

CHAPTER 3

LEGAL PROVISIONS

Under Article 246 of the Constitution of India, Union List- Entry 55, the welfare, safety and health of personnel employed in mines are the concern of the Central government and those in factories are the concern of the state governments. Under this mandate, the Mines Act 1952 and the Factories Act 1948 have been enacted and the rules and the regulations made under the Mines Act 1952 are administered by Director, Mines and Safety and that of the Factories by the Chief Inspector of Factories of that particular state. There are statutory provisions for the detection of silicosis like:

- 1) Employment of occupational health physician
- 2) training of physician on ILO classification
- 3) Certification of pneumoconiosis by Medical board
- 4) Disability evaluation and compensation
- 5) Preplacement evaluation
- 6) Periodical Medical examination including general examination, Full chest X-ray, lung function test(spirometry)

There are also statutory provisions for the prevention of silicosis such as:

- 1) Comprehensive health surveillance programme
- 2) Establishment of occupational health center

- 3) Silicosis being notified and compensable disease
- 4) Monitoring of silica dust level at work place and not to allow it beyond 15 % of quartz

The some of the important Constitutional and legislative provisions ma dealing with are enumerated as follows:-

3.1 Constitutional Provisions:

Though the Right to Health is not included directly as a fundamental right in the Indian Constitution, the Constitution directs the state to take measures to improve the condition of health care of the people through some provisions of the Directive Principle of State Policy. Thus the preamble to the Constitution of India, inter alia, seeks to secure for all its citizens justice-social and economic. It provides a framework for the achievement of the objectives laid down in the preamble. Some of the important Constitutional provisions related to welfare and safety of persons employed under various occupations are as follows.

- Article 21 of constitution mandate state that no person shall be deprived of his life or personal liberty except according to procedure established by law. Right to live means something more, than more animal existence and includes the right to live consistently with human dignity and decency. In 1995, the Supreme Court in the case of Paschim Banga Khet mazdoor Samity & ors v. State of West Bengal & ors, held that right to health and medical care is a fundamental right covered by Article 21 since health is essential for making the life of workmen meaningful and purposeful and compatible with personal dignity. The state has an obligation under Article 21 to safeguard the right to life of every person, preservation of human life being of paramount importance.

- Article 24 of the Constitution prohibits employment of child below 14 years for work in in any factory or mine or any hazardous job.
- Article 38 of Constitution impose liability on State that states will secure a social order for the promotion of welfare of the people which implies promotion of public health also since without public health welfare of people is impossible.
- Article 39(e) related with workers to protect their health.
- Article 41 imposed duty on State to public assistance basically for those who are sick and disable.
- Article 42 makes provision to protect the health of infant and mother by maternity benefit.
- Article 47 considers it the primary duty of the state to improve public health, securing of justice, human condition of works, extension of sickness, old age, disablement and maternity benefits and also contemplated.
- Article 48A ensures that State shall Endeavour to protect and impose the pollution free environment for good health.

The Seventh Schedule of the Constitution lists the jurisdiction of the Centre and the State Governments to legislate in particular subject matters. In terms of List-I under this Schedule, the Central Government is exclusively authorized to make laws for regulations of labour and safety in mines (vide Item No.55 in the list) and for safety of workers employed in major ports (vide Item No. 27 in the list). In the list of Concurrent subjects welfare of labour (vide No. 24 in the list) and factories (vide No. 34 in the list) have been included

3.2 Provisions in the Factory Act 1948 in related Rules and Regulations

3.2.1 CHAPTER IV-A- Provisions relating to hazardous process:

41 A. Constitution of Site Appraisal Committees

(1) The State Government may, for purposes of advising it to consider applications for grant of permission for the initial location of a factory involving a hazardous process or for the expansion of any such factory, appoint a Site Appraisal Committee consisting of :-

- a. The Chief Inspector of the State who shall be its Chairman;
- b. a representative of the Central Board for the Prevention and Control of Water Pollution appointed by the Central Government under section 3 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);
- c. a representative of the Central Board for the Prevention and Control of Air Pollution referred to in section 3 of the Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981);
- d. representative of the State Board appointed under section 4 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);
- e. a representative of the State Board for the Prevention and Control of Air Pollution referred to in section 5 of the Air (Prevention and Control of Pollution) Act (14 of 1981);
- f. a representative of the Department of Environment in the State;

g. a representative of the Meteorological Department of the Government of India;

h. an expert in the field of occupational health; and

i. a representative of the Town Planning Department of the State Government; and not more than five other members who may be co-opted by the State Government who shall be-

a scientist having specialize knowledge of the hazardous process which will be involved in the factory,

a representative of the local authority within whose jurisdiction the factory is to be established, and not more than three other persons as deemed fit by the State Government.

