides for the freedom of business, occupation and contract and “declares, negatively, against what is known as the law of status”. The law of status postulates that the career of an Indian citizen is to be determined by his worth and not by his birth. His blood will not make his life under the law of status. The Constitution guarantees that a citizen is free to take up any profession, calling, trade or business of his choice.

In *Cooverjee B. Bharucha vs The Excise Commissioner And the Chief Commissioner*¹²⁷ CJ Mahajan held that “Article 19(1) (g) of the constitution guarantees that all citizens have the right to practice any profession or to carry on any occupation or trade or business.

Article 39 imposes another obligation upon the States, the obligation to ensure to each citizens “the right to adequate means of livelihood.” It is hence the duty of the State to provide opportunities for suitable employment with adequate wages to all able bodied persons. V.V Giri once observed that “No civilized government has any right to exist unless it guarantees the fundamental right, especially that of right to live and right to work.¹²⁸” With a view to ensure ‘adequate means of livelihood’ the provisions for ‘right to work’ has been incorporated

¹²⁶ CIVIL APPEAL NO. 2381 OF 2007

¹²⁷ 1954 AIR 220, 1954 SCR 873

¹²⁸ V.V.Giri - Future of Indian Labour. Problems of Indian Labour : A symposium (Labour Bureau, Simla, 1947), p.8.

in Articles 41 and 43 of the Constitution. Article 41 says: "The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work " . Article 43 also points out: "The State shall endeavour to secure, by suitable legislation, economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life". The expression 'right to work' is synonymous with the right to employment. It implies the acceptance by the State of a policy of high level of employment in conformity with the rate of economic growth of the country. The Constitution points out that the right to work shall be ensured by the State "within the limits of its economic capacity and development."

In an industrialised society the right to decent working conditions is the corollary of the right to work. The Declaration of Philadelphia has recognized the solemn obligation of the I.L.O. to further among the nations of the world programmes which will achieve (i) policies in regard to hours and other conditions of work calculated to ensure a just share of the fruits of progress to all, and (ii) adequate protection for the life and health of workers in all occupations. In pursuance of this policy the I.L.O. has outlawed harsh conditions of work by formulating new measures through adoptions of Conventions and Recommendations relating to working conditions, such as, hours, of work, holidays with pay, protective and welfare measures within the workplace. The right to decent conditions of work has also figured prominently in the Universal Declaration of Human Rights. Art. 23(1) of this Declaration says that everyone has the right "to just and favourable conditions of work"- and Art. 24 declares that "Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay". Art.27 also says that "Everyone has the right freely to participate in the cultural life of the community"

Accordingly, the right to good working conditions has been given a prominent place in the Constitution of India. Art. 39(e) says that "the health and strength of workers" must not be abused. Art. 42 declares: "The State shall make provision for securing just and humane conditions of work . The phrase 'just and humane conditions of work' connotes a number of things. Besides hours of work and weekly holidays, it is concerned with night shifts, overtime work, annual leave with pay and other things, It postulates congenial physical environment within the precincts of the undertaking such as sanitation, absence of dust and dirt, presence of ventilation, welfare measures like latrines, Urinals, washing facilities, drinking water, bathrooms, etc. The working conditions of labourers in factories, mines, plantations, are regulated under the provisions of the Factories Act , the Mines Act, the Plantations Labour Act,

The constitutional right to just and humane conditions of work also includes congenial physical environment to be provided by the employers within the precincts of the undertaking. These relate to health, safety and welfare services. While they have a vital bearing on the health and productive capacity of the worker, the Acts have laid down the minimum standards which all employers are required to follow where the nature of the processes carried on or the special conditions and circumstances of employment demand it. The Factories Act and the Mines Act prescribe several measures to safeguard the health of workers. The statutory provisions with regard to the working conditions exist in India to a fairly large extent. But experience has shown that those statutory provisions have not been properly observed in most of the undertakings.¹²⁹ India has a very poor health and safety record. The legislations that do exist to protect the right and health of the workers are not implemented effectively and only a very small section of the workers enjoy the benefits conferred by these legislations out of the total workforce only 8% enjoy the benefit of the labour legislations. Due to abundance, low skill and the high rates of employment in Indian these workers are easy to exploit. Getting work is more important than the hazards involved.¹³⁰ It is the policy of the state to make provisions for securing just and humane conditions of work. The constitution provides a broad framework under which policies and programmes for occupational health and safety could be established.¹³¹ The National Policy on Safety, Health and Environment at Work Place was declared by the Ministry of Labour and Employment, Government of India in February 2009¹³².

National Policy on Safety, Health and Environment at Workplace

On the basis of the Constitutional Provision and the International Covenants that India has ratified the MoLE declared the National Policy on Safety, Health and Environment at Workplace on the 20th of February 2009.

The policy aims to establish a preventive safety and health culture in the country by eliminating work related injuries diseases and fatalities and to enhance the wellbeing of the workers in all the sectors.

The salient features of the Policy are as below:-

¹²⁹ Maity, Anadi Bhusan, Industrial labour and the Indian constitution, University of Calcutta

¹³⁰ ALU Issue No. 39, April - June 2001 <https://www.amrc.org.hk/content/india-health-and-safety-work#:~:text=Article%2042%20%E2%80%93%20The%20state%20shall,of%20work%20and%20maternity%20relief.&text=Safety%20and%20health%20occupies%20a,amines%20and%20in%20hazardous%20occupations.>

¹³¹ *Id*

¹³² https://www.ilo.org/asia/WCMS_182422/lang--en/index.htm

- It recognizes safe and healthy working environment as a fundamental human right.
- It aims at enhancing the well-being of the employees and the society at large by eliminating work related injuries, diseases, etc.
- It enumerates the goals to be achieved and brings into focus the objective of continuous reduction in the incidence of work related injurious and diseases.¹³³

The Ministry of Labour and Employment has in accordance with the national policy on Safety, Health and the Report of the 2nd National Commission on Labour drafted the Labour Code of Occupational Safety, Health and Working Conditions. The commission had proposed the labour laws in India to be subsumed into four major Labour Codes. The draft law under consideration seeks to amalgamate 13 Central laws relating to the safety and health standards, health and working conditions, welfare provisions for the employees and leave and hours of work

