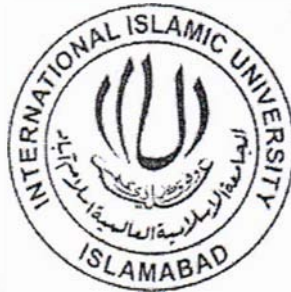


**OCCUPATIONAL SAFETY AND HEALTH LAWS IN PAKISTAN:
A COMPARATIVE STUDY WITH USA LAWS**



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A COMPARATIVE STUDY WITH USA LAWS**



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**A thesis submitted in partial fulfillment
of the requirement for the degree of
MASTERS OF LAWS (Corporate)
(Faculty of Shariah and Law)
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2012

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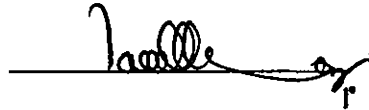
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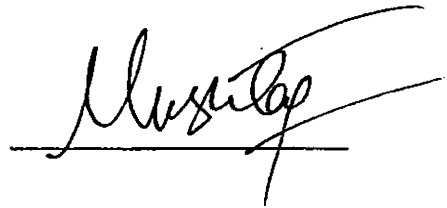
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DEDICATION

This Dissertation is dedicated to my amazing Father, who taught me that the best kind of knowledge to have is that which is learned for its own sake.

It is also dedicated to my lovely Mother, who taught me that even the largest task can be accomplished if it is done one step at a time.

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First, I bow down to ALLAH (SWT) who gives me courage and in the name of our beloved Prophet (PBUH) who is the source of all blessings.

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Words are inadequate to express my gratitude to my family for their support and prayers for the completion of this work.

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May ALLAH (SWT) bless all these humane and kind people for their generosity.

ABSTRACT

Occupational Safety and Health (OSH) becomes an issue relating to the health, safety and welfare of the workers during working environment. It is an admitted fact that healthy workers are the productive workers and the environment in which they are working has direct impact on their level of productivity. Workers have faced work related hazards, accidents, illness and diseases that are common in all parts of the world but much higher in the developing countries.

This study is conducted to look into the promotion of safe and healthy work-related conditions and environment reveals a serious challenge to the International Labor Law (ILO) and World Health Organization (WHO) work endeavor.

This dissertation not only puts emphasis on the current laws, regulations, standards and initiatives adopted by the USA legislation on the OSH at workplace but also it is a pioneering effort at defining and drawing attention to the subject of OSH that eventually tend to encumber the implementation of the relevant labor laws and policies in the Pakistan.

The ultimate purpose of this study is to raise awareness to the concept of the OSH of the workers at the workplace; to discuss its scope and contents as well as its legal status in the context of USA and Pakistan in drafting an effective OSH standards and policies on the national and international level to prevent the future workers from this scourge.

In the end, recommendations and suggestions are given for the development of comprehensive OSH laws and regulations which are helpful in updating the OSH laws in Pakistan.

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LIST OF ABBREVIATIONS

ACGIH	American Conference of Governmental Industrial Hygienists
AIHA	American Industrial Hygiene Association
ALJs	Administrative Law Judges
BOHS	Basic Occupational Health Services
BLS	Bureau of Labor Statistics
CAS Registry	Chemical Abstracts Service Registry
CDC	Centers for Diseases Control and Prevention
CFOI	Census of Fatal Occupational Injuries
CIWCE	Centre for the Improvement of Working Conditions and Environment
DOL	Department of Labour
FACE	Fatality Assessment and Control Evaluation
GPA	Global Plan of Action
GOHNET	Global Occupational Health Network
GPRA	Government Performance and Results Act
HHE	Health Hazard Evaluation
ICOH	International Commission on Occupational Health
ILC	International Labour Conference
ICSCs	International Chemical Safety Cards
ILO	International Labour Organization
IOHA	International Occupational Hygiene Association
IPCS	International Programme on Chemical Safety
IRO	Industrial Relations Ordinance
ISO	International Standards Organization
LIP	Labour Inspection Policy

LPP	Labour Protection Policy
MSDS	Material Safety Data Sheets
NIOSH	National Institute for Occupational Safety and Health
NORA	National Occupational Research Agenda
NSC	National Safety Council
OECD	Organization for Economic Co-operation and Development
OELs	Occupational Exposure Limits
OSH	Occupational Safety and Health
OSHA	Occupational Safety and Health Administration
OSHRC	Occupational Safety and Health Review Commission
PDCA	Plan-Do-Check-Act
PIACT	Program on the Improvement of Working Conditions and Environment
POA	Plan of Action
PPE	Personal Protective Equipment
TLVs	Threshold Limit Values
UN	United Nations
USA	United States of America
WHA	World Health Assembly
WHO	World Health Organization

INTRODUCTION

The concept of Occupational Safety and Health (OSH) remains mostly unidentified in all over the world but largely in the developing countries like Pakistan. Many developed countries highlighted major OSH problems and made laws and regulations to meet these problems to safeguard the workers at the workplace to the large extent such as USA.¹

The present study obtains to look into a substantial framework for OSH that is provided by the Pakistan's labor laws. Strategic analysis of the national labour legislation and policies regarding OSH should be conducted. It also shows defects in the procedural methods like lengthy and cumbersome judicial procedure, inefficient inspection structure and nominal and ostensible punitive measures which eventually tend to encumber the implementation of the relevant labour laws and policies in the Pakistan.

This study also includes the analysis of USA laws, acts and regulations on OSH. The Occupational Safety and Health Act of 1970, USA instituted Occupational Safety and Health Administration (OSHA) and also National Institute of Occupational Safety and Health (NIOSH) which focused on the verifiable standards and regulations for health and safety of the workers and also covered a line of research, training, education and information in the concerned area. These two departments of USA administered a lot of work for making important rules on OSH approaches.

¹ The Occupational Safety and Health Act, 1970.

This dissertation contains a comparative study of the labour laws of Pakistan and the labour laws of the USA regarding OSH for the observance of health and safety standards at work places.

Furthermore, the tripartite participation of the employers, employees and government's representation in legislation, management and realization of labour laws and formulate policies and its implementation for OSH system in the Pakistan. The dissertation in the area of OSH specifically focuses on:

- Recognizing underlying policies and approaches for the development of OSH as a system and framework;
- Describing the OSH culture in the Pakistan's labour laws transversely with globally agreed standards;
- Putting forward a detailed comparison between Pakistani and USA legal regime concerning OSH at workplace;
- Exploring work on OSH system, expecting future developments and making suggestions for upturn.