(2) The Site Appraisal Committee shall examine an application for the establishment of a factory involving hazardous process' and make its recommendation to the State Government within a period of ninety days of the receipt of such application in the prescribed form.

(3) Where any process relates to a factory owned or controlled by the Central Government or to a corporation or a company owned or controlled by the Central Government or to a corporation or a company owned or controlled by the Central Government, the State Government shall co-opt in the Site Appraisal Committee nominated by the Central Government as a member of that Committee.

(4) The Site Appraisal Committee shall have power to call for any information from the person making an application for the establishment or expansion of a factory involving a hazardous process.

(5) Where the State Government has granted approval to an application for the establishment or expansion of a factory involving a hazardous process, it shall not be necessary for an applicant to obtain a further approval from the Central Board or the State Board established under the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974) and the Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981).

41 B. Compulsory disclosure of information by the occupier

(1) The occupier of every factory involving a hazardous process shall disclose in the manner prescribed all information regarding dangers, including health hazards and the measures to overcome such hazards arising from the exposure to or handling of the materials or substances in the manufacture, transportation, storage and other processes, to the workers employed in the factory, the Chief Inspector, the local authority within whose jurisdiction the factory is situated and the general public in the vicinity.

(2) The occupier shall, at the time of registering the factory involving a hazardous process lay down a detailed policy with respect to the health and safety of the workers employed therein and intimate such policy to the Chief Inspector and the local authority and, thereafter, at such intervals as may be prescribed, inform the Chief Inspector and the local authority of any change made in the said policy.

(3) The information furnished under sub-section (1) shall include accurate information as to the quantity, specifications and other characteristics of wastes and the manner of their disposal.

(4) Every occupier shall, with the approval of the Chief Inspector, draw up an onsite emergency plan and detailed disaster control measures for his factory and make known to the workers employed therein and to the general public living in the vicinity of the factory the safety measures required to be taken in the event of an accident taking place.

(5) Every occupier of a factory shall,-

- j. if such factory engaged in a hazardous process on the commencement of the Factories (Amendment) Act, 1987 within a period of thirty days of such commencement; and
- k. if such factory proposes to engage in a hazardous process at any time after such commencement, within a period of thirty days before the commencement of such process, inform the Chief Inspector of the nature and details of the process in such form and in such manner as may be prescribed.

(6) Where any occupier of a factory contravenes the provisions of sub-section (5), the license issued under section 6 to such factory shall, notwithstanding any penalty to which the occupier or factory shall be subjected to under the provisions of this Act, be liable for cancellation.

(7) The occupier of a factory involving a hazardous process shall, with the previous approval of the Chief Inspector, lay down measures for the handling, usage, transportation and storage of hazardous substances inside the factory premises and the disposal of such substances outside the factory premises and publicize them in the manner prescribed among the workers and the general public living in the vicinity.

41C. Specific responsibility of the occupier in relation to hazardous processes

Every occupier of a factory involving any hazardous process shall :

(a) Maintain accurate up-to-date health records or, as the case may be, medical records, of the workers in the factory who are exposed to any chemical, toxic or any other harmful substances which are manufactured stored, handled or transported and such records shall be accessible to the workers subject to such conditions as may be prescribed;

(b) appoint persons who possess qualifications and experience in handling hazardous substances and are competent to supervise such handling within the factory and to provide at the working place all the necessary facilities for protecting the workers in the manner prescribed :

Provided that where any question arises as to the qualifications and experience of a person so appointed, the decision of the Chief Inspector shall be final;

(c) Provide for medical examination of every worker -

l. before such worker is assigned to a job, involving the handling of, or working with, a hazardous substance, and

m. while continuing in such job, and after he has ceased to work in such job, at intervals not exceeding twelve months, in such manner as may be prescribed.

41D. Power of Central Governments to appoint Inquiry Committee

(1) The Central Government may, in the event of the occurrence of an extraordinary situation involving a factory engaged in a hazardous process, appoint an Inquiry Committee to inquire into the standards of health and safety observed in the factory with a view to finding out the causes of any failure or neglect in the adoption of any measures or standards prescribed for the health and safety of the workers employed in the factory or the general public affected, or likely to be affected, due to such failure or neglect and for the prevention and recurrence of such extraordinary situations in future in such factory or elsewhere.

2) The Committee appointed under sub-section(1) shall consist of a Chairman and two other members and the terms of reference of the Committee and the tenure of office of its members shall be such as may be determined by the Central Government according to the requirements of the situation.

(3) The recommendation of the Committee shall be advisory in nature. ?