1. The Factories Act 1948
2. The Mines Act 1952
3. The Dock Workers (Safety, Health and Welfare) Act, 1986
4. The Building and Other Construction Workers Act 1996
5. The Plantation Labour Act 1951
6. The Contract Labour Act 1970
7. The Inter State Migration workmen Act 1979
8. The Working Journalist and Other News Paper Employees Act 1955
9. The Working Journalist (Fixation of rates of wages Act 1958
10. The Motor Transport Workers Act 1961
11. Sales Promotion Employees Act 1976
12. The Beedi and Cigar Workers Act 1966
13. The Cine Workers and Cinema Theater Workers Act 1981

Issues relating to working conditions and welfare account for a big part of the labour laws. Broadly, these laws can be classified into two groups, one dealing with specific activities,

¹³³ Directorate General Factory Advice Service and Labour Institutes in collaboration with International Labour, National Occupational Safety and Health (OSH) Profile,

such as Factories Act 1948, Mines Act 1952, Building and other Construction Workers Act 1996, Plantations Labour Act 1951, Beedi and Cigar Workers (Conditions and Employment) Act 1966, Motor Transport Workers Act 1961, Shops and Establishments Act and so on; the other relating to activities across the board, as for example Contract Labour (Regulation and Abolition) Act 1970, Child Labour (Prohibition and Regulation) Act 1986, Dangerous Machines (Regulation) Act, 1983, Inter State Migrant Workmen Act 1979, and so on. Besides these, there are also specific welfare laws providing for a levy of cess on the activity at a prescribed rate, and the constitution of welfare funds out of which welfare activities for the benefits of workers and their families are taken up; it is in the nature of such funds that they seek to provide welfare outside the work place, unlike the earlier Acts mentioned above where, essentially, welfare is provided only to workers at the work place, excepting for crèches which are meant for the children of workers (an exception to this will be the Plantations Labour Act 1951 where welfare of the extended type is statutorily provided for). Examples of the genre of welfare fund laws in the central sphere include Beedi Workers Welfare Fund Act 1976, Mica Mines Labour Welfare Fund Act 1946, Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Fund Act 1976, Limestone and Dolomite Mines Labour Welfare Fund Act 1972 and Cine Workers Welfare Fund Act, 1981 with their accompanying Cess Acts. There are even a larger number of welfare laws enacted by the states for different categories of workers; Kerala state perhaps takes the lead in the number of welfare funds, both statutory and non-statutory.¹³⁴

The 2nd National Labour commission recommended “We would recommend consolidation of all laws of the kind and the enactment of a general law relating to hours of work leave and working conditions, at the work place. For ensuring safety at the work place and in different activities, one omnibus law may be enacted, providing for different rules and regulations on safety applicable to different activities. Similarly, there should be a consolidated law governing the welfare provisions in various laws at the work place or it can be combined with the laws on wages whereas those relating to provisions on welfare outside the workplace should be merged with the law on social security. It should apply to all establishments where 20 or more workers are employed, irrespective of the nature of activity carried on, be it manufacturing or mining or transport or services or any other”.

¹³⁴ *supra* at note 1

The Commission in its report also noted the need of an umbrella legislation for the workers in the unorganized sector “We have also been asked to see that the legislation, and the system that will be built around it, will assure at least a minimum protection and welfare to workers in the unorganised sector. We are deeply conscious of the urgency and importance of this task. In fact, both the main tasks entrusted to our Commission are urgent and difficult.” The Commission in its report has also recognized the challenge that will be faced by the legislature to modeling an umbrella legislation for the benefit for the Unorganized sector.” In the unorganised sector, we have to deal with workers who are engaged in a variety of occupations or employments, ranging from those like forest workers, tribals trying to follow traditional vocations within their traditional habitats, and fishermen who venture out to sea in vulnerable canoes, to those who are working in their homes with software, or assembling parts for a highly sophisticated product. Many of them are victims of invisibility. The laws or welfare systems that we propose for them cannot be effective unless they themselves are conscious of the laws, and acquire the strength to ensure that laws are brought into force; unless there are effective means to implement, monitor and provide quick redress; unless breaches of the law are punished with deterrent penalties, and unless the organs of public opinion and movements and organizations mount vigil, and intercede to ensure that the provisions of the laws and welfare systems are acted upon.

[Occupational Safety Health and Working Conditions Bill, 2019](#)

The draft of the newly proposed Bill was prepared by amalgamating 13 labour laws relating to safety and health standards, health and working welfare provisions for the employees and leave and hours of work the draft of the bill is divide into 13 chapters with the 3rd Chapter talking about the duties of the Employer and Employees Section 6 of the proposed bill provide that the Duty of the Employer which reads as follows:

“Duties of employer:

(1) Every employer shall ensure to his employees that work place is free from hazards that cause or are likely to cause injury or occupational disease to the employees, and shall comply with the Occupational Safety and Health standards made under this Code and of the regulations, rules, bye-laws and orders made there under.

(1A) Every employer shall ensure the periodical medical examination and prescribed tests of the employee employed in his establishment in the manner as prescribed.

(2) Every employer shall provide and maintain, as far as is reasonably practicable, a working environment that is safe and without risk to the health of the employees.

(3) Every employer or manager of an establishment shall furnish to every worker on his appointment in the establishment, a letter of appointment in the prescribed form and where a worker appointed on or before the commencement of this Code does not have an appointment letter furnished by his employer or manager, such worker shall, within three months of such commencement, be furnished with appointment letter in the form so prescribed.

(4) No employer shall levy or permit to be levied on any employee, any charge in respect of anything done or provided for maintenance of safety and health at work place including conduct of medical examination and investigation for the purpose of detecting occupational diseases.