The study depends on the existing text on the subject for building a basis for strategic analysis of a framework on OSH. The World Health Organization (WHO) declarations such as, the Stress Declaration of 2006, the Jakarta Declaration of 1997, the Global Compact and the Global Plan of Action for Workers Health of 2007, ILO's conventions like as the Occupational Safety and Health Convention 155 of 1981 and its Recommendation 164 of 1981, Protocol of 2002 to Convention 155, Occupational Health Services Convention 161 and its Recommendation 171 of 1985, "Promotional Framework for Occupational safety and health Convention 187 and its Recommendation

197 of 2006” and International Standards Organization (ISO) regarding workplace health and safety to call upon member states with effect to these conventions and standards to often find their ways into national policies and laws.

The basic study focused in this dissertation is on the existing situation in the industrial area on reducing industrial accidents and prevention of diseases for the workers at large. The comprehensive legislation on OSH covers a wide spectrum e.g. construction, mines, agriculture and industrial accidents, however, the dissertation will be on the concept of the OSH and prevention of industrial accidents.

In addition to multilateral ILO conventions, recommendations, and codes of practice, there are number of the conventions on the industrial accidents, which are binding on the respective member states. Pakistan has not been a signatory to conventions relating to the occupational safety and health.²

This work lays stress on the need to amend the outdated laws on OSH in Pakistan as well as to make comprehensive laws regarding OSH for the welfare of the workers. It also suggests the viable strategy including in the Labour Policy of 2002 as well as the Labour Policy of 2010 to establish “National Occupational Safety and Health Council” and “National Tripartite Occupational Safety and Health Council” to achieve the unanimity on the concerned issue which will ultimately make the OSH more effective.

² Pakistan has not ratified the Convention No. 155 on Occupational Safety and Health, 1981 but it has adopted the ILO’ Recommendation No.97 on Protection of Workers’ Health which is considerably drawn upon Convention No.155.

The work is divided into five chapters. The first chapter introduces the issue and builds a conceptual foundation for an overall research to the existing literature on OSH culture. The second chapter consists of the legislative steps and the statutory framework on the OSH in USA. The third chapter comprises of the functional layout of the statutory framework of the labour laws of Pakistan. The fourth chapter describes a detailed comparison between both the legal regimes of Pakistani laws and USA statutory legislative work. The fifth chapter provides recommendations to make comprehensive laws on the OSH in Pakistan.

CHAPTER 1

OCCUPATIONAL SAFETY AND HEALTH STANDARDS AND REGULATIONS

Occupational Safety and Health (OSH) is a substantial area, which is primarily related to the safety and well-being of the workers at their workplaces. It is the primary duty of the employers to provide the facilities regarding OSH to the employees. International Labour Organization (ILO) and World Health Organization (WHO) have assured to provide the safety and health to the workers through different Conventions, Treaties and Declarations.

1.1 The Concept of Occupational Safety and Health (OSH)

OSH is the basic right of every worker, which ensures better working conditions to the workers at the workplaces.

Article 23(1) of the Universal Declaration of the Human Rights, 1948 stated as under:

It is the fundamental right of everyone to work at his own choice in the working environment, which fulfills the just and favorable conditions.³

Article 7(b) of the International Covenant on Economic, Social and Cultural Rights, 1976 reiterated this right as:

³Article 23 (1) of the Universal Declaration of the Human Rights, 1948. See, <http://www.un.org/en/documents/udhr/index.shtml#a23>, last accessed on October 30, 2010.

Every person has a right to work “to the enjoyment of the just and favourable conditions” particularly which confirms “safe and healthy working conditions” recognized by the state parties to the covenant.⁴

Occupational Safety and Health (OSH) is enlightened not only to protect health and safety of the workers during employment but also to prevent them from being seriously harmed or damaged at work.

International Labour Organization (ILO) and the World Health Organization (WHO) have been defined the phrase of the “Occupational Health” since 1950. The definition envisages a much broader range of objectives, which aims at:-

The promotion and maintenance of the highest degree of physical, mental and social being of workers in all occupations; the prevention among workers of departures from health caused by their working conditions; the protection of workers in their employment from risks resulting from factors adverse to health; the placing and maintenance of workers in an occupational environment adapted to his physical and mental capabilities; the adaptation of work to man and of each man to his job.⁵

These are the areas which emphasize on the mental and physical welfare and social conditions of the workers and employees and their working capacity. It also puts emphasis on the maintenance of the workers, which prevent them from different types of the diseases that result from a work accident. The field of implementation of the principles determined to identify hazards and stop work accidents in different work-

⁴ Article 7(b) of the International Covenant on Economic, Social and Cultural Rights, 1976. See, <http://www.umn.edu/humanrts/instr/b2esc.htm>, last accessed on October 30, 2010.

⁵ ILO-WHO committee jointly has been, adopted a comprehensive definition on “Occupational Health” revising in its 12th session of 1995. See, http://www.searo.who.int/LinkFiles/Related_Links_2.pdf, last accessed on October 30, 2010.

related conditions.⁶ The concept of OSH focuses on the physical condition of workers at working environment and intends to reduce labour accidents and prevent hazards at workplace as well.

International Occupational Hygiene Association (IOHA) has generally defined the phrase OSH as, “the field of anticipating, recognizing, evaluating and controlling health hazards in the working environment with the objective of protecting worker health and well-being and safeguarding the community at large.”⁷ The identification of this field for the strategy of prevention has absolute basic requirement for the risk assessment and an OSH management system. Risk/Hazards should be related on an ongoing root by taking certain preventive and protective actions to minimize, eliminate, control it and take collective measures by providing personal protective equipment (PPE).⁸

The OSH Management System is established on the essential elements of policy of organization, work participation of the workers, systematizing, planning, implementation, documentation, evaluation, recommendations and strategies for development.⁹

OSH embodies an overall policy to ensure well-being of the workers at the large extent as well as to make positive efforts to production. Promotion and protection of the safe

⁶ Lewis Dictionary of Occupational and Environmental Safety and Health, (Jeffrey. W. Vincel, Lewis Publishers, 2000), 711.

⁷ IOHA has consultative position with ILO and WHO. See, <http://www.ioha.net/faqs.html>, last accessed on October 30, 2010.

⁸ ILO, Guidelines on Occupational Safety and Health Management Systems (ILO-OSH 2001), International Labour Office, Geneva, 2001: 11. It has also in glossary “The process of evaluating the risks to safety and health arising from hazards at work.” See, <http://www.vbcsd.org/web/projects/cement/tf3/guidelin.pdf>, last accessed on November 2, 2010.

