

Legal Regime for Workers' Health and Safety: Human Rights Dimension with Reference to India and Tanzania

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Abstract

Precarious working conditions and hazards have continued to persecute workers all over the world. Reports revealed that the global working population is closer to 3.5 billion out of which 42% are engaged in vulnerable works. About 76% of the latter are in developing countries including India and Tanzania. Human and economic sufferings have continued to haunt most workers especially in the most dangerous occupations. The ILO estimates that closer to 2.74 million people dies each year with million others injured and suffering from occupational diseases. The WHO estimates the loss as constituting between 4 to 6 percent of annual GDP. On that, this study discussed occupational health hazards as violations of human rights of workers including occupational health right and right to life, dignity, just and favorable conditions of work. Specifically, the study objectives were to;

- ✓ Account for global and national historical developments in WHS legislation;
- ✓ Analyse international legal protection and cooperation for WHS protection
- ✓ Explore WHS issues in hazardous occupations in India and Tanzania;
- ✓ Critically examine the Indian and Tanzanian legal frameworks WHS protection
- ✓ Discuss judicial responses on WHS right;
- ✓ Ascertain intricacies involved in laws relating to WHS protection; and
- ✓ Suggest appropriate recourse to ensure effective protection of WHS.

The study examined the Indian and Tanzanian frameworks for Workers' Health and Safety (WHS) protection from the human rights perspectives. Legislative, institutional, policy and other measures taken by India and Tanzania in light of their obligations to WHS protection are analysed with a focus to select dangerous occupations, i.e. agriculture, mining, construction and manufacturing. The study confined itself to legislative (both preventative and curative) and policy measures applicable to hazardous occupation i.e. manufacturing, mining, construction and agriculture. The study comprehended human rights dimensions in terms of protection of WHS as a fundamental workers' right. It discussed the rights' recognition, scope, violations and implications under the international order and application in the study countries. Such hypotheses were formulated from the basic problems of the study;

- Precarious working conditions and hazards are responsible for human rights violations at work.
- ILO's international labour standards and the international human rights framework are the sources of WHS protection of WHS at national levels.
- Indian and Tanzanian legal regimes are not sufficient to encounter health and safety evils brought by globalisation and advancement in science and technology.
- Implementing the 'Business and Human Rights' agenda will ensure effective realisation of ESCRs of workers in hazardous occupations.

The study employed a doctrinal research methodology. Main concern had been on the legal doctrines relating to workers' health and safety right. Substantially, the study involved the locating and reading of the sources to analyse the legal principles thereof. Upon successful

completion of locating and reviewing the documents, the researcher, used logic and reasoning, in synthesising the principles in context and aligned them with the study objectives to arrive to conclusions. The research has analysed the doctrines qualitatively. However, minimal statistical information was relied upon to justify some contentions. The international legal dimension on WHS was critically analysed.

Besides, the fundamental principles regarding States and private enterprises obligations in the protection of WHS are discussed. Since the study was carried out with reference to India and Tanzania, the measures taken by the two countries (legislative, administrative, remedial and others) were also analysed in light of the legal, regulatory and human rights frameworks in place. Sources of Information. The study relied upon primary and secondary sources. Primary sources included national constitutions, legislation, precedents, customary/general principles of law, international treaties and declarations dealing with Workers' Health and Safety right. Secondary sources include information obtained from various books, reports, journals, periodicals, and committees' recommendations and online databases accessed through various websites. All these literatures have been used in assessing WHS protection against occupational hazards, diseases, accidents and fatalities.

The researcher visited various law libraries in India and Tanzania. In India, the researcher visited the libraries of the Faculty of Law, Delhi University, Jawaharlal Nehru University (Dr. B.R. Ambedkar Central Library), India Law Institute Library (both in New Delhi), Mahatma Gandhi Labour Institute (Ahmedabad, Gujarat), National Law University of Bangalore Library (Bangalore) and the University of Mysore Library. In Tanzania, the researcher visited the ILO Library in ILO Country Headquarters, the University of Dar es Salaam Library, the Legal and Human Rights Centre (LHRC) Library, The Office of the Controller and Auditor General (CAG) and

The Occupational Health and Safety Authority Offices (both situated in Dar es Salaam) protecting WHS right calling for urgent measures to protect those in the dangerous occupations. Based on the gaps identified, the study proposed a multi-disciplinary approach which encompassed the human right approach to eliminate precarious works, hazards and violations of WHS right in India and Tanzania.