(5) Without prejudice to the generality of the provisions of sub-section (1), (2), (3), (4) the duties of an employer shall particularly in respect of factory, mines, dock, building and other construction work or plantation include -

(a) the provision and maintenance of plant and systems of work in the workplace that are safe and without risks to health;

(b) the arrangements in the workplace for ensuring safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances;

(c) the provision of such information, instruction, training and supervision as are necessary to ensure the health and safety of all workers at work;

(d) the maintenance of all places of work in the workplace in a condition that is safe and without risks to health and the provision and maintenance of such means of access to, and egress from, such places as are safe and without such risks;

(e) the provision, maintenance or monitoring of such working environment in the workplace for the employees that is safe, without risks to health and adequate as regards facilities and arrangements for their welfare at work.

(6) Every employer relating to factory, mine, dock work, building or other construction work or plantation shall ensure and be responsible for the safety and health of persons who are on the work premises of the employer, with or without his knowledge.

This section aims to cast upon the employer the duty to ensure that the workplace is a safe environment which is free from the hazards and other dangers that are likely to cause injury or occupational diseases to the employees and goes on to prescribe medical examinations, the notable feature of this section is sub section 4 of the section which restricts the employer from levying any charge on anything done or provided for maintenance of safety and health at the work place including conduct of medical examination and investigation for the purpose of detecting occupational disease, this provision provides the employer from charging the expense of any test or medical examination done in connection with occupation health and detection of occupational diseases hence this implies that the employer must bear this expense the first three section are general provision hence it will applicable to all the work places Sub section (5) and (6) provides for more specialized provisions regarding employers of Factory, , mines, dock, building and other construction work or plantation.

Section 7 of the Act provides for the Duties and responsibilities of owner, agent and manager in relation to mine this section is far more specialized than Section 6 of the Act and make the owner, agent and manager jointly and severally responsible for making financial and other provisions and to take steps necessary for the compliance with this code and regulations, rules, bye – laws and orders made there under. Similarly section 8 and 9 provide for the Duties of manufacturers and Duties of architects, project engineers and designers respectively

The Bill also proposes to impose duties on the Employees as well. Section 13 of the proposed Bill provides as follows:|

Duties of employees- Every employee at work place shall –

(a) take reasonable care for the health and safety of himself and of other persons who may be affected by his acts or omissions at the work place;

(b) comply with the safety and health requirements specified in the Standards;

(c) co-operate with the employer in meeting the statutory obligations of the employer under the Code;

(d) if any situation which is unsafe or unhealthy comes to his attention, as soon as practicable, report such situation to his employer or to the health and safety representative for his workplace or section thereof, as the case may be, who shall report it to the employer;

(e) willfully interfere with, or misuse, or neglect any appliance, convenience or other thing provided work for the purpose of securing the health, safety and welfare of workers; and

(f) not do, willfully and without reasonable cause, anything, likely to endanger himself or others.

The proposed Bill by this section aims to ensure the health and safety of the workers by a cooperative attitude between the employer and the employee rather than putting the entire burden on the employer. The section makes it the duty of the employee to take care of his own health and safety and also of the health and safety of his coworkers.

Section 14 of the bill proposes the Rights of the employees:

(1) Every employee in an establishment shall have the right to obtain from the employer information relating to safety and health at work; and represent to the employer directly or through a member of the Safety Committee, if constituted by the employer for such purpose, regarding inadequate provision for protection of his safety or health in connection with the work activity in the workplace, and if not satisfied, to the Facilitator.

(2) (i) where the employees referred to in sub-section (1) in any work place have reasonable apprehension that there is a likelihood of imminent serious personal injury or death or imminent danger to health, they may bring the same to the notice of their employer directly or through a member of the Safety Committee referred to in sub-section (1) and simultaneously bring the same to the notice of the Facilitator.

(ii) The employer or any employee referred to in sub-section (1) shall take immediate remedial action if he is satisfied about the existence of such imminent danger and send a report forthwith of the action taken to the Facilitator.

(3) If the employer referred to in clause (ii) of sub-section (2) is not satisfied about the existence of any imminent danger as apprehended by his employees, he shall, nevertheless, refer the matter forthwith to the Facilitator whose decision on the question of the existence of such imminent danger shall be final.”

The Bill proposes to constitute a National Occupational and Health Advisory Board Board:-(1) The Central Government shall, by notification, constitute the National Occupational Safety and Health Advisory Board (hereinafter in this Code referred to as the National Board)

to discharge the functions conferred on it by or under this Code and to advise to the Central Government on the matters relating to –

(i) Standards, rules and regulations to be framed under this Code;

(ii) implementation of the provisions of this Code and the rules and regulations relating thereto;

(iii) the issues of policy relating to occupational safety and health referred to it, from time to time, by the Central Government; and

(iv) any other matter relating to this code referred to, from time to time, by the Central Government

(2)The National Board shall consist of-

(i) Secretary, Ministry of Labour and Employment.....Chairperson (ex-officio);

(ii) Director General, Factory Advices Services and Labour Institutes, Mumbai.....Member (ex-officio);

(iii) Director General, Mines Safety, Dhanbad.....Member (ex-officio);

(iv) Chief Controller of Explosives, Nagpur.....Member (ex-officio);

(v) Chairman, Central Pollution Control Board, New Delhi.....Member (ex-officio);

(vi) Chief Labour Commissioner (Central), New Delhi.....Member (ex-officio);

(vii) Principal Secretaries dealing with labour matters of 4 States (by rotation as the Central Government may deem fit)Member (ex-officio);

(viii) Director General, Employee State Insurance Corporation, New Delhi.....Member (ex-officio);

(ix) Director General, Health Services, New Delhi.....Member (ex-officio);

(x) five representatives of employers.....Member (ex-officio);

(xi) five representatives of employees.....Member (ex-officio);

(xii) five eminent persons connected with the field of Occupational Safety and Health, or representatives from reputed research institutions or similar other discipline.... Member:

(xiii) Joint Secretary, Ministry of Labour and Employment-Member Secretary (ex-officio);

(3) The terms of office of the Members referred to in clause (vii), (x), (xi) and (xii) of sub-section (2) shall be of three years and the procedure of the National Board and the officers and staff thereof shall be such as may be prescribed.