⁹ ILO, Guidelines on Occupational Safety and Health Management System (ILO-OSH 2001), International Labour Office, Geneva, 2001: 5. OSH Management System stated as “A set of interrelated or interacting elements to establish OSH policy and objectives, and achieve those objectives.” See, <http://www.vbcsd.org/web/projects/cement/tf3/guidelin.pdf>, last accessed on November 2, 2010.

working conditions put strong weight on the expansion of physical conditions of the workers. Healthy workers are more motivated to work and contribute to the quality products and goods, if healthy workplaces provide to them.

Consequently, the healthy workplace concept emerged in the last few years and many experts and researchers defined it as for getting healthier and safer workplace, it is very vital to go along with the standards and policies of OSH by the participation of government and the role played by the managers are vital to implement OSH.¹⁰

1.2 International Conventions and Recommendations of the ILO Related to OSH

ILO has done an immense work relating to OSH to uphold the health and safety of workers at workplace in the contour of conventions, recommendations and codes of practice.

1.2.1 Scope and Objectives of ILO Conventions and Recommendations relating to OSH

OSH is the field which is growing all over the world rapidly and its objectives have become wider for dealing with issues relating to it. The ILO Preamble particularly

¹⁰ Harry S. Shannon, Lynda S. Robson and Joanna E.M. Sale, "Creating Safer and Healthier Workplaces: Role of Organizational Factors and Job characteristics" *The American Journal of Industrial Medicine* 40 (2001): 319-34. Some of the researchers in this article defined it as; NIOSH adopted a definition by closing the relationship of worker's health with the strategy of firm's overall business by effective way. For the determination of the healthiness of work related places, they have incorporated determinants of health, which based on lifestyle factors. Hopkins [1995] has observed that the "Safety Pays" argument is as the liability of company's monetary activity to provide safety at work. He also alleged that it is the best way to concentrate management mind on safety by the intervention of the government and managers have responsibility to abide by law, work for benefit of workers and wish to do the best work. Leiter et al [1998] established that it is not an effective situation to push managers "to go through the motions" for the promotion of the OSH. Israel et al [1996] played an important role for describing many related Interventions. They set up that changes will not occur only by the management but also by the participation of the union leadership. Union may raise different issues relating to wages and others.

enables that “the protection of the workers against sickness, disease and injury arising out of employment” is a significant basis of the “Social Justice”.¹¹ In 1999, it was also declared, “the primary goal of the ILO today is to promote opportunities for men and women to obtain decent and productive work, in conditions of freedom, equity, security and human dignity.”¹²

The present plan of ILO is basically based on several conventions and recommendations in the OSH such as, “the Occupational Safety and Health Convention 155 and its Recommendation 164 of 1981, Protocol of 2002 to Convention 155, Occupational Health Services Convention 161 and the Recommendation 171 of 1985, Promotional Framework for Occupational safety and Health Convention 187 and its Recommendation 197 of 2006.”

“Occupational Safety and Health Convention 155 and its Recommendation 164 of 1981” primarily state not only the principles of a national policy on OSH but also describe the steps taken by the member states concerning OSH to upgrade the working circumstances. “Occupational Health Services Convention 161 and its Recommendation 171 of 1985” ascertain the occupational health services at the enterprise level to implement the OSH policy.

¹¹ Constitution of the ILO provides basic conditions, principles and provisions for the safety of employees and for the member state to incorporate these provisions in their laws and regulations. See, <http://www.ilo.org/ilolex/english/constq.htm>, last accessed on November 3, 2010.

¹² ILO: Decent Work, Report of the Director General, International Labour Conference (ILC), 87th Session, 1999. See, <http://www.ilo.org/public/english/standards/reln/ilc/ilc87/rep-i.htm>, last accessed on November 4, 2010.

Occupational Health Services defined in the Convention 161 of 1985 as,

Services entrusted with essentially preventive functions and responsible for advising the employer, the workers and their representatives in the undertaking on; the requirements for establishing and maintaining a safe and healthy working environment which will facilitate optimal physical and mental health in relation to work; the adaptation of work to the capabilities of workers in the light of their state of physical and mental health.¹³

Other conventions and standards that complemented the cross-cutting subject matter of the OSH are such as, in particular, the Labour Inspection Convention 81 of 1947 and the Employment Injury Benefits Convention 121 of 1964 amended as the Schedule I in 1980.

Convention 155 is central and principal in the OSH area of the ILO action. Many provisions of this convention have been adopted on OSH by other ILO mechanisms like; the Prevention of Major Industrial Accidents Convention 174 of 1993 is related to the Article 11 (a) of the Convention 155¹⁴ while the Chemicals Convention 170 of 1990 and the Asbestos Convention 162 of 1986 is correlated to Article 11(b) of the convention 155.¹⁵

Different instruments such as, Asbestos Recommendation 172 of 1986, Chemicals Recommendation 177 of 1990 and Prevention of Major Industrial Accidents Recommendation 181 of 1993 are complemented recommendations of the ILO regarding

¹³ Occupational Health Services Convention 161, 1985. See, <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C161>, last accessed on November 4, 2010.

¹⁴ Article 11 (a) of the convention 155 described as, "the determination, where the nature and degree of hazards so require, of conditions governing the design, construction and layout of undertakings, the commencement of their operations, major alterations affecting them and changes in their purposes, the safety of technical equipment used at work, as well as the application of procedures defined by the competent authorities."

¹⁵ Article 11 (b) of the convention No.155 described as, "the determination of work processes and of substances and agents the exposure to which is to be prohibited, limited or made subject to authorization or control by the competent authority or authorities, health hazards due to the simultaneous exposure to several substances or agents shall be taken into consideration."

OSH. There are further added various conventions and recommendations on the OSH adopted prior to 1981 which include fundamental provisions of the two instruments such as, radiation safety,¹⁶ labour inspection, occupational cancer¹⁷ as well as physical hazards in the working environment.¹⁸

1.2.2 Historical Background

ILO actions have been endless purposes for promotion of the safe and healthy workplace for the workers, since it was set up in 1919. It has extended a major body of the international documents, directions and instruments over the past 90 years to support components for the intensification of their capabilities to protect from hazards and risks at workplace.¹⁹

The safe, decent and healthy working situations have been reconfirmed in the “Declaration of Philadelphia” in 1944²⁰ as well as the “ILO Declaration on Social Justice for a Fair Globalization.”²¹ The standards and instruments of the ILO are more than 80% of work relating to issues of OSH and its components. The gradual process has brought about the progress of these instruments and standards and their incorporation into the national and international regulations since the beginning of the industrial revolution. These regulatory systems have been originated in the subject of OSH since the industrial

¹⁶ Radiation Convention No. 115, 1960 and its Recommendation No. 114, 1960.