41E. Emergency standards

(1) Where the Central Government is satisfied that no standards of safety have been prescribed in respect of a hazardous process or class of hazardous processes, or where the standards so prescribed are inadequate, it may direct the Director-General of Factory Advice Service and Labour Institutes or any institution specialized in matters relating to standards of safety in hazardous processes, to lay down emergency standards for enforcement of suitable standards in respect of such hazardous processes.

(2) The emergency standards laid down under sub-section (1) shall, until they are incorporated in the rules made under this Act, be enforceable and have the same effect as if they had been incorporated in the rules made under this Act.

41F. Permissible limits of exposure of chemical and toxic substances

(1) The maximum permissible threshold limits of exposure of chemical and toxic substances in manufacturing processes (whether hazardous or otherwise) in any factory shall be of the value indicated in the Second Schedule.

(2) The Central Government may, at any time, for the purpose of giving effect to any scientific proof obtained from specialized institutions or experts in the field, by notification in the Official Gazette, make suitable changes in the said Schedule.

41G. Workers participation in safety management

(1) The occupier shall, in every factory where a hazardous process takes place, or where hazardous substances are used or handled, set up a Safety Committee consisting of equal number of representatives of workers and management to promote cooperation between the workers and the management in maintaining proper safety health at work and to review periodically the measures taken in that behalf :

Provided that the State Government may, by order in writing and for reasons to be recorded, exempt the occupier of any factory or class of factories from setting up such Committee.

(2) The composition of the Safety Committee, the tenure of office of its members and their rights and duties shall be such as may be prescribed. ?

41H. Right of workers to warn about imminent danger

(1) Where the workers employed in any factory engaged in a hazardous

process have reasonable apprehension that there is a likelihood of imminent danger to their lives or health due to any accident, they may, bring the same to the notice of the occupier, agent, manager or any other person who is in charge of the factory or the process concerned directly or through their representatives in the Safety Committee and simultaneously bring the same to the notice of the Inspector.

(2) It shall be the duty of such occupier, agent, manager or the person in charge of the factory or process to 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 nearest Inspector.

(3) If the occupier, agent, manager or the person in charge referred to in sub-section (2) is not satisfied about the existence of any imminent danger as apprehended by the workers, he shall, nevertheless, refer the matter forthwith to the nearest Inspector whose decision on the question of the existence of such imminent danger shall be final.

3.2.2 CHAPTER –V, Section 45- First-aid appliances

There shall in every factory be provided and maintained so as to be readily accessible during all working hours first-aid boxes or cupboards equipped with the prescribed contents, and the number of such boxes or cupboards to be provided and maintained shall not be less than one for every one hundred and fifty workers ordinarily employed at any one time in the factory.

[(2) Nothing except the prescribed contents shall be kept in a first-aid box or cupboard.

(3) Each first-aid box or cupboard shall be kept in the charge of a separate

responsible person, who holds a certificate in first-aid treatment recognized by the State Government] and who shall always be readily available during the working hours of the factory.

[(4)] In every factory wherein more than five hundred workers are ordinarily employed there shall be provided and maintained an ambulance room of the prescribed size, containing the prescribed equipment and in the charge of such medical and nursing staff as may be prescribed and those facilities shall always be made readily available during the working hours of the factory

Rules 65 & 66/ Section 45 & 112

Rule 65- The first Aid Appliances: The first Aid boxes or Cupboards shall be distinctly marked with a red cross white background and shall contain the prescribed equipment.

Rule 66:

- Every ambulance room shall be under the charge of at least one whole time medical practitioner assisted by at least one qualified nurse or dresser cum compounder and one nursing staff or attendant in each shift.
- The ambulance room shall be separated from rest of the factory and shall not be situated in close proximity to any part of the factory in which noisy processes are carried on.
- No medical officer shall be required or permitted to do any work which is inconsistent with or detrimental to his responsibilities under the Act/Rules

- A record of all cases of sickness and accident treated in the room shall be kept and produced to the inspector or certifying Surgeon when required.

3.2.3 CHAPTER V, Section 49- Provisions related with welfare officers

(1) In every factory wherein five hundred or more workers are ordinarily employed the occupiers shall employ in the factory such number of welfare officers as may be prescribed.

(2) The State Government may prescribe the duties, qualifications and conditions of service of officers employed under sub-section (1).

3.2.4 Chapter IX, Section 89- Notice of certain diseases

(1) Where any worker in a factory contracts any disease specified in the [Third] Schedule the manager of the factory shall send notice thereof to such authorities, and in such form and within such time, as may be prescribed.

(2) If any medical practitioner attends on a person, who is or has been employed in a factory, and who is, or is believed by the medical practitioner to be suffering from any disease specified in the [Third Schedule] the medical practitioner shall without delay send a report in writing to the office of the Chief Inspector stating:

- a. the name and full postal address of the patient,
- b. the disease from which he believes the patient to be suffering, and
- c. the name and address of the factory in which the patient is, or was last, employed.