The conceptual clarification. The study clarified various words, phrases and expressions used consistently in order that the context is captured;

- Workers' health entails the protection of the bodies and minds of people from illness resulting from the materials, processes or procedures used in workplaces. The WHO defines health generally to mean the state of physical, mental and social wellbeing, not just the absence of disease or infirmity. For purposes of the study, the term workers' health was contextualised to the WHO definition. In discussing Workers' Health and Safety, workers' health will not be confined only to the absence of occupational fatalities, injuries and diseases. Together with absence of diseases, the health of a worker encompasses the physical, mental and social wellbeing.
- The Concept of 'Safety'. The 'Workers' Safety' is part and parcel of the workers right to health and safety. The word health and safety are different but have been used altogether for purposes of protecting the workers. Safety entails freedom from injury, harm, danger or loss. In the workplace context, safety meant a situation where workers

are free from being injured, harmed, endangered or damaged by any means. Safety means the protection of people from physical injury.

- Workers Health and Safety Right'. This should be understood as the workers right to be healthy and safe. It is the right in which every worker is entitled to physical, mental and social wellbeing free from any occupational injury, harm, danger or loss. Any reference to the right and discussion thereof will be confined to the aspects falling within the delineation. The right to health and safety is discussed with reference to workers. A worker is used interchangeably with the word employee for purposes of this study. And therefore, the term worker encompasses employees and non-employees providing their labour to various employers in the select occupations.
- 'Dangerous/ Hazardous Occupations & Select Occupations'. This refers to works or undertakings which are risky by nature and which exposes a worker/employee to more likelihood of encountering harm, damage or injury. The undertakings in the occupations have potential injury or loss impacts. The measurement for danger/hazard in an occupation is the fatalities frequency which is mostly calculated by dividing the number of deaths with that of workers in the occupation. According to the ILO, *agriculture*, *construction* and *mining* are the most dangerous occupations. Manufacturing is not in the top most list but dangerous by nature. The study's discussion of the dangerous occupations refers to the four occupations. The usage of the concept select occupations is confined to the four.

Results; agriculture, mining, construction and manufacturing are dangerous but significant.

- Agriculture, mining, construction and manufacturing sectors, dangerous as they are, forms part of the engines of the Indian and Tanzanian economic developments. The sectors play a great role in providing among other things employment opportunities to many. They are the labor-intensive occupations. They generally contribute to the countries' economic growth. The sectors combined; they provide for closer to 50% of the Indian national GDP. In Tanzania, Agriculture accounts for 27% of the country total GDP. Construction contribution to countries GDP is 12%. Extraction industry contributes to 5% of the GDP while manufacturing sector contributes to 6% of the country's GDP (half of the country's total GDP).

Results; health and safety are fundamental human right of all workers.

- The research found that health and safety at work is a fundamental human right. It applies to all workers including the ones in the most hazardous occupations. The right is recognised and protected not only under the UN Human Rights framework but also under the regional Human Rights frameworks. It is encompassed in the International Bill of Rights and other Core UN Human Rights treaties. It is also forming part of the human rights treaties of regional Blocs (the EU, AU and the OAS). Judicial pronouncements have also recognised the right as one fundamental, protecting the life, dignity and security of a worker. Just like other socio-economic rights, health and safety at work right poses multiple obligations to State to ensure its realisation.
- India and Tanzania are party to the International Covenant on Economic Social and Cultural Rights under which the right is recognised. They are thus obliged to respect, protect and fulfill the right through legislative, administrative, judicial, social, economic and other measures, progressively while utilising to the maximum its available resources. The two are also obliged to abolish discriminatory laws and to provide for conducive environment for the enjoyment of the right.

Results; WHS right protection is narrow under the Indian and Tanzanian Constitutions.