¹⁷ Occupational Cancer Convention No. 139, 1974 and its Recommendation No. 147, 1974.

¹⁸ Working Environment (Air Pollution, Noise and Vibration), Convention No. 148, 1977 and its Recommendation No. 156, 1977.

¹⁹ http://www.ilo.org/global/About_the_ILO/Origins_and_history/lang-en/index.htm, last accessed on November 6, 2010.

²⁰ <http://www.ilo.org/public/english/bureau/inf/download/brochure/pdf/page5.pdf>, last accessed on November 10, 2010.

²¹ International Labour Conference (ILC), 97th Session, Geneva, 10 June 2008. See, http://www.ilo.org/wcmsp5/groups/public/---dgreports/---cabinet/documents/publication/wcms_099766.pdf, last accessed on November 10, 2010.

revolution of 1800s.²² There are many disastrous incidents such as fires in the factory sparked off legislation for the improvement in the factory safety standards.²³

Currently, the Robens Report²⁴ extended the wider meaning of the International OSH standards and incorporated the fundamental concept to apply OSH as a policy-based source. This scope primarily promoted the guidelines by the "International Program on the Improvement of the working Conditions & Environment (PIACT)"²⁵ launched in 1976 by the ILO. It was the first attempt to take up comprehensive standards, guidelines and conventions on OSH and its related issues at workplace. The PIACT program was a comprehensive and complete form for an OSH policy that combined with the manner of "making work more human" and the key element of prevention at workplace was as, "preventative safety and health culture."²⁶ This first effort resulted into the standards adopted in the "Working Environment (Air Pollution, Noise and Vibration), Convention 148²⁷ and its Recommendation 156" in 1977.²⁸

²² while the memoirs of the OSH is begun before the 19th century, there are several renowned originators who have their participation in the occupational health, such as "Sir Percival Pott in UK," who have research in the occupational cancer for the 1st time, Ramazzani in Italy, Paracelsus and other physicians who ask different questions to their patients, "what is your occupation? & what work do you do?" See, <http://www.radford.edu/wkovarik/misc/blog/industrial.health.html>, last accessed on November 16, 2010.

²³ There was the most horrible tragic event in the Labour history of the USA. It happened casualties of 146 garments workers in 18 minutes, most probably who locked deliberately by the owners alleged the workers stole material on the 9th floor behind the doors in the New York City in 1911. See, <http://my.firedoglake.com/mason/2011/01/17/the-triangle-shirtwaist-factory-fire-in-1911/>, last accessed on November 18, 2010.

²⁴ A Robens Report of the committee (1970-72), "Great Britain Committee on Safety and health at work" in this report, the uppermost recommendations are that the Industry has specific "health and safety legislation," which must be increasingly replaced and repealed by the law that covers all the workers and industries. See, <http://www.eig.org.uk/eig2002/documents/robens.pdf>, last accessed on November 20, 2010.

²⁵ ILC: An International program on the improving working conditions and environment (PIACT), 70th Session, Geneva, 1984, Provisional Record 37.

²⁶ The ILO for the improvement of the OSH develops the PIACT program. See, <http://www.answers.com/topic/piact>, last accessed on December 12, 2009.

²⁷ <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C148>, last accessed on November 22, 2010.

²⁸ <http://www.ilo.org/ilolex/cgi-lex/convde.pl?R156>, last accessed on November 24, 2010.

This approach finally based on the element of prevention which applied at national and enterprise level and provided basic idea for the Convention 155 and Recommendation 164. These two instruments structured the comprehensive principles with the broad objectives and later on complemented with the protocol in 2002 that included prevention of the hazards for the planning, evaluating and improving working conditions through a continuous process²⁹. This incorporated approach to OSH was also debated at ILC in 2003³⁰ and resulted thereof in the form of the Global Strategy.³¹ This approach was the basic and central idea for the Promotional Framework for Occupational safety and health Convention 187 and its Recommendation 197 of 2006 as well.

1.2.3 Coverage of Branches of Economic Activity of the Convention 155

Article 1(1) and 2(1) of the ILO convention 155 describes, “all branches of economic activity” as well as “all workers in the branches of economic activity.”³²

Articles 3(a) as, the “branches of economic activities” contain “all the branches in which workers are employed, including the public service.”³³

Article 1(2) and 1(3) explains the flexible clauses provide exclusion of the branches of the economic activities to the member state³⁴ and exclusion of limited categories of workers in their difficulties.³⁵

²⁹ ILC, International Labour Conference, 66th Session, Geneva, 1980, Provisional Record 42.

³⁰ ILC, International Labour Conference, 91st Session, 2003, Provisional Record No-22. ILO regulations concerned to the actions in the OSH. See, <http://www.ilo.org/public/english/standards/relm/ilc/ilc91/pdf/pr-22>, last accessed on December 2, 2010.

³¹ http://www.ilo.org/public/english/protection/safework/globstrat_e.pdf, last accessed on December 3, 2010.

³² ILO Convention No- 155, 1981, Art-I(1) & 2(1)

³³ Ibid. Article 3(a)

³⁴ Ibid. Article 1(2) &(3)

Article 1(3) and 2(3) as, however, in respect of all these exclusions, it is mandatory on the member state to report subsequently on the progress for the wider application.³⁶ These sub articles, when read together with the Articles 4 and 8, would allow a review of excluded categories, particularly, for the implementation of the “coherent national policy” on OSH³⁷ consulting the social partners about the changed circumstances.

1.2.4 Consultation with the Social Partners for implementation of ILO Actions

Consultation and cooperation with other social partners on tripartite basis is extremely significant. The role of the employers, workers and organizations is vital as their active involvement play an important role for the implementation of ILO agenda.