(3) Where the report under sub-section (2) is confirmed to the satisfaction of the Chief Inspector, by the certificate of the certifying surgeon or otherwise, that the person is suffering from a disease specified in the [Third Schedule], he shall pay to the medical practitioner such fee as may be prescribed, and the fee so paid shall be recoverable as an arrears of land revenue from the occupier of the factory in which the person contracted the disease.

(4) If any medical practitioner fails to comply with the provisions of sub-section (2), he shall be punishable with fine which may extend to one thousand rupees.

[(5) The Central Government may, by notification in the Official Gazette, add to or alter the Third Schedule and any such addition or alteration shall have effect as if it had been made by this Act.

Rule 100 under section 89:

A notice as early as possible in form No. 20 should be sent forthwith both to the Chief Inspector of Factories and to the Certifying Surgeon, by the manager of the Factory in which there occurs a disease as a case of Lead, Mercury, Manganese, Arsenic, Carbon- bisulphide or Benzene poisoning, or poisoning by Nitrous fumes, or by Halogen or Halogen derivatives of the Hydrocarbons of the Aliphatic series or of Chrome Ulceration, Anthrax, Silicosis, toxic Anemia, toxic Jaundice, primary Epitheliomatous Cancer of the skin, or Pathological manifestation due to Radium or radioactive substances or X-rays.

3.2.5 Chapter IX, Section 90- Power to direct inquiry into cases of accident or disease

(1) The State Government may, if it considers it expedient so to do, appoint

a competent person to inquire into the causes of any accident occurring in a factory or into any case where a disease specified in the Third Schedule has been, or is suspected to have been, contracted in a factory, and may also appoint one or more persons possessing legal or special knowledge to act as assessors in such inquiry.

(2) The person appointed to hold an inquiry under this section shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (V of 1908), for the purposes of enforcing the attendance of witnesses and compelling the production of documents and material objects and may also, so far may be necessary for the purposes of the inquiry, exercise any of the powers of an Inspector under this Act; and every person required by the person making the inquiry to furnish any information shall be deemed to be legally bound so to do within the meaning of section 176 of the Indian Penal Code (XLV of 1960).

(3) The person holding an inquiry under this section shall make a report to the State Government stating the cause of the accident, or as the case may be, disease, and any attendant circumstances, and adding any observations which he or any of the assessors may think fit to make.

(4) The State Government may, if it thinks fit, cause to be published any report made under this section or any extracts therefrom.

(5) The State Government may make rules for regulating the procedure at inquiries under this section.

3.2.6 Chapter IX, Section 91-Power to take samples

(1) An Inspector may at any time during the normal working hours of a factory,

after informing the occupier or manager of the factory or other person for the time being purporting to be in charge of the factory, take in the manner hereinafter provided a sufficient sample of any substance used or intended to be used in the factory, such use being :-

- q. in the belief of the Inspector in contravention of any of the provisions of this Act or the rules made thereunder, or
- r. in the opinion of the Inspector likely to cause bodily injury to, or injury to the health of, workers in the factory.

(2) Where the Inspector takes a sample under sub-section (1), he shall, in the presence of the person informed under that sub-section unless such person willfully absents himself, divide the sample into three portions and effectively, seal and suitably mark them, and shall permit such person to add his own seal and mark thereto.

(3) The person informed as aforesaid shall, if the Inspector so requires provide the appliances for dividing, sealing and marking the sample taken under this section.

(4) The Inspector shall :-

- a. forthwith give one portion of the sample to the person informed under sub-section (1) ;
- b. Forthwith send the second portion to a Government analyst for analysis and report thereon;

c. retain the third portion for production to the Court before which proceedings, if any, are instituted in respect of the substance.

(5) Any document purporting to be a report under the hand of any Government analyst upon any substance submitted to him for analysis and report under this section, may be used as evidence in any proceeding instituted in respect of the substance.

3.2.7 Chapter IX, Section 91A. Safety and occupational health surveys

(1) The Chief Inspector, or the Director-General of Factory Advice Service and Labour Institutes, or the Director-General of Health Services, to the Government of India, or such other officer as may be authorized in this behalf by the State Government or the Chief Inspector or the Director-General of Factory Advice Service and Labour Institutes or the Director-General of Health Services may, at any time during the normal working hours of a factory, or at any other time as is found by him to be necessary, after giving notice in writing to the occupier or manager of the factory or any other person who for the time being purports to be in charge of the factory, undertake safety and occupational health surveys and such occupier or manager or other person shall afford all facilities for such survey, including facilities for the examination and testing of plant & machinery and collection of samples and other data relevant to the survey.