(4) The Central Government may constitute as many technical Committees or advisory committees consisting of such number of members having such qualifications as may be prescribed, to assist the National Board in discharge of its function specified in sub-section (1).¹³⁵

Similarly a State Occupational Safety and Health Advisory Board is also prescribed to be constituted under the proposed Bill. The constitution, procedure and other matters relating to the Advisory Board is left to the State Government .The State Government may constitute as many technical committees or advisory committees of such Advisory Board including site appraisal committees, consisting of such number of members and having such qualifications as may be prescribed, to assist the State Government or State Advisory Board in discharge of their functions relating to the area falling within their respective jurisdictions.¹³⁶

The power or declare the standards on occupational safety and health for work places relating to factories, mines, dock work, building and other construction work and other establishments is given to the Central Government by notification also it prescribes that the standards may relate to physical, chemical, biological and any other hazards to be dealt with for the period of working life of employee to ensure to the extent feasible on the basis of the best available evidence or functional capacity, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to such hazards; the norms—

(i) appraising the hazards to employees and users to which they are exposed;

(ii) relating to relevant symptoms and appropriate energy treatment and proper conditions and precautions of safe use or exposure;

¹³⁵ The Labour Code on Occupational Safety, Health and Working Conditions Bill, 2019
Section 16

¹³⁶ The Labour Code on Occupational Safety, Health and Working Conditions Bill, 2019
Section 17

(iii) for monitoring and measuring exposure of employees to hazards;

(iv) for medical examination and other tests which shall be made available, by the employer or at his cost, to the employees exposed to hazards; and

(v) for hazard evaluation procedures like safety audit, hazard and operability study, fault-free analysis, event-free analysis and such other requirements;¹³⁷

The State Government may also with the prior approval of the Central Government by notification amend the above standards for establishments situate in the State.

The Code also provides for provisions to conduct Safety and occupational health surveys at any time during the normal working hours of an establishment or at any other time. Such survey may be conducted by (a) the Chief Inspector-cum-Facilitator in the case of factory or mine; or (b) the Director General of Factory Advice Service and Labour Institute in the case of factory; or (c) the Director General of Mines Safety in the case of mine; or (d) the Director General of Health Services in the case of factory or mine; or (e) such other officer as may be authorised by the appropriate Government in the case of any other establishment or class of establishment.¹³⁸ Before conducting such survey a notice in writing is necessary to be given to the employer and the employer is liable to afford all the facilities for such survey including facilities for the examination and testing of plant and machinery and collection of samples and other data relevant to the survey.¹³⁹

The person conducting the survey can also require the workers to present themselves to undergo medical examination and also to furnish all the necessary information for the survey.¹⁴⁰ The Bill also provide that any time the worker spent undergoing the medical examination or furnishing information shall be for the purpose of calculating the wages be counted as working hours.

It also provides the Government to require, by general or special order, a class of establishments to constitute in the prescribed manner a Safety Committee consisting of representatives of employers and workers engaged in such establishment in such manner that

¹³⁷The Labour Code on Occupational Safety, Health and Working Conditions Bill, 2019
Section 18

¹³⁸ The Labour Code on Occupational Safety, Health and Working Conditions Bill, 2019
Section 20

¹³⁹ *id*

¹⁴⁰ The Labour Code on Occupational Safety, Health and Working Conditions Bill, 2019
Section 20(2)

the number of representatives of workers on the Committee shall not be less than the number of representatives of the employer and the representatives of the workers shall be chosen in such manner and for such purpose as may be prescribed by Government¹⁴¹.

The Bill imposes certain responsibilities upon the employer for maintaining health and working conditions as prescribed by the Central Government and the Central Government is given power to prescribe to provide (i) cleanliness and hygiene;

(ii) ventilation, temperature and humidity;

(iii) environment free from dust, noxious gas, fumes and other impurities;

(iv) adequate standard of humidification, artificially increasing the humidity of the air, ventilation and cooling of the air in work rooms;

(v) potable drinking water;

(vi) adequate standards to prevent overcrowding and to provide sufficient space to employees or persons, as the case may be, employed therein;

(vii) adequate lighting;

(viii) sufficient arrangement for latrine and urinal accommodation to male, female and transgender separately for employees maintaining hygiene therein;

(ix) effective arrangements for treatment of wastes and effluents; and

(x) any other arrangement which the Central Government considers appropriate.¹⁴²

(1) The employer shall be responsible to provide and maintain in his establishment such welfare facilities for the workers as may be prescribed by the Central Government, including,—

(i) adequate and suitable facilities for washing to workers for male and female separately;

(ii) bathing places and locker rooms for male, female and transgender employees separately;

¹⁴¹ The Labour Code on Occupational Safety, Health and Working Conditions Bill, 2019
Section 22(1)

¹⁴² The Labour Code on Occupational Safety, Health and Working Conditions Bill, 2019
Section 23(2)

(iii) place of keeping clothing not worn during working hours and for the drying of wet clothing;

(iv) sitting arrangements for all workers obliged to work in a standing position;

(v) adequate standard of canteen or workers thereof in an establishment employing one hundred or more workers including contract labour ordinarily employed; and in case of mines, medical examination of the workers employed or to be employed in the mines, before their employment and at a specific intervals;

(vi) adequate first-aid boxes or cupboards with contents readily accessible during all working hours; and

(vii) any other welfare measures which the Central Government considers, under the set of circumstances, as required for decent life of the workers.\

The appointment of the above mentioned Inspector Cum Facilitator is done by the appropriate Government.¹⁴³ Such Inspector cum Facilitator has, within his prescribed jurisdiction, the power to

(i) enter, with such assistance of persons, being persons in the service of the Government, or any local or other public authority, or with an expert, as he thinks fit, any place which is used, or which he has reason to believe, is used as a workplace;

(ii) inspect and examine the mine, premises, plant, machinery, article or any other relevant material;

(iii) inquire into any accident or dangerous occurrence, whether resulting in bodily injury, disability or death or not and take on the spot or otherwise statement of any person which he may consider necessary for such inquiry;