Article 4 and 8 of the Convention 155 explains the imperative part of consultation of the employers and workers through their representative organizations are to be held to, “formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment.”³⁸ This is obviously shown in the requisites of the Articles which require “consultation at the earliest possible stage.”³⁹ Consultation is a major factor to give effect to provisions of the conventions in these instruments. In Articles 4(1) and 8 of the Convention 155 also provide for “in consultation with” the representatives of employers and employees and for “after consultation with” to resolve the issues regarding OSH. Moreover, it implies

³⁵ Ibid. Article 2(2) &(3)

³⁶ Ibid. Article 1(3) & 2(3)

³⁷ Ibid. Article 4

³⁸ Ibid. Article 4 and 8

³⁹ Ibid. Article 15

that this requirement of consultation has no effect on the power of the member state and also on rule of law of the legislature to decide the final verdict.⁴⁰

Current and the latest national policy must be retained through a procedure that follows up the actions of the “Plan-Do-Check-Act (PDCA), guidelines for the modern management model.”⁴¹ The most important objective of this national strategy is the prevention from accidents, injuries and diseases to the workers which happens during work and employment, “by minimizing so far as reasonably practicable, the causes of hazards inherent in the working environment.”⁴²

1.2.5 Flexibility Clauses

Article 19 (3) of the ILO Constitution⁴³ and other tools of the ILO be composed of flexibility clauses for the appliance of the Conventions and Recommendations. Government implements the flexibility with regard of Conventions mostly after the consultation with the employees and the concerned employers’ organizations.⁴⁴

⁴⁰ Article 2 of the Protocol 2002. See also in Art.1 (2), 2(2) & 15(1) referred to the consultation in the subject matter of OSH.

⁴¹ http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---safework/documents/publication/wcms_110496.pdf, last accessed on December 3, 2010.

⁴² Article 4 (2) of the Convention No- 155.

⁴³ Article 19(3) of the ILO Constitution expresses as, “In framing any Convention or Recommendation of general application the Conference shall have due regard to those countries in which climatic conditions, the imperfect development of industrial organization, or other special circumstances make the industrial conditions substantially different and shall suggest the modifications, if any, which it considers may be required to meet the case of such countries.”

⁴⁴ http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_086223.pdf, last accessed on December 4, 2010.

Convention 155 includes the flexibility clauses as in Article 1(2)⁴⁵ allows to the exclusion in partly or completely specially the “branches of economic activity,” relating to the obstacles that occur of substantial nature. In Article 2(2) also focuses on “limited categories of workers in respect of which there are particular difficulties.”

Article 4 (1) permits countries to prepare national plan “in the light of national conditions and practice.”⁴⁶ Article 7 enables the countries to evaluate and review the national plan “at appropriate intervals, either over-all or in respect of particular areas”⁴⁷ and implementation of the convention in course of laws. Article 8 also gives powers to member state as, “Each Member shall, by laws or regulations or any other method consistent with national conditions and practice and in consultation with the representative organizations of employers and workers concerned, take such steps as may be necessary to give effect to Article 4 of this Convention.”⁴⁸

⁴⁵Article 1(2) of the Convention No- 155 states, “A Member ratifying this Convention may, after consultation at the earliest possible stage with the representative organizations of employers and workers concerned, exclude from its application, in part or in whole, particular branches of economic activity, such as maritime shipping or fishing, in respect of which special problems of a substantial nature arise.”

⁴⁶ Article 4(1) endows with the member states as, “Each Member shall, in the light of national conditions and practice, and in consultation with the most representative organizations of employers and workers, formulates, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment.”

⁴⁷ Ibid, Article 7 enables the countries as, “The situation regarding occupational safety and health and the working environment shall be reviewed at appropriate intervals, either over-all or in respect of particular areas, with a view to identifying major problems, evolving effective methods for dealing with them and priorities of action, and evaluating results.”

⁴⁸ Ibid, Article 8. Article 2 of the Protocol 2002 also enabled the countries to implement it in course of laws or regulations as well.

Article 11 of the convention shows the flexibility that provides the member state after ratifying the convention to fulfill the obligations of the national policy that enumerates six "functions" to comply with it progressively.⁴⁹

Protocol 2002 of the Convention 155 also contains different flexibility clauses. Article 3 (d) of Protocol 2002 takes steps regarding "confidentiality of personal and medical data in the employers" possession in accordance with national laws and regulations, conditions and practice" and concerns with recording and notification procedures "where appropriate, as appropriate or if applicable." Article 2 of Protocol 2002 provides the conditions of the consultation with the employers and workers for recording and notification.

1.2.6 Elements of the Occupational Hazards

Occupational hazard is a dangerous and perilous condition that is caused from an exposure of the hazardous chemicals to the workers during the course of work and employment as described in the Article 11 of the Convention 155.

⁴⁹ Article 11 of convention 155 explains six functions to abide by the member states. These six functions are as, "(1) the determination, where the nature and degree of hazards so require, of conditions governing the design, construction and layout of undertakings, the commencement of their operations, major alterations affecting them and changes in their purposes, the safety of technical equipment used at work, as well as the application of procedures defined by the competent authorities; (2) the determination of work processes and of substances and agents the exposure to which is to be prohibited, limited or made subject to authorisation or control by the competent authority or authorities; health hazards due to the simultaneous exposure to several substances or agents shall be taken into consideration; (3) the establishment and application of procedures for the notification of occupational accidents and diseases, by employers and, when appropriate, insurance institutions and others directly concerned, and the production of annual statistics on occupational accidents and diseases; (4) the holding of inquiries, where cases of occupational accidents, occupational diseases or any other injuries to health which arise in the course of or in connection with work appear to reflect situations which are serious; (5) the publication, annually, of information on measures taken in pursuance of the policy referred to in Article 4 of this Convention and on occupational accidents, occupational diseases and other injuries to health which arise in the course of or in connection with work; (6) the introduction or extension of systems, taking into account national conditions and possibilities, to examine chemical, physical and biological agents in respect of the risk to the health of workers."

The term Occupational Hazard defined in the Black's Law Dictionary as under:

"A danger or risk that is peculiar to a particular calling or occupation. Occupational Hazards include both accidental injuries and occupational diseases."⁵⁰

The Article 11 of the Convention 155 elaborates the area of action referred in Article 4 by focusing on the elements of the occupational hazards.⁵¹ The risks for health and safety of the employees to ensure that whole management of the occupational hazards, major steps of assessment, review, control, identification and action of progress shall be taken into consideration.⁵² This is also adopted and explained in broader scope in paragraph 4 of the Recommendation 164⁵³ that submits to the necessity of enactment, review of the regulatory and control means, the provisions to control and prevent occupational accidents and to study for the assessment of risks and hazards. Every member states have to incorporate the provisions of Article 11 in their national legislation keeping in view their own socio-economic structure as well as different aspects and approaches. The survey information revealed that the developing countries had struggle to expand the coverage and approach of international instruments progressively towards the

⁵⁰ Black's Law Dictionary, (USA: Bryan A. Garner, 7th Edition, 1st Reprint 2004), 1106.