(2) For the purpose of facilitating surveys under sub-section (1) every worker shall, if so required by the person conducting the survey, present himself to undergo such medical examination as may be considered necessary by such person and furnish all information in his possession and relevant to the survey.

(3) Any time spent by a worker for undergoing medical examination or furnishing information under sub-section (2) shall, for the purpose of calculating wages and extra wages for overtime work, be deemed to be time during which such worker worked in the factory.

3.2.8 Chapter XI, section 112- General power to make rules

Rule

The State Government may make rules providing for any matter, which, under any of the provisions of this Act, is to be, or may be prescribed or which may be considered expedient in order to give effect to the purposes of this Act.

Rule 107/section 112 (Cost of Medical Examination) :

In respect of any worker of a factory, when it is necessary to carry out any clinical or other test for the purpose of medical examination specified under any provision of the Act and the rules framed there under, the cost of such test will be born by the occupier of the factory and shall not be recovered from the worker.

Rule 49/Section 41 & 112:

State

• No person shall be allowed to operate a crane, locomotive (dumper, dozer, lorry or tractor), forklift truck or to give signals to crane or locomotive operators unless his eyesight and colour vision have been examined and declare fit by a qualified ophthalmologist to work whether with or without the use of corrosive glasses.

Rule

• The eye sight and the colour vision of the person shall be re-examined at least one in every period of 12 months up to the age of 45 and once in every six months beyond this age.

- Any fee payable for the examination of a person under this rule shall be paid by the occupier and shall not be recovered from the person.
- The record of the examination or re-examination carried out as required under the rules shall be maintained in form 17 A.

Rule 52A/ Section 41 & 112- Protective Equipment

- The factory Inspector may, having regard to the nature of hazards involved in work and process being carried out, order the occupier of the manager, in writing to supply to the workers exposed to particular hazards and personal protective equipment, may be considered necessary and specified in the order.
- All personal protective equipment to be provided to the workers as required under any provision of the acts or the rules made there under shall have certification by Indian Standard Institute and be maintained in good repair and usable condition.

Statutory legislation (Medical Provision) prescribed in the Factories Act 1948

Rule 63 J prescribed under Section 41B, 41C & 112

- Provides medical examination of the workers before employment and thereafter periodically in every six months
- Maintenance of records of health examination in Health register (Form no. 25)
- If any worker suspended from the process shall be provided with alternative

placement facilities or if he is incapacitated to work, shall be suitably rehabilitated

- No worker shall refuse to undergo medical examination under these rules or under any medical survey conducted on or on behalf of Central or State Government.

Rule 63 (k) prescribed under Section 41B, 41C & 112: Provision for occupational health center

- Employment of Factory Medical officer for surveillance of workers
- Employment of 5 persons trained in First aid one person shall always be available during working hours
- A fully equipped First Aid Box

Factories employing 51 to 250 workers

- An occupational health center having two rooms with minimum floor area of 15 sq.m. with floor and walls upto a height of 1.5 mtr
- One Factory Medical officer who will attend thrice in a week, whose services are readily available
- One qualified and trained Dresser cum Compounder on duty in each shift
- Adequate number of fully equipped first Aid Box

Factories employing above 250 workers

- One full time Factory Medical Officer upto 1000 workers, then one factory medical officer for every additional 500 workers
- Occupational Health center with two room with minimum floor area as prescribed above
- One qualified Nurse, one qualified and trained Dresser-Cum- Compounder and one sweeper-cum-ward boy in each shift.

Rule 63 (L) under Section 1C & 112

Prescribes provision of Ambulance Van fully equipped with the facility of first Aid trained helper and driver for transportation of serious patients

Rule 63 (N) under Section 41C & 112

Provides provision of maintenance and accessibility of all records of medical examination.

Schedule XXXI to Rule 94 prescribed under section 87

- Employment of a qualified Medical Practitioner for a medical surveillance of workers
- Maintenance of records of Medical Examination & certification I form No. 17 & 25

Medical Examination by the Certifying Surgeon

- Within 15 days of first employment

- Pulmonary function test
- Chest X-ray
- Re-examination by Certifying Surgeon at least once in 12 months
- Records of examination should be kept in form No. 17 & 25

Rule 100 prescribed under Section 89

The manager should send a notice as early as possible in form no 20, both to the Chief Inspector of Factories and to the certifying surgeon of the Factories in case of suffering of any worker by any notifiable disease as mentioned in the third schedule under the list of notifiable diseases.

