

Industrial Disasters: Assessing The Health And Safety Paradigm In India



In the wake of the recent accident due to boiler blast in an industrial unit in the state of Uttar Pradesh, it is time that employers have a critical reassessment of their compliances with respect to health and safety related legal regulatory requirements in India.

There are a plethora of laws both at the central and the state levels which govern the aspect of health and safety at work in India, which amongst others include the following:

1. The Factories Act, 1948, which is applicable on the manufacturing units.
2. The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, which is applicable to establishments employing ten or more construction workers.
3. The Indian Boilers Act, 1923, which has been enacted with an objective of providing safety of life and property from the danger of explosions of steam boilers and for achieving uniformity in registration and inspection during operation and maintenance of boilers.
4. The Dock Workers (Safety, Health and Welfare) Act, 1986, which contains provisions pertaining to safety, health and welfare of dock workers.
5. The Mines Act, 1952, which contains provisions regulating the labour employed in the mines and their safety.
6. The Employees' State Insurance Act, 1948, which provides medical benefits to insured employees and is applicable to employees earning wages not more INR 21, 000.
7. The Employees' Compensation Act, 1923, which is applicable to employees covered under the ambit of this act and who are not already covered under the Employees' State Insurance Act, 1948. This act contains similar provisions for providing compensation for accidents arising in course of employment.

Health and Safety Compliances

Some of the key requirements for health and safety which some of these legislations stipulate are:

1. Prescribing the standards of maintaining machines and equipment or hazardous substances. For instance: Under the scheme of the Indian Boilers Act, 1923, the boilers can only be operated once they are duly registered and inspected regularly and are operated by duly qualified boiler attendants.
2. Outlining procedures for inspections of the equipment and the health and safety standards required to be maintained in an establishment;
3. The requirement of having external or internal health and safety committees in place. The external safety committees are headed by the appropriate authorities and usually implement the health and safety standards of the organisations.

4. Further, these legislations contain provisions on notifiable accidents, injuries or occupational diseases which need to be reported to the concerned authorities.
5. The Employees' State Insurance Act, 1948 and the Employees' Compensation Act, 1923 contain provisions on providing compensation to employees in the event of industrial accidents and other injuries arising out of employment and occupational diseases.

Employer's Liability

There are specific provisions under the health and safety legislations in India, which make the employer liable for ensuring compliance with the various requirements set out under these acts. Further, under most of these legislations regulating health and safety in India, liability for any default or contravention of the provisions of the act or any negligence, may on many occasions be imputed on the directors of the company.

Under Factories Act, 1948, the occupier or the manager of the factory shall be responsible for contraventions of provisions of this act. Occupier is defined as a person who has ultimate control over the affairs of the factory. In case of a company, any one of the directors shall be deemed to be the occupier of the factory. The companies usually nominate a specific director as the occupier of a factory in its board meetings

Under the Dock Workers (Safety, Health & Welfare) Act, 1986, the responsibility rests on the director nominated for a particular dock. The director who in each case is either in charge of the management or holds the largest number of shares in the company assumes the responsibility of being the person in charge and is usually nominated accordingly.

Similarly, under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 and the Employees' State Insurance Act, 1948, the provisions on offences by companies provide that if an offence has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be jointly and severally liable. The managing directors or whole time directors being generally in charge of the affairs of the company are likely to be held accountable, unless otherwise it can be proved that offence was committed without the consent or connivance or negligence of the such directors.

In view of the above requirements and the associated employer obligations, it is essential that employers address these issues under their health and safety policies, conduct regular health and safety legal audits, insurance audits and also have robust internal mechanisms in place for risk assessment and risk mitigation.

Insurance

Another aspect that companies working in the labour intensive and hazardous sectors need to keep in mind are whether or not are they covered under appropriate insurance policies to cushion the financial damage in the event of disaster. From the insurance point of view a project is divided into two phases- construction and O&M. Before buying any insurance policy during the construction phase, one has to clearly know what one is responsible for and what one is not responsible for.

For instance, there can be scenarios when the liabilities are overlapping between the contractor and the subcontractor. The key is to ensure that the subcontractor is included under the contractor's all risk insurance policy as insured and cross liabilities arising due to the act or omission of subcontractors are covered under the policy.

On the same line while buying insurance policies during operational phase, one needs to be aware of the risk factors which may cause losses and affect the business continuity. Insurance policies should take care of physical damage to the assets, losses due to business interruption and legal liabilities towards employees/third parties. However, it's hard to get the equilibrium right as many companies usually try to get away with minimal insurance, whereas others will overindulge on insurance they don't really need.

It is always a good idea to have an insurance audit done by independent firms that have no interest in selling insurance policies. The insurance audit will address the adequacy of a company's insurance portfolio as against the requirements defined in various laws and also advise whether the coverage sufficiently protects one against all kind of risk exposures. Audit report will suggest improvements to protect uncovered exposures and compare the insurance proposal and insurance binder to the issued policy to assure the policy was accurately issued. Due attention should also be paid to ensure that the insurances purchased is also inclusive of insurance coverages required by law.

Clasis Law actively advises its clients on risk mitigation strategies under all the above-mentioned laws and would be happy to respond to queries on all the aspects covered under this note.

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