(iv) in respect of a plantation and subject to any rules made by the State Government in this behalf, within his jurisdiction, examine the crops grown in any plantation or any worker employed therein or require the production of any register or other document maintained in pursuance of this Code, and take on the spot or otherwise statement of any person which he may consider necessary for carrying out the purposes of this Code relating to plantation;

¹⁴³ The Labour Code on Occupational Safety, Health and Working Conditions Bill, 2019
Section 34

(v) supply information and sensitizes the employers and workers regarding the provisions of this Code and compliance thereof;

(vi) require the production of any register or any other document relating to the workplace or work activity;

(vii) search or seize, or take copies of, any register, record or other document or any portion thereof, as he may consider necessary in respect of any offence under this Code, which he has reason to believe, has been committed;

(viii) direct the concerned occupier or employer that any premises or any part thereof, or anything lying therein, shall be left undisturbed (whether generally or in particular respects) for so long as is necessary for the purpose of any inspection or inquiry;

(ix) take measurements, photographs and videographs and make such recordings as he considers necessary for the purpose of any examination or inquiry;

(x) take samples of any articles or substances found in any premises into which he has power to enter and of the air of the atmosphere in or in the vicinity of any such premises in such manner as may be prescribed by the appropriate Government;

(xi) direct the employer to—

(a) dismantle any article or substance; or

(b) subject such article or substance to any process or test (but not so as to damage or destroy it unless the same is, in the circumstances necessary, for carrying out the purposes of any provision of this Code); if such article or substance is found in any premises, being an article or substance which appears to the Inspector-cum-Facilitator as having caused or is likely to cause danger to the health and safety of employees, and take possession of such article or substance or a part thereof and detain it for so long as is necessary for such examination, as required;

(xii) issue show cause notice relating to safety, health and welfare provisions arising under this Code, rules, regulations and bye-laws made thereunder;

(xiii) prosecute, conduct or defend before any court any complaint or other proceeding arising under this Code, the rules and regulations made thereunder; and

(xiv) exercise such other powers and perform such other duties as may be prescribed by the appropriate Government¹⁴⁴

The District Magistrate can also exercise the powers and duties of the Inspector Cum Facilitator in respect of mines as may be prescribed by the Central Government.¹⁴⁵

All the information obtained by the Chief Inspector-cum-Facilitator or an Inspector-cum-Facilitator or by any one assisting him, in the course of the inspection or survey of any establishment shall be regarded as confidential and shall not, while in service or after leaving the service, be disclosed to any person or authority unless the Chief Inspector-cum-Facilitator or the Inspector-cum-Facilitator considers disclosure necessary to ensure the health, safety or welfare of any person employed in establishment.¹⁴⁶

Every employer of an establishment shall afford the Chief Inspector-cum-Facilitator and every Inspector-cum-Facilitator having jurisdiction or every person authorised by Chief Inspector-cum-Facilitator all reasonable facilities for making any entry, inspection, survey, measurement, examination or inquiry¹⁴⁷.

The Bill also provides for special provision for contract labour especially in establishments where there are more than 20 contract labour on any day of the preceding twelve months¹⁴⁸. The Bill also reserves the power of the government by notification to apply the provision of the bill regarding to contract labour to establishments or manpower supply contractor employing such number of workers less than 20¹⁴⁹. The establishments that perform intermittent and casual labour are not included by this Bill.

¹⁴⁴ The Labour Code on Occupational Safety, Health and Working Conditions Bill, 2019
Section 35

¹⁴⁵ The Labour Code on Occupational Safety, Health and Working Conditions Bill, 2019
Section 36

¹⁴⁶ The Labour Code on Occupational Safety, Health and Working Conditions Bill, 2019
Section 39

¹⁴⁷ The Labour Code on Occupational Safety, Health and Working Conditions Bill, 2019
Section 40

¹⁴⁸ The Labour Code on Occupational Safety, Health and Working Conditions Bill, 2019
Section 45

¹⁴⁹ *Id*

The Bill retains the licensing of the contractors under the Contract Labour Regulation and Abolition Act 1970¹⁵⁰ and the rest of the Bill with regards to the contract Labour is similar to that of the Contract Labour (Regulation and Abolition) Act 1970.

Part VI of the Bill refers to the Factories and follows the existing legislation of Factories Act closely.

The main effect of the new bill is that of the general provisions that will be applicable to all kind of labourers irrespective if they are employed in a Factory Mine or Plantations. Hence the duty of the employer and the duty of the employee will be applicable to all and hence this legislations provides more cover with regards to the health and safety of the labourers than the existing legislations and other is the offence and punishments that are provided in the Bill.

The Code specifies various offences. An offence that leads to the death of an employee will be punishable with imprisonment of up to two years, or fine up to five lakh rupees, or both. Further, courts may direct that at least 50% of such fine be given as compensation to the heirs of the victim. For any other violation where the penalty is not specified, the employer will be punished with a fine between two and three lakh rupees. If an employee violates provisions of the Code, he will be subject to a fine of up to Rs 10,000. First-time offences which are not punishable with imprisonment, can be settled for up to 50% of the maximum fine.¹⁵¹

The Bill sought to avoid small scale establishment namely establishments with workers fewer than 20 so that these small scale establishments may not be burdened with the expenses as to meet the provisions of the Bill and as pointed out earlier this has left a large strata of the labours ie unorganized sector which according to the 2nd national Commission of Labour are out of the protection of the Bill. But the Bill shows flexibility in the establishments included by giving the power to appropriate government to add certain establishment by notification.

Further, the Code specifies additional leave for sales promotion employees. It also specifies that working journalists cannot be made to work more than 144 hours in four weeks (i.e. an average of 36 hours per week). For all other workers covered under the Code, the minimum leave and maximum work hours is prescribed through rules. The rationale for differential treatment with regard to working conditions between working journalists and sales promotion employees on the one hand, and all other workers on the other hand, is unclear.¹⁵²

¹⁵⁰ Contract Labour (Regulation and Abolition) Act 1970, Section 12

¹⁵¹ <https://www.prsindia.org/billtrack/occupational-safety-health-and-working-conditions-code-2019>

¹⁵² *id*

Conclusion

In this Chapter we looked at the constitutional provision that aims at protecting workers and we found that the labourers that are involved in the handling and managing hazardous waste materials face great risks to their health due to the lack of training and safety equipment, this in turn result in the violation of their right to work and life as envisioned by the Constitution in Article 21 and later expanded up on by various Judicial pronouncements.