3.3 provisions in Mines Act 1952

3.3.1 Section 19- Drinking Water

In every mine effective arrangement shall be made to provide and maintain at suitable points conveniently situated sufficient supply of cold and wholesome drinking water for all person employed therein. All such points shall be legibly marked "Drinking Water" in a language understood by the majority of the persons employed in the mines. Such points shall not be situated within 6 mtrs of any washing place, urinal or latrine.

3.3.2 Section 20- conservancy

In every mine there shall be provided, separately for males and females, a sufficient number of latrines and urinals of prescribed type situated at a convenient place accessible to the persons employed in the mines at all times.

3.3.3 Section 21- Medical appliances

In every mines there shall be provided with and maintained first –aid boxes or cupboards equipped with prescribed contents only. These shall be under the charge of a responsible person and shall be readily available. There shall be arrangements for the conveyance of the bodily injured person or become ill to hospitals or dispensaries.

3.3.4 Section 22- power of Inspectores when cause of danger not expressly provided against, exist or when employment of persons is dangerous

If, in respect of any matter in which no express provision is made by or under this Act, the Chief Inspector or an Inspector may give notice to the owner, agent or manager of the mine for taking remedial measures. where he fails to comply with the term of the notice within the specified period the Chief Inspector or Inspector may prohibit the employment of any person whose employment is not necessary for securing compliance with the term of the notice.

3.3.5 Section 22A-Power to prohibit employment to certain disease

If the owner, agent or manager fail to comply with any provision under this Act, the Chief Inspector may serve a notice requiring to be complied within a specified time. In case of a failure, Chief Inspector may prohibit the employment of any person.

3.3.6 Section 23-Notice to be given in case of accidents

Accident: (1) Whenever there occurs in or about a mine

- an accident causing loss of life or serious bodily injury or,

- an explosion, ignition, spontaneous heating, outbreak of fire or irruption or inrush of water or any other liquid matter or,
- an influx of inflammable or noxious gases or,
- a breakage of rope, chain or other gears by which persons or materials are being lowered or raised or,
- an overloading of cages or other means of conveyance or,
- a premature collapse of any part of the working or,
- any other accident which causes bodily injury resulting in the enforced absence from work for a period exceeding 24 hours

3.3.7 Section 24- Power of Government to appoint Court of Enquiry in case of accidents

In case of an accident of the nature referred to Section 23(1) occurs, the Central Government may appoint a committee to enquire into the causes and the circumstances. The committee can enforce the attendance of witnesses and compel the production of documents and material objects. Any person holding an enquiry may exercise such of the power of an Inspector under this Act for the purpose of this enquiry.

3.3.8- Section 25- Notice of certain diseases

(1) Where any person employed in a mine contracts any disease notified by the Central government, the owner, agent or manager of the mine shall send a notice to the Chief Inspector.

(2) If any medical practitioner attends a person who is or has been employed in the mine or who is or is believed by the medical practitioner to be suffering from any disease notified under Sub-Section (1), the medical practitioner shall send a report in writing to the Chief Inspector stating-

- the name and address of the patient
- the disease from which the patient is or believed to be suffering and
- the name and address of the mine in which the patient is or was last employed.

3.3.9 Section 26- Power to direct investigation of cause of disease

Central Government can appoint a competent person to enquire into and report to it on any case where a notified disease notified under section 25 has been or suspected to have been contracted in a mine.

3.3.10 Section 27 – Publication of reports

The Central Government may cause any report submitted by a Committee under section 12 or any report or extracts from the report submitted to it under Section 26, and shall cause every report submitted by the Court of enquiry under Section 24 to be published in such a manner as it may think fit.

3.4 Provisions in Work Man Compensation Act 1923

The occupational diseases causing permanent disability have been notified as compensable diseases under Section 3 of Workman Compensation Act, 1923 and Section 52 (ii) of ESI Act, 1948. The provisions of compensation under ESI

Act are principally similar to Workman Compensation Act, 1923. The act is applicable to all workplaces. However, in case of factories, the Employee State Insurance Act, 1948, governs the compensation and other benefits. The provisions of the Workmen's Compensation Act, 1923 include:

Section 3 Employer's Liability for compensation:

(a) If a workman employed in any employment specified in Part A of Schedule III contracts any disease specified therein as an occupational disease peculiar to that employment, or if a workman whilst in the service of an employer in whose service he has been employed for a continuous period of not less than six months (which period shall not include a period of service under any other employer in the same kind of employment) in any employment specified in Part B of Schedule III, contracts any disease specified therein as an occupational disease peculiar to that employment, or if a workman, whilst in the service of one or more employers in an employment specified in Part C of Schedule III for such continuous period as the Central Government may specify in respect of each such employment, contracts any disease specified therein as an occupational disease peculiar to that employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section and, unless the contrary is proved the accident shall be deemed to have arisen out of, and in the course of the employment

Provided that if it is proved –

That a workman whilst in the service of one or more employers, in any employment specified in Part C of Schedule III, has contracted a disease specified therein as an occupational disease peculiar to that employment during a continuous period which is less than the period specified under this sub-section for that employment, and

- That the disease has arisen out of and in the course of the employment, the contracting of such disease shall be deemed to be an injury by accident within the meaning of this section : Schedule III, Part C addresses silica-related disease as follows: Pneumoconioses caused by sclerogenic mineral dust (Silicosis, anthracosilicosis, asbestosis) and silicotuberculosis: provided that silicosis is an essential factor in causing the resultant incapacity or death.