- The Constitution of India, on one hand, provides for the fundamental rights. It is only the civil and political rights which form part of the fundamental rights. However, the Constitution provides for the Directive Principles of State Policy. The principles encompass WHS protection. They are, however, not providing for WHS as a socio-economic right. There is a bar on the enforcement of the principles. They are more of guiding principles.
- Comparatively, the situation is 'somehow better' under the Indian Constitution compared to the Tanzanian Constitution. The Constitution of Tanzania is silent on working conditions and WHS protection. This is notwithstanding the fact that it provides for the right to work. The gap was observed during the Constitution Review Process which led to the Proposed Constitution of Tanzania of 2014. The same, even though is yet to go through a referendum, places workers' health and safety in the enforceable fundamental rights.

Results; occupational health tragedies are responsible for violations of workers' rights.

- Workers in agriculture, mining, manufacturing and construction have been victims of multiple occupational hazards. Hazardous working conditions have largely been responsible for fatalities, accidents and diseases. From the perspectives of human rights protection, occupational tragedies are violative of the critical rights of workers. Fatalities accounts for violations of among others right to life. Diseases and accidents account for the violations of multiple other rights particularly right to dignity of a person and right to health. They have also caused economic distress leading to economic sufferings to most workers and the members of their families.

Results; inadequate legislative WHS measures for the 'global most employer'.

- Old, labour intensive and significant as it is, agriculture has continued to persecute workers in large numbers. Though statistics are inaccurate but it is estimated that India experiences around 7.6 lakhs accidents every year with 45000 fatalities and lakhs of workers injured. The loss is estimated to be around 5400 Crores. The statistics excludes diseases which are mostly long term caused by application and use of unregulated dangerous substances (chemicals and biological and toxic in nature). In Tanzania, agriculture accounts for 0.12% fatality cases, for its estimated 13 million workers). That notwithstanding, the sector has remained unregulated and is characterised as one without WHS standards. Specific legislation or rules exist for the other dangerous occupations but none for the sector. The protection is derived from laws addressing specific aspects applicable to agriculture, e.g. Laws and rules on insecticides and dangerous machinery.

Results; there were apparent gaps and disorders in legal frameworks for WHS protection.

- The study has also found out that measures taken are inadequate to prevent occupational hazards. The inadequacy is largely contributed by gaps and disorders in the legal and regulatory frameworks. Exclusion of critical WHS entitlements and issues with scope, coverage, regulatory set ups and enforcement of laws are part and parcel of the gaps and disorders observed. WHS laws largely protect workers in formal employment, leaving out the sufficient majority in the informal sectors, including ones in dangerous occupations. Enforcement of WHS laws is a serious ailment for both countries. There are question marks on the flexibility in the text of the legislation and exclusion of critical components of WHS right.

Results; compliance and enforcement of occupational medical standards is inadequate.

- The research found out that the protection of WHS in India and Tanzania is inadequate for among other reasons employers' failure to comply with regular medical checkups and authorities' failure to address the non-compliance. Legislation in place encompasses obligations to ensure workers are medically examined, periodically. Reports from both India and Tanzania suggest that only a few enterprises comply with the same and no sanctions are taken against them. In Tanzania, reports revealed that the Occupational Health and Safety Agency provides its services to only 'financially capable' institutions.

Results; occupational health services and health insurance are scarce.

- State Authorities and non-State Enterprises are required to ensure the provision of occupational health services as well as health insurance to workers, especially ones in the dangerous occupations. The same are crucial to prevent and cure workers' health and safety issues. Consequently, the authorities are required to ensure facilities are provided to enable medical checkups and treatments. Insurance covers must also be provided.
- However, from the study, it was established that occupational health services are scanty and almost nonexistent to most workers. They are available (not so adequate though) to workers in formal employment. Most workers in informal employment, where agriculture and construction works are mostly carried out, have no or have limited access to the services. It is estimated that only less than 20% of all workers have access to occupational health services. The same is the problem with health insurance covers.

Results; significant knowledge gap exists on WHS dangers and human rights violations.

- ✓ The research found that most workers, especially ones in the dangerous occupations, are ignorant of the dangers and their rights against precarious working conditions and hazards. The ignorance is largely contributed by their little knowledge over the activities/operations and economic necessities. Most are unaware of those precarious working conditions constitute to violations of their human rights. Workers' ignorance of their rights is one of the major barriers to realisation of WHS right. The ignorance is directly linked to the absence/ inadequacy of the right's promotion by authorities and corporate bodies.