The National Policy on Safety, Health and Environment at Workplace also require s that the works be provided with safe and healthy working environment , this is not in any way assured to the workers involved in the handling of hazardous waste materials , even though they are a nicee section of the nations workforce they are also the section that is in more need than any other for legislation protecting their health and safety because of the nature of the work involves constant interactions with the elements that may adverse effect their health

The new draft bill before the legislator that codifies and amalgamates the various Labour laws make it the duty of every employer to make sure the safe working environment is provided to every employee working under him, but this law has not been passed by the legislators and also many of the laws especial the welfare legislation face the problem of poor enforcement, and at this stage we cannot say with definite certainty that the code will provide the protection that this class of worker need.

Conclusion

India being one of the top ten industrialised countries in the world has a good industrial infrastructure in core industries like metals, chemicals petroleum, fertilisers, food etc., Due to progress in atomic energy there has also been an increase in radioactivity. Besides these there are a number of industrial effluents and emission, particularly poisonous gases in the atmosphere. The technologically more advance manufacturing and Mining Activities have contributed to production of more and more hazardous waste products.

As the nation becomes more industrialized in proportion to the industrial and technological growth the production of more dangerous hazardous waste also increases. We have reached a state in which from the biggest factories to the everyday households have now contributed to the production of hazardous waste products

Even though there are various laws and Conventions that deal with management and the disposal of the these waste products such as the Basel Convention and the Hazardous Waste Management and Handling Rules these rules focus as their names suggest on the movement management and disposal of these wastes, what get overlooked or so as to say lost are the people that are involved in the management and handling of these waste. These people are usually form the low income families and lack the technical knowhow as to how to handle these waste products and are as a result are exposed to the adverse health defects of these waste products.

On examining the Basel Convention it provides to regulate the transboundary movement of waste material, the majority of its provision address the definition of the hazardous waste materials, transboundary movement of hazardous waste between signatories and international cooperation and the establishment of a conference of the parties. The provision of the Basel Convention aims to bring about the betterment of the human health and environment through better management of hazardous waste. India has ratified and is a

signatory of this Convention. As a signatory India is prevented from importing the Hazardous waste product except for the recycling recovery and reuse, these process of the recycling recovery and reuse is done with human intervention and the Basel Convention is silent about the safety of the people who are involved in these intervention

This provision of the importing of toxic waste material in guise of recycling and reuse has also led to various health hazards to the people of the nation, finally forcing the Honourable Supreme Court to step in the case *Research Foundation for Science and others Vs. Union of India and others*¹⁵³ in which the Supreme court directed the central government to ban import of all hazardous/toxic wastes which had been identified and declared to be so under the BASEL Convention and its different protocols. The Central Government is also directed to bring the Hazardous Wastes (Management & Handling) Rules, 1989, in line with the Articles 21, 47 and 48A of the Constitution. Till this ruling India was considered as a dumping grounds for developed nations of the world and as result of this ruling the Ministry of Forest and Climate Change enacted the Hazardous Waste Handling And Transboundary Movement Management Rules 2008 which replace the older rule. It is established under the Environment Protection Act of 1986 which gives the central government all the power to take any measures as deemed necessary or expedient for the purpose of protection and improvement of environment and preventing controlling and abating environment pollution including making rules regarding handling of hazardous waste.

The hazardous waste rules set out various requirements that has to be met before a person can set up a facility to handle hazardous waste. The person first must approach the SPCB (State Pollution Control Board) for a grant of authorisation. Even though the rule provide that the person setting up facility must require the authorisation of the SPCB the rule is absent as to provisions as to make sure the health of the employees employed by these facilities are kept in good health. The SPBC face the challenge of lack of financial resources and they receive very limited grants from the central government's budget, On top of the limited financial resourece the SPBC are subject to financial restrictions imposed on it by the State Governments and hence puts an even bigger dent on the funds to function day to day let alone enforce the safeguard under the act. SPCBs are also facing a shortage of staff. Many positions are vacant at the SPCBs: one study found that, at one¹⁵⁴ SPCB, as many as 65% of the positions were

¹⁵³ Writ Petition (C) No.657 of 1995

¹⁵⁴Organisation for Economic Co- Operation and Development(OECD), Environmental Compliance and Enforcement in India: Rapid Assessment,2006

vacant. Added to the high vacancy rate, there is an insufficient number of technical staff, with “the human resources structure in most SPCB, the staff is heavily dominated by non-technical staff. On top of this the penalties that are prescribed are mostly nominal as compared to more developed nations such as the USA where the penalty for violation is much more severe.

Even if there are laws regarding the disposal of various hazardous wastes such as The E-Waste (Management and Handling) Rules, 2010, The Bio-Medical Waste (Management and Handling) Rules, 1998, The Chemical Accidents (Emergency Planning, Preparedness and Response) Rule, all these rules face the same problem as the duty to enforce these rules lies with SPCB which due to lack of finance and also lack of power cannot full bring into effect the various provisions for the safe handling and disposal of the waste and these rule in practice remain just black letter on the statute books.

As the specialized provision discussed above in practice does nothing for the safety of the workers in handling the waste, we also find that there exist another set of legislation that are designed to protect the workers from the various hazards of the work place namely the Labour Laws..

These legislation are considered much more effective and has resulted in various Judicial pronouncement and are also much more widespread and cover much more aspects than the Environmental centric laws such as Hazardous Wastes (Management & Handling) Rules and similar legislation and prima facie seems much more apt to protect the health and safety of the workers involved in the handling of Hazardous waste.