⁵¹ Occupational hazards defined as, "a working condition that can lead to illness or death. Often, people in jobs which pose a high level of risks are paid than similar but less risky jobs to compensate for the danger involved." See, http://www.investorwords.com/3380/occupational_hazard.html , last accessed on December 6, 2010.

⁵² Article 11(a) of the Convention 155, 1981.

⁵³ Paragraph.4(i) of the Recommendation No- 164 "to secure good liaison with the International labour occupational safety and health Hazard Alert System set up with the framework of the international labour organization."

improvement of the OSH and the laissez-faire of the trade and the presence of the conglomerates internationally are necessary tools for it.⁵⁴

The supplementary paragraph to Article 11 of the convention 155 refers towards the control of certain substances and work processes which are needed to prohibit, control, restrict or make expose to authorization.⁵⁵ This paragraph takes into consideration the exposure of the different and several substances and their agents, which cause health hazards and perils. Evaluation and estimation of ILO with regard to occupational exposure of the hazardous substances, almost 440,000 people died all over the world in 2005.⁵⁶ Out of these casualties in 2005 more than 70% of this figure died of cancer because of the exposure to asbestos and nano-particles⁵⁷ dreadful effect on the workers health became an issue for scientists now a days. It is very complicated to find out the reliable statistics on existing natural and synthetic substances of chemicals, which are used and produced for the assessment of hazards. There are more than 32 million existing natural and synthetic chemical substances; organic and inorganic that has been

⁵⁴ ILO, Tripartite Declaration of Principles Concerning Multinational Enterprises & Social Policy (MNE Declaration), See, http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---multi/documents/publication/wcms_094386.pdf, last accessed on December 7, 2010.

⁵⁵ Convention No- 155, Art.11 (b), also see, ILC, 67th Session, 1981, Geneva, Provisional Record No.25. It is very significant to be noted that the committee undertook the important aspect that in English language the word "work processes" included the "use of machinery" but in this view the term is related to the work processes requiring the exposure of the employees and workers to hazardous chemicals, vapours or fumes of these chemicals i.e. heavy metals.

⁵⁶ P.Baichoo, B.Dardelin and J.kruger, "ILO activities in the area of chemical safety," *The African Newsletter on Occupational Health and Safety* (2006): 52-55.

⁵⁷ OECD (Organization for Economic Cooperation and Development), Workshop on the Safety of Manufactured Nanomaterials (2005). See, <http://www.oecd.org/ehs/>. The OECD set up duty to the concerned forces to assess the effect of nanomaterials on environment as well as on human health, use of nanomaterials, the risk assessment and evaluation, the regulatory insinuations of the industrial production and the hazard classifications.

recognized and registered all over the world.⁵⁸ Out of all these chemicals, 110,000 synthetic chemical substances are produced by the industrial quantities,⁵⁹ only 6,000 chemical substances are obtainable for the reliable and adequate data for hazards assessment and only 500-600 single hazardous chemical substances⁶⁰ have been laid down for the Occupational Exposure Limits (OELs).⁶¹

1.2.7 Definitions of Occupational Accidents, Occupational Diseases and Occupational Injuries

The ILO Protocol of 2002 lays emphasis on the “occupational accidents, occupational diseases, dangerous occurrences and commuting accidents.” These most important terms relating to OSH are comprehensively defined in Article 1 of the Protocol as well.

Article 1 (a) of Protocol 2002 defined the occupational accident as, the occurrence took place during the employment which resulted into the “fatal or non-fatal injury.”⁶² The word accident defined as, an unexpected, unplanned occurrence that arises by way of combination of causes due to physical harm i.e. injury or disease to an individual, business failure or combination of these effects.⁶³

⁵⁸ CAS Registry (The Chemical Abstracts Service Registry) is a self-regulating service registry, which grants a worldwide service to register the different forms of chemicals, names of all the existing natural and synthetic chemical substances and definition of these chemical agents. See, <http://www.cas.org/expertise/cascontent/index.html>, last accessed on December 8, 2010.

⁵⁹ I.Obadia, “Chemicals Benefits and Dangers,” in *World of Work* 7, 1994.

⁶⁰ ACGIH (American Conference of Governmental Industrial Hygienists), List of Threshold Limits Values (TLVs), 2007. See, <http://www.acgih.org>, last accessed on December 10, 2010.

⁶¹ http://www.ilo.org/safework/info/lang--en/WCMS_151534/index.htm, last accessed on December 11, 2010.

⁶² Article 1 (a) of the Protocol 2002 defined, “the occupational accident covers an occurrence arising out of, or in the course of, work which results in fatal or non-fatal injury.”

⁶³ Jeremy Stranks, *Health and Safety at Work: Key Terms* (Butterworth-Heinemann, Oxford Univ. Press, 2002), 3.

The "Sixteenth International Conference of Labour Statisticians" defined the phrase occupational accident for purpose of the statistics of the occupational injuries as, "an unexpected and unplanned occurrence, including acts of violence, arising out of or in connection with work, which results in one or more workers incurring a personal injury, disease or death."⁶⁴

Article 1(b) of Protocol 2002 of the Convention 155 has defined the phrase Occupational Disease such as, any disease is caused in consequence of exposure to hazard factors which occur during the course of work.⁶⁵

Occupational Disease, as defined in "Lewis Dictionary of Occupational and Environmental Safety and health" as:

Any disease resulted because of exposure to a physical agent, biological organism, hazardous substances and ergonomic stress during the course of work and the conditions or materials detrimental to health from an exposure for the period of employment.⁶⁶

The term Occupational Disease defined in Black's Law Dictionary as under:

A disease that is contracted because of exposure to debilitating conditions or substances in the course of employment. Employees who suffer from occupational diseases are eligible for workers' compensation. Courts have constructed the term to include the variety of ailments, including lung conditions (such as asbestosis or black lung), hearing loss and carpal tunnel syndrome.⁶⁷

⁶⁴ http://www.ilo.org/wcmsp5/groups/public/---dgreports/---integration/---stat/documents/normativeinstrument/wcms_087528.pdf, last accessed on December 12, 2010.

⁶⁵ Article 1(b) of the Protocol 2002 of the Convention 155.

⁶⁶ Lewis Dictionary of Occupational and Environmental Safety and health (Jeffrey. W. Vincel, Lewis Publishers, 2000), 710.

⁶⁷ Black's Law Dictionary (USA: Bryan A. Garner, 7th Edition, 1st Reprint 2004), 1106.