Results; there is lack of effective national WHS management information systems.

- ✓ Both the Indian and Tanzanian regimes for WHS protection are found to exist without national WHS management information systems. There are no accurate and reliable statistics on occupational fatalities, diseases and injuries. The information available is not up to date and measures taken are therefore not in consonance with the magnitude of the problem. It is found out that there are underestimations of the seriousness of the problem.

Results; gaps on ratification of ILO Treaties on WHS are critical.

- ✓ Critical core WHS conventions are yet to be ratified by India and Tanzania. The Occupational Health Services Convention is not yet ratified by India and Tanzania. The same is the case with the Promotional Framework for Occupational Safety and Health Convention 2006. The problems of protection in the agriculture sector are also a result of non-ratification of the Safety and Health in Agriculture Convention 2001 and allied Conventions. Regarding mining and construction, the Safety and Health in Mines Convention, 1995 and the Safety and Health in Construction Convention, 1988 have not been ratified by India and Tanzania.

Conclusions made by this study;

- ✓ Precarious working conditions and hazards have largely contributed to human and economic sufferings and continue to do so at increased rates. The International Labour Organisation (ILO) estimates that around 2.74 million workers die each year from occupational diseases and injuries. About 360 million contracts and suffer occupational diseases while 160 are injured. The figures represent human sufferings. Economically, the World Health Organisation (WHO) estimates that WHS hazards accounts for 4% - 6% of the total lost GDP per annum.
- ✓ Health and safety dangers are also part of the Indian and Tanzanian economic activities. Particularly, the situations are critical in the dangerous occupations i.e. agriculture, construction, mining and manufacturing. Significant as they are to the countries' economic development, the sectors are responsible for human and economic sufferings of the workers and the members of their families due to fatalities, injuries and accidents.
- ✓ There is no clear statistical representation of the same due to absence of systems of recording and WHS management. However, reports indicate that there are about 42 fatal cases per 100,000 workers in India. In Tanzania, fatality rate reported per sector portrays those fatalities are high in hazardous occupations. Workers suffer multiple injuries and contracts occupational diseases. From the study, India and Tanzania have taken legislative, administrative, remedial and other measures to protect workers from WHS dangers and precarious working conditions.
- ✓ There are WHS preventive and curative legislation, regulatory institutions, human rights institutions and courts of law. However, the same have not been adequate enough to address workers' sufferings. Health and safety are not a constitutionally guaranteed worker's right. Legislative measures, for instance, are narrow in terms of scope of coverage, only applicable to less than 20% of the total working population. They have also manifested a number of disorders creating difficulties in the implementation and realisation of the health and safety right of many workers.
- ✓ Laws have remained static even with the increasing threats to health and safety of workers posed by globalisation and advancements in science and technology. Critical WHS rights (e.g. right to sound alarm, rights to refuse work posing imminent dangers and protection from employers' retaliation for the exercise of the rights) are not part of the legislation. Institutional measures, on the other hand are multiple leading to overlapping of roles. Looking at the legal, regulatory and human rights framework (whose existence is most often relied by States as constituting sufficient measures) one would believe so.
- ✓ However, the measures taken are far from materialising. Health services, i.e. occupational, are scanty and unavailable to more than one third of the working population. Implementation of the measures under the framework is an issue as the approaches by these institutions are not exhaustive and there are serious personnel and financial handicaps affecting their enforcement tasks. There are other specific limitations including ignorance by many workers and violations and non-compliance to WHS obligations and standards by multiple employers and key stakeholders forming part of the reasons why fatalities, diseases, injuries and economic losses have continued to persecute workers in big numbers in the dangerous occupations.