The Central Government had also formulated Model Draft Rules – Workmen's Compensation (Occupational Diseases) Rules, 1968. However these rules were ratified by few states only and could not come into force in majority of the states. The relevant provisions of the rules are reproduced below:

- "Pneumoconiosis" means silicosis or coalminers pneumoconiosis or asbestosis or bagassosis or any of those diseases accompanied by pulmonary tuberculosis;

- Medical conditions under which pneumoconiosis may be considered to be an occupational disease-

(1) The diagnosis of pneumoconiosis shall be carried out with all the necessary technical guarantees. Proof of the degree of development of the pathological or anatomical changes in the respiratory and cardiac systems shall be furnished by the radiographic record and other laboratory records, which shall be accompanied by the report of a full clinical examination, including a report of the industrial history of the person concerned, the record of all occupations in which he has been employed, the nature of the harmful dusts to which he was exposed and the duration of such exposure.

(2) For entitlement to compensation, silicosis and coal miners' pneumoconiosis shall fulfill the following radiological and clinical conditions:

(a) The radiological examination of the workmen must reveal –

- (i) The appearance of generalised micronodular or nodular fibrosis covering a considerable part of both lung fields whether accompanied or not by signs of pulmonary tuberculosis: or
- (ii) In addition to a marked accentuation of the pattern of both lungs, the appearance of one or several pseudotumoral fibrotic formations, whether accompanied or not by signs of pulmonary tuberculosis; or
- (iii) The appearance of both of these types of fibrotic lesions at once, whether accompanied or not by signs of pulmonary tuberculosis;

(b) Serial radiological pictures taken over a period during periodical medical examinations shall, as far as possible, be considered in making definite diagnosis in cases where doubt exists;

(c) Radiological interpretation shall be based on the standard International classification laid down by the International Labour Organisation (Geneva Classification).

(d) The clinical examination of the workman concerned must reveal a decrease or deterioration of the respiratory function or cardiac function, or a deterioration of the state of general health, caused by the pathological processes specified above.

• Evaluation of disablement –

(1) The evaluation of disablement shall be made by reference to the physical (anatomical, physiological, and functional) and mental capacity for the exercise of the necessary functions of a normally occupied life which would be expected in a healthy person of the same age and sex. For such assessment, recognized cardio-respiratory function tests shall be used to assess the degree of cardio-respiratory function impairment.

(2) It shall be determined whether the disablement is temporary or permanent and also the percentage loss of function as it pertains to the loss of working capacity for receiving compensation.

(3) Assessment of disablement shall be proportionate to the loss of earning capacity, total disablement being taken to be 100% loss of earning capacity.

3.5 Provisions in ESCI Act

3.5.1 -Section 2(8) It deals with the definition of the employment injury.

3.5.2 -Section 51A:- This section deals with the presumption as to accident arising in course of employment and states that, an accident arising in the course of an insured person's employment shall be presumed, in the absence of evidence to the contrary, also to have arisen out that employment.

3.5.3- Section 52A deals with occupational diseases. Schedule III of the act lists the Occupational diseases in three parts, with silicosis listed under Part C of the Schedule. For diseases specified in Part A there is no qualifying period of employment. For diseases specified in Part B a person should have been employed in the specified a person should have been employed in the specified employment for a continuous period of 6 months before the disease is contracted. For the

diseases specified in Part C, the qualifying period is specified by the Employee State Insurance Corporation which is set up under the Act

3.6 Provisions under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act 1996 and Rules

About 8.5 million workers in the India are engaged in building and other construction works and are one of the most numerous and vulnerable segments of the unorganised labour in India. The government has enacted the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 and Rules to ensure health safety and welfare of this group of workers. However, only five states (including Delhi and Tamilnadu) have notified Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 and have framed Rules. Others are yet to notify. The enforcement mechanism for Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 and Rules is still evolving. While in some states it is being enforced by Regional Labour Welfare Commissioner, in others it is being overseen by the Directorate of Factories. Some states are yet to frame and notify the rules.