Article 1(c) of the Protocol 2002 also defined the Dangerous Occurrence as a recognized event identified in national regulations and rules which causes an injury or disease to workers or public at large at their employment.⁶⁸

Article 1(d) of the Protocol 2002 has described the definition of the Commuting Accident as, "an accident resulting in death or personal injury occurring on the direct way between the place of work and the worker's principal or secondary residence or the place where the worker usually takes a meal or the place where the worker usually receives his or her remuneration."⁶⁹

The comprehensive program of the "Sixteenth International Conference of Labour Statisticians" on OSH is based on the Occupational Diseases and Injuries as an integral part of this program.

Occupational Injuries defined in the "Sixteenth International Conference of Labour Statisticians" as, any personal injury or illness and casualty which occurred from an occupational accident.⁷⁰

Occupational Injury defined in the "Lewis Dictionary of Occupational and Environmental Safety and health" as:

"Any injury that results from a work accident or from a single instantaneous exposure in the work environment."⁷¹

⁶⁸ Article 1(c) of the Protocol 2002 defined as, "the term dangerous occurrence covers a readily identifiable event as defined under national laws and regulations, with potential to cause an injury or disease to persons at work or to the public."

⁶⁹ Article 1(d) of the Protocol 2002.

⁷⁰ http://www.ilo.org/wcmsp5/groups/public/---dgreports/---integration/---stat/documents/normativeinstrument/wcms_087528.pdf, last accessed on December 12, 2010.

1.2.8 Record Keeping, Statistical data and Notification of Occupational Accidents and Diseases

The collection of records of all these events is necessary for upgrading the national OSH plan of action and providing assistance regarding record keeping, statistics and notification.

Article 11(c) describes that the competent authority is entitled to require the establishment and the employers presents application to notify the occupational accidents and diseases to the relevant authority when it is proper then to insurance body and other relevant department directly.⁷² Convention No-81 also obligated to the member states to make sure that the labour inspectorate shall be duty bound to notify the cases of occupational diseases and occurrences of industrial accidents as any way by the approved national regulations and by prescribed laws.⁷³

By adoption of these conventions and recommendations after few years ago, there were demands for fortification of the international labour standards regarding record keeping, notification and statistical data of the "occupational accidents and diseases." The

⁷¹ Lewis Dictionary of Occupational and Environmental Safety and health (Jeffrey. W. Vincol, Lewis Publishers, 2000), 710.

⁷² Article 11(c) of the Convention No-155, 1981.

⁷³ Article 14 of Labour inspection Convention No-81, 1947. Article 15(2) of Recommendation No-164, 1981 also describes the details for recordings of data of occupational accidents and diseases, it explains as, "Employer should be required to keep such records relevant to occupational safety and health and the working environment as are considered necessary by the competent authority or authorities; these might include records of all notified occupational accidents and injuries to health which arise in the course of or in connection with work, records of authorizations and exemptions under the laws or regulation to supervision of the health of workers in the undertaking, and the data concerning exposure to specified substances and agents."

approval of the “ILO Code of Practice”⁷⁴ of “Recording and Notification of Occupational Accidents and Diseases” has been resulted in 1995.⁷⁵ The new question raised for the expansion of latest standards in this field was ultimately kept in mind in 2002, re-examined list of occupational diseases in Recommendation 194⁷⁶ and directed together with the Protocol of 2002.

Article 4(b) of Protocol of 2002 also consists of some particular flexibility clauses with specific preparations, when it needed, to notify and report of the occupational accidents and diseases particularly by several relevant bodies.⁷⁷

Generally, it is a very essential factor that medical practitioners play a vital role to notify such diseases to the competent authorities because they are the first one to diagnose occupational diseases.⁷⁸ For the accurate, perfect and relevant statistical data analysis is required a process by which the way of modification in OSH needs assessment by the member state and introduces imperative ways for coherent and effective national policy

⁷⁴ ILO Code of Practice describes detailed regulations and guidance and responsible for OSH. List of instruments on OSH covered different aspects of health and safety as, “Radiation protection of workers (ionizing radiations) Geneva, 1987, Safety in the use of chemicals at work, 1993, Occupational exposure limits to airborne substances harmful to health, 1980, Safety in the use of asbestos, 1984, Prevention of Major Industrial Accidents, 1991, Guidelines on the occupational Safety and Health Management Systems, 2001.” See, http://training.itcilo.it/actrav_cdrom2/es/osh/add/sechyg.htm, last accessed December 13, 2010.

⁷⁵ http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---safework/documents/normativeinstrument/wcms_107800.pdf, last accessed on December 14, 2010.

⁷⁶ ILO, List of Occupational Diseases Recommendation No-194, 2002. The International Labour Office (ILO) approved a new List of Occupational Diseases on 25 March 2010.

⁷⁷ Art.4(b) of the Protocol to the Convention No-155, 2002, which states that “The requirements and procedures for notifications shall determine where appropriate, arrangements or notification of occupational accidents and occupational diseases by insurance institutions, occupational health services, medical practitioners and other bodies directly concerned.”

⁷⁸ ILO, “Recording and notification of occupational accidents and diseases and ILO list of occupational diseases,” Report V (2A), ILC, 90th Session, Geneva, 2002. See, <http://www.ilo.org/public/english/standards/relm/ilc/ilc90/rep-v-2b.htm>, last accessed on December 15, 2010.

of the member state as well. The coherency point of this system requires a new process for the recognition of the pertinent areas and “holding of inquiries.”⁷⁹

In the preparatory work, these inquiries contain the inquiries into events which mainly concerning the individuals as well as the inquiries in its wider extent, to meet the subsequent requirement on the following industrial accidents or disasters which drastically endangered the lives and health of great figures of the workers.⁸⁰

1.2.9 Significant Role of Employers and workers

The employers and workers have been played an important role which is broadly described in the “ILO Declaration on Social Justice for a Fair Globalization.” ILO has played key role to promote and achieve progress for the system of tripartism among governments, representatives of employers and workers to accomplish solutions through rule of law and International Labour Standards.⁸¹

The ILO Declaration also put emphasis on, “the importance of the employment relationship should be recognized as a means of providing legal protection to workers.”⁸²

Article 3(a) of the Protocol 2002 describes the responsibility of the employer to fulfill the requirement and to follow the processes for record keeping of the Occupational Accidents and Occupational Diseases.

⁷⁹ Article 11(d) of Convention No-155, 1981, states that “the competent authority or authorities shall ensure that the following functions are progressively carried out the holding of inquiries, where cases of occupational accidents, occupational diseases or any other injuries to health which arise in the course of or in connection with work appear to reflect situations where are serious.”