Labour law are mainly made of The Factories Act 1948, The Mines Act, 1952 ,The Dock workers (safety, health and welfare) Act, 1986, The Plantation Labour Act, 1951, The Explosives Act, 1884, The Petroleum Act, 1934, The Insecticide Act, 1968, The Indian Boilers Act, 1923, The Indian Electricity Act, 1910, The Dangerous Machines (Regulations) Act, 1983, The Indian Atomic Energy Act, 1962, The Radiological Protection Rules, 1971 and such similar provisions.

Occupational safety is a subject that is allotted to the Ministry of Labour and employment under the government of India allocation of business rules. On the basis of the directive Principles as well as international instruments the government of India Ministry of Labour and Employment has declared the National policy on Safety, health and Environment at workplace Policy. This policy aims to establish a safety and health culture in the country

through elimination of the incidents of work related injuries, diseases, fatalities, disasters and to enhance the wellbeing of the workers

The main Act under this class of labour legislation or welfare legislation is the Factories Act. The Factories Act in India was first passed in 1881. It over the time developed into a welfare legislation with wide contents and coverage through innumerable amendments and re-enactments. Under the present Act any premise in which 10 or more workers are working and a manufacturing process is carried on with the aid of power ; any premise in which 20 or more workers are working and a manufacture process is carries on without the aid of power are brought under the definition of Factories. This legislation was enacted with the prime objective of protecting the workmen employed in factories against industrial and occupational hazards. To achieve this aim the Act imposed upon the occupiers and owners certain obligations to protect unwary as well as negligent workers and to secure employment for them which is safe and conducive

Chapter IV A was added after the Bhopal Gas Tragedy. This chapter of the Act deals with Provisions relation to Hazardous Processes. This chapter provide for the various provisions for guaranteeing the safety of the workers involved in the handling of hazardous waste material, but these provisions only apply to the Factories which also has been defined under the same act “any premise in which 10 or more workers are working and a manufacturing process is carried on with the aid of power; any premise in which 20 or more workers are working and a manufacture process is carries on without the aid of power”. The main defining characteristics of the factories are that these establishments are involved in the manufacturing process, hence the establishments that exclusively deal with handling of hazardous wastes are not included and not governed under the provisions of the Factories Act.

The ground reality is that these Factories which are involved in the manufacturing usually employ theses Hazardous waste Management establishment to deal with their waste production and these waste management companies are not governed by the Factories Act as they are not involved in manufacturing and hence are governed by the Hazardous waste Rules which as we discussed earlier is not very proficient in ensuring the health and safety of worker employed in these establishment due to lack of power and resources of the enforcement authority they come under and due to a lack of any specific provisions in the rules rather than general provision requiring the employer or the occupier to take due care unlike the Factories Act which provides provisions as to the specific responsibilities of the occupier in relation to

the hazardous processes and permissible limits as to exposure of chemicals and toxic substances, periodic medical examination of workers all these provisions relating to health and welfare are absent in the Hazardous Waste Management Rules.

Hence the above law relates to the only protect a very small portion of people involved in the handling of hazardous waste the majority of the work is done by the unorganized sector which the 2nd National Commission on Labour noted as constituting 90% of the entire nations workforce and these sector is dire need of protection as most of the works that they are employed in is hazardous or they lack the legal protection that they need. They are usually engage themselves in huge range of occupations from forest workers to assembling sophisticated. Defining these group of worker is one of the main challenges that the Legislature face while dealing with these group, as how is one supposed to make law for a group that cannot be defined accurately especially Labour laws which rely on supervising the employer employee relations how can this be achieved without first establishing who the employer is and who the employees are. The unorganized sector for many years has been considered as a group of workers who lacks the legislative protection of heir rights, but to say that this sector is left bare without any legislative protection will not be a correct statement. The National Commission For Enterprises in the Unorganised Sector has defined the Unorganised sector as consisting of all unincorporated private enterprise owned by individuals or households engaged in the sale or production of goods and services operated on a proprietary or partnership basis and with less than 10 total workers. With the help of this definition the legislature has framed the Unorganized Sector Social Security Act 2008 in which Section 2(l) of the Act defines unorganized sector as an enterprise owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten;¹⁵⁵

The main argument against defining this sectors in terms of number is that the vast masses of unorganised labour who work as agricultural, workers, cultivators, construction workers, self-employed vendors, artisans, traditional crafts persons, home-based workers, traditional service workers, workers depending on the common property resources such as forests and fisheries and others gets excluded from this category, this legislation only deals with the various schemes of the unorganized sector. The National Social Security Board which is constituted under the Act advises the Union government on the suitable schemes and also on

¹⁵⁵ The Unorganized Sector Social Security Act , 2008 , Section 2(l)

the administration the act. Similarly a State Social Security Board is constituted by the state government and has the similar function as the National Social Security Board.

The judiciary has played its part through judicial pronouncement to make sure that right of this class of workers are protected adequately. The judiciary has extended the protection of various welfare measures such as Employees Compensation Act and Payment of Gratuity Act and the Employees State Insurance Act Employees Provident Funds Act, and also used the help of the fundamental rights Provision under Article 23 , Article 21 , Article 14 and Article 16 etc to make sure that this class of workers are adequately protected

The Constitution of India is the touchstone of every legislations in the nation. India boasts one of the biggest Constitutions in the world, this constitution has also played an active role in shaping the Labour Laws in the nation namely the Fundamental Rights and Directive Principles Of the State Policy. Part III especially has led to the development of the Labour Laws in India. Article 19 guarantees freedom of speech and expression, freedom to form associations or unions and freedom to practice any profession or to carry on any occupation, trade or business, subject to reasonable restrictions that may be imposed by law on the exercise of these freedoms. We also have Article 23 prohibiting traffic in human beings and forced labour, and Article 24 prohibiting employment of children in factories etc. These are constitutionally binding. Besides we have a very large number of Directive Principles of State Policy in Part IV of the Constitution Articles 38, 39 39A, 41, 42, 43 and 43A are principles which are relevant. Article 21 of the Constitution gives every citizen of India a Right to life and liberty, right to work has been considered as an extension of this immutable right. The Olga Tellis case in one of the cases in which the Supreme Court recognized that right to work was an extension to right to work under Article 21. Similarly in Chanran Singh's case the Supreme Court took up a similar stance. Article 19(1)(g) of the Constitution has given to all citizens " the right to practice any profession or to carry on any occupation, trade or business." The freedom suggested by this clause grants to every citizen the right to choose his own employment or to take up any trade or calling. Article 39 imposes another obligation upon the States, the obligation to ensure to each citizens " the right to adequate means of livelihood." Article 41 says: "The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work".. Article 43 the, also points out: "The State shall endeavour to secure, by suitable legislation, economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life". In an industrialised society the right to decent working conditions is the corollary of the right to work.