3.6.1 - Rule 223. Medical examination of building workers, etc.- The employer shall ensure at a construction site of a building or other construction work that-

(a) (I) a building worker who is employed for a work involving such risk or hazards, inherent in such work as the Chief Inspector of Inspections of Building and Construction considers appropriate for the periodical medical examination of such worker, is medically examined at such intervals as the Chief Inspector of Inspections of Building and Construction, may direct from time to time;

(iv) In case of a building worker who is exposed to special occupational health hazard owing to job or work assigned to such worker, the periodical medical examination referred to in sub-clause (i) or sub-clause (ii) includes such special investigation as may be deemed necessary by the construction medical officer examining such building worker for the diagnosis of occupational disease;

(e) In case a construction medical officer examining a building worker under subclause (i) or sub-clause (ii) of clause (a) is of the opinion that such building worker so examined is required to be taken away from the building or other construction work at which he is employed for health protection, such medical officer shall inform the employer of such building worker accordingly and such employer shall inform such opinion to the board where such worker is registered as a beneficiary.

3.6.2- Schedule VII (Rule 81 and 223) Periodicity of Medical Examination of Building Workers

1. The employer shall arrange a medical examination of all the building workers employed as drivers, operators of lifting appliances and transport equipment before employing, after illness or injury, if it appears that the illness or injury might have affected his fitness and thereafter, once in every two, years upto the age of forty and once in a year, thereafter.

2. Complete and confidential records of medical examination shall be maintained by the employer or the physician authorised by the employer.

3. The medical examination shall include,--

(a) Full medical and occupational history;

(b) Clinical examination

3.6.3 - Rule 152. Permissible limit of exposure of chemicals. - The employer shall ensure at a construction site of a building or other construction work that-

(a) the working environment in a tunnel or a shaft in which building workers are employed does not contain any of the hazardous substances in concentrations beyond the permissible limits as laid down in the Schedule XII annexed to these rules; The permissible limit for airborne respirable silica dust under "Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Rules" is similar to as prescribed in the Second Schedule of Factories Act, 1948.

3.6.4- Rule 225 Occupational Health Centres. - The employer shall ensure at a construction site of a building or other construction work involving hazardous processes specified under Schedule - IX annexed to these rules that-

- (a) an occupational health centre, mobile or static, is provided and maintained in good order at such site;
- (b) services and facilities as per the scale laid down in Schedule - X, annexed to these rules are provided at the occupational health centre referred to in clause (a).
- (c) A construction medical officer appointed at a occupational health centre possesses the qualification as laid down in Schedule - XI, annexed to these rules.

3.7 International covenants and Declarations

3.7.1- First expression of the right to health lies in

The WHO Constitution (1946) which says that "The States parties to this Constitution declare, in conformity with the Charter of the United Nations, that the following principles are basic to the happiness, harmonious relations and security of all peoples.

- 1) Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.
- 2) The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition (...)" .

3.7.2- The right to health is also recognized in numerous other instruments like;

- 1961 European Social Charter
- 1966 International Covenant on Economics, Social and Cultural Rights (most detailed; Article 12.1 and 12.2)
- 1978 Declaration of Alma Ata
- 1981 African Charter on Human and People's Rights
- 1988 Additional Protocol to the American Convention on HRs in the Area of Economic, Social and Cultural Rights
- 1989 Convention on the Rights of the Child

International Covenant on Economics, Social and Cultural Rights (ratified by 147 countries) also has following Articles on health.

Article 12 which recognizes "right of everyone to the enjoyment of the highest attainable standard of physical and mental health" and Article 12.2 which illustrates a number of steps to be taken by States parties to achieve:

- maternal, child and reproductive health
- healthy natural and workplace environments
- prevention, treatment and control of disease
- health facilities, goods and services

Similarly, Committee on Economic, Social and Cultural Rights, General Comment nr.14 (May 2000), Art.12.2.c: (Right to prevention, treatment and control of diseases includes creation of a system of urgent medical care in case of accidents, epidemics; and disaster relief and humanitarian assistance) and Art 12.2.d: (Right to health facilities, goods and services includes appropriate treatment of prevalent diseases, preferably at community level; and the provision of essential drugs as defined by the WHO Action Programme on Essential Drugs) are specifically related with right to health. not only this, it also has provisions for what deemed to be Violations of these right like

1) Adoption of retrogressive measures, repeal, suspension

2) Failure to take all steps to ensure the right to health; e.g.

- failure to adopt or implement a national health policy designed to ensure

the right to health for anyone

- insufficient expenditure or misallocation of public resources
- failure to monitor realization of the right to health in the country
- failure to take measures to reduce inequitable distribution of health facilities, goods and services

3) Important: distinguish inability from unwillingness of the State