⁸⁰ Art.12, paragraph No. 1(c) of Labour Inspection Convention No-81, 1947.

⁸¹ www.ilo.org/wcmsp5/groups/public/---dgreports/---cabinet/documents/publication/wcms_099766.pdf, last accessed December 16, 2010.

⁸² Ibid.

1.2.10 Development of ILO Regulations and Standards at National and International Level

There have been a remarkable development of regulations and standards regarding numerous areas of OSH at national and international level and working conditions and environment get better in several parts of worldwide as witnessed in the past 90 years of the ILO.

However, several problems arise but sustained and synchronized actions are required to strengthen the reinforcement of the concerned mechanisms for continuous improvement of OSH systems at national and international levels. Estimation of ILO in 2008 specified that approximately “358,000 fatal and 337 million non-fatal occupational accidents” happened globally and “1.95 million” people have expired due to the job related diseases and the annual economic cost on these current crisis relating to occupational accidents is approximately determined as US\$ 5 billions.⁸³

For improving the OSH conditions globally and boosting the impact and the relevancy of accessible OSH related actions, mechanisms and tools have been devoted by the countless consideration of the ILO and its mechanisms. The drastic impact of the “Decent Work Agenda of 2001,” the reassessment of International Labour Standards concluded in 2002 as well as Standards relating activities of the OSH discussed at 91st Session of ILC in 2003 ended in an effective agreement that amplified recognition and consideration of

⁸³ ILO: “General Survey concerning the Occupational Safety and Health Convention No-155, 1981, the Occupational Safety and Health Recommendation No-164, 1981 and the Protocol of 2002 to the Occupational Safety and Health Convention, 1981, Report of the committee on the Application of the Conventions and Recommendations (articles of 19, 22 and 35 of the constitution).” Report III part IB, Geneva (2009), 272-75.

the OSH related issues were needed worldwide. The implementation of the “Global Strategy on OSH” resulted into the debate⁸⁴ and the approval of the Convention 187 was in response of the above-mentioned needs of OSH concerns. The widespread current data for analysis of international circumstances of the OSH plans that provided all relevant and useful guidance regarding the application of these OSH instruments in practice argued at the 98th Session of ILC. The Committee agreed on a collection of conclusions on the purposes of these Conventions, Recommendations and Codes of practice to develop a strategy for feat and provide process of directions to this result.⁸⁵

Efforts will be taken to include the report for the provisions of the “Seoul Declaration on Safety and Health at Work” standardized by the ILO with other social partners.⁸⁶

This whole scenario has directed the workers, employers and organizations to improve working situations and OSH. All these standards, laws and regulations provide guidance to the member states in setting their national laws and regulations and its applicability at work place. The Strategic policy Framework 2010-16⁸⁷ of ILO presents the framework for the current plan of action which aspires for improvement of OSH worldwide and motivates the social partners to make national policies and guidelines for development

⁸⁴<http://www.ilo.org/public/english/standards/relm/ilc/ilc91/pdf/pr-22.pdf>, last accessed on December 16, 2010.

⁸⁵http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_108370.pdf last accessed on December 16, 2010.

⁸⁶ “Seoul Declaration on Safety and Health at Work” adopted by the “Safety and Health Summit on the XVIII World Congress on Safety and Health in Seoul,” 29 June 2008. See, <http://www.seouldeclaration.org/>, last accessed on December 17, 2010.

⁸⁷ Plan of Action (2010-2016) lays stress to implement of the “Occupational Safety and Health Instruments (Convention No-155, its 2002 Protocol and Convention No-187).” See, http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/genericdocument/wcms_125616.pdf, last accessed on December 18, 2010.

and progress of OSH strategies of the ILO laws and standards. Main objectives and goals of this plan of action have created increasingly a global environment for awareness about the significance of OSH standards.

For promotion, advocacy and awareness raising plans will contain the global awareness movement activity such as “World Day on Safety and Health at Work” (April 28, 2010),⁸⁸ not only to initiate strong modes for maximum priority of OSH standards but also to elevate the preventative health and safety mores at national and international levels.

1.3 International Guidelines, Functions and Strategic plans of the WHO on OSH

The concept of OSH expanded globally and played a vital role for the OSH of the workers at healthy work place and environment. WHO has a far-reaching impact on the promotion of healthy working environment, worker’s health and awareness of healthy workplaces. Constitution of WHO also describes its objective that “the attainment by all people of the highest possible level of health.”⁸⁹

WHO is concerned with the regional and worldwide health crisis of the workers. It is one of the specialized agency of UN and also the leading health organization in the world managing health related issues on the global level.⁹⁰

⁸⁸ <http://www.ilo.org/safework/events/safeday/lang--en/index.htm> last accessed on December 18, 2010.

⁸⁹ <http://www.who.int/entity/governance/cb/constitution/en/> , last accessed on December 19, 2010.

⁹⁰ <http://www.who.int/about/history/en/> , last accessed on December 19, 2010.

Furthermore, the efforts have evolved to improve the health of the workers, to achieve best ideas for worker' safety and to provide best working circumstances are the main goals and objectives over time of the WHO.

Many key documents generated by the WHO as, "Ottawa Charter 1986,"⁹¹ Global Declaration on Occupational Health for All 1994,⁹² Global Strategy on Occupational Health for All 1996,⁹³ Jakarta Declaration on Health Promotion 1997,⁹⁴ Stresa Declaration on Worker' Health 2006⁹⁵ and Global Plan of Action on Workers Health 2007."⁹⁶

1.3.1 Scope and Concept of Occupational Health and Healthy Workplaces

Occupational health is directly related to workers' health and development of the health systems to improve workers' lives. WHO defined health as, "A state of complete physical, mental and social well-being and not merely the absence of disease."⁹⁷

⁹¹ Ottawa Charter for Health Promotion, First International Conference on health promotion," Ottawa, November 21, 1986. The concept of the health promotion is used as, "the process of enabling people to increase control over, and to improve, their health."

⁹² WHO, "Global Declaration on Occupational Health for All, 1994." Most important factor of declaration is that "Occupational Health" includes accident prevention (Health and Safety). See, http://www.who.int/occupational_health/publications/declaration/en/index.html, last accessed on December 20, 2010.

⁹³ WHO, Global Strategy on Occupational Health for All, 1996. It pointed out 3 main areas like, the importance of the using of workplaces, health promotion of the workers and to influence on worker' lifestyle factors as well. See, http://www.who.int/occupational_health/publications/globstrategy/en/index.html last accessed on December 20, 2010.

⁹⁴ WHO, "Jakarta Declaration on