- ✓ India and Tanzania, have recently opted for legislative reforms intending to address some gaps in protection of WHS. India is seeking to simplify, amalgamate and rationalize its central labour laws. This is in accordance with the 2nd National Commission of Labour recommendation. The reforms, if successful will bring four major labour codes in India, Code on Wages; Code on Industrial Relations; Code of Social Security and Code on Occupational Health, Safety and the Working Conditions. The latter i.e. Code on WHS, amalgamates 13 laws relating to WHS in India including the factories Act, the Mining Act, the Plantations Act. Proposed Code contains inter-alia the rights of employees. The reforms have also touched curative laws i.e. workers compensation laws for which a Draft Labour Code on Social Security is in place.
- ✓ For Tanzania, the 1977 Constitution contains no provision on WHS right. However, following the Constitution Review process, there is a Proposed Constitution for the United Republic of Tanzania in 2014. The Proposed Constitution encompasses WHS as a fundamental right in the Bill of Rights. There is also a move to amend the Occupational Health and Safety Act with a view of keeping pace with changes that have so far occurred. Whether or not the amendment will enshrine WHS as a fundamental work and employment right, time is of essence in providing the answer.
- ✓ There are also attempts to rationalize the Business in Human Rights Agenda in India and Tanzania. National Action Plans for Human Rights Protection have been formulated. In Tanzania, the National Action Plan for Human Right Protection is in existence while the one in India is still in the pipeline. (A Draft Plan is in place). Whether or not the proposed reforms will materialise and whether or not they will cover the gaps and disorders identified, it is only a matter of time.

Suggestions drawn by this study

Umbrella legislation enactment and umbrella regulatory body for India.

- ✓ The study recommended the enactment of umbrella legislation on occupational health and safety protection in India. As earlier noted, the Draft Code for WHS protection is in the pipeline. For now, the object seems to be more of amalgamating and simplifying WHS legislation.
- ✓ The legislation should not only provide for the protection of workers in all occupations but also ensure the same is regardless of the number of workers.
- ✓ To fill the gaps and take care of the disorders, legislation should also ensure a link between public health, occupational health and sectoral legislation is clearly stipulated. For India, the Draft Code shall consider encompassing of workers' critical rights, enhancing sanctions for non-compliance and violations, coverage and access to occupational health services. The enactment of umbrella legislation will help formulating national WHS standards to cut across all occupations.
- ✓ The legislation shall expressly spell out the provisions for the protection of workers in the agriculture sector. Rules shall be made under it to effectuate its provisions sectoral wise and with reference to specific hazards.

Reforms of the WHS bodies and frameworks.

- ✓ On the other hand, in order to address regulatory disorders, the researcher proposes the establishment of one umbrella body to administer WHS legislation provisions and matters incidental thereto.

- ✓ The national WHS body should be an overall body when it comes to all matters pertaining to WHS administration. It shall have mandate in all sectors, all hazards, and all activities. WHS institutions, undertaking to regulate and promote WHS shall be under its direction and control.
- ✓ The same will ensure an effective coordination of implementation process.
- ✓ To dissolve problems pertaining to inadequate enforcement (inspection, inquiry, investigations inclusive), an umbrella body shall ensure that it is accessible to majority workers in the rural and remote areas. The same will ensure smooth enforcement of WHS legislation and rules made thereunder. The Code for WHS protection proposes for the establishment of National Occupational Safety and Health Advisory Body. The same is welcome.

Reforms for the existing legislation and transforming the Occupational Health and Safety Authority for Tanzania.

- ✓ The study proposes amendments to the Tanzanian Occupational Health and Safety Act, 2003. Particularly, amendments should be made to fill the gaps and take care of the disorders identified. Foremost, amendments should ensure the link between public health, occupational health and other sectoral legislation is clearly stipulated. Secondly, the amendment should take aboard critical components of WHS right including medical care, insurance and civil liberties, i.e. right to sound alarm, right refuse dangerous work and protection from employers' retaliation on exercising the two.
- ✓ For Tanzania, it was proposed that the Occupational Safety and Health Authority (OSHA) be transformed into a national occupational health and safety body with branches all over Tanzania. The new body shall oversee regulation of WHS in all sectors of the economy. Its linkage with public health should also clearly be defined. At present it is not serving as an umbrella organisation for WHS protection and promotion. It has not reached the grassroots, with only five zonal offices to serve for 25 regions.

Tackling WHS problems with a Human Right Approach.

- ✓ The right based approach would also be useful in condemning and remedying massive and horrifying workplace hazards. Massive violations and hazardous disasters will be, as case may be, violations of human rights. The right based approach can provide an avenue for individual employee to confidently