The right to good working conditions has been given a prominent place in the Constitution of India. Art. 39(e) says that “the health and strength of workers” must not be abused. Art. 42 declares: “The State shall make provision for securing just and humane conditions of work.

The phrase ‘just and humane conditions of work’ connotes a number of things. Besides hours of work and weekly holidays, it is concerned with night shifts, overtime work, annual leave with pay and other things. It postulates congenial physical environment within the precincts of the undertaking such as sanitation, absence of dust and dirt, presence of ventilation, welfare measures like latrines, Urinals, washing facilities, drinking water, bathrooms, etc. The working conditions of labourers in factories, mines, plantations, are regulated under the provisions of the Factories Act, the Mines Act, the Plantations Labour Act.

India has a very poor health and safety record. Much legislation exists to protect workers’ rights and health but they are not implemented properly and only an elite of workers enjoy the benefits. Of the total workforce only 8.8 percent are organised. The workforce is abundant, low skilled and easily available and the high rate of unemployment makes them susceptible to exploitation. Getting work is more important than the hazards involved

The constitution provides a broad framework under which policies and programmes for occupational health and safety could be established.¹⁵⁶ The National Policy on Safety, Health and Environment at Work Place was declared by the Ministry of Labour and Employment, Government of India in February 2009. The purpose of this National Policy is to establish a preventive safety and health culture in the country through elimination of the incidents of work related injuries, diseases, fatalities, disasters and to enhance the well being of employees in all the sectors of economic activity in the country, reduction in the incidence of work related injurious and diseases.¹⁵⁷

The Ministry of Labour and Employment has in accordance with the National Policy on Safety, Health and the Report of the 2nd National Commission on Labour drafted the Labour

¹⁵⁶ALU Issue No. 39, April - June 2001 <https://www.amrc.org.hk/content/india-health-and-safety-work#:~:text=Article%2042%20%E2%80%93%20The%20state%20shall,of%20work%20and%20maternity%20relief.&text=Safety%20and%20health%20occupies%20a,mines%20and%20in%20hazardous%20occupations.>

¹⁵⁷ Directorate General Factory Advice Service and Labour Institutes in collaboration with International Labour, National Occupational Safety and Health (OSH) Profile,

Code Of Occupational Safety, Health And Working Conditions welfare provisions for the employees and leave and hours.

Section 6 of the Act which is a general provision applies to all workplaces that comes under the Act. The Act also defines employees as in respect of an establishment, a person (other than an apprentice engaged under the Apprentices Act, 1961) employed on wages by an establishment to do any skilled, semi-skilled, unskilled, manual, operational, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied; and (ii) a person declared to be an employee by the appropriate Government, hence the definition is very wide and employers means a person who employs, whether directly or through any person, or on his behalf, or on behalf of any person, one or more employees in his establishment and where the establishment is carried on by any department of the Central Government or State Government, the authority specified, by the head of such department, in this behalf or where no authority, is so specified, the head of the department and in relation to an establishment carried on by a local authority, and in relation to any establishment, the person who or the authority which has ultimate control over the affairs of the establishment and where said affairs are entrusted to a managing director, such managing director. The definition of the establishment means and includes place where any industry, trade, business, manufacture or occupation is carried on in which ten or more workers are employed. Hence by the definition the scope of the code is very wide and the general provisions of the act applies to wide range of established and would also include establishments that were previously left out the protection of the welfare legislation. The code makes it the duty of the employer to ensure that the health standards and occupational safety of the employees employed under his establishment and the appropriate government is empowered to make occupational and safety and health advisory board and also by notification that are otherwise left out of the purview code can be brought under it.

Hence Part III of the proposed code is general in nature, which means that every establishment the employees more than 10 people will be bound by the provisions of this part, unlike the special provision of the Factories Act which only applies to the establishments that are involved in the manufacturing process, Part III also prescribes the appointment of the Inspector Cum Facilitator such person appointed as the Inspector cum Facilitator has to power ensure that all the provisions of the act is followed. Every employer of an establishment shall afford the Chief Inspector-cum-Facilitator and every Inspector-cum-Facilitator having

jurisdiction or every person authorised by Chief Inspector-cum-Facilitator all reasonable facilities for making any entry, inspection, survey, measurement, examination or inquiry

Hence the new proposed code will impose the employer with a duty to protect the rights and liabilities to protect the health of the employee and also provide for necessary equipment and protection for their health and also provide for the means for its inspectors and also the fine and punishment for its non-compliance.

The mains problem that legislations in India face is that of enforcements the proposed code provide and fixes many of the lacuna of the existing laws the way it is enforce has to be seen and the legislation so far has not passed the bill hence it just remains a proposed law and not a law in practice.

With regards to the existing law the, execution of the law still remains one of the mains challenges especially with regards to the provision in the Hazardous Waste Management and Handling Rule, as I have pointed out earlier the enforcement of the rule falls on the SPCB which has been underfunded and also lack the resources to properly enforce the Rules

With regards to the Unorganized sector that are in involved in the handling of hazardous waste is defining who all are to be considered as unorganized sector and how to define them and how to bring any benefits if any the legislators conferred on them in to effect. The easiest was to make sure that the benefits is to reach these workers is to give the responsibility of the enforcement to the local authorities under the supervision of the State government as labour is a concurrent issue, it also give the State government flexibility to make law more apt to their unique situations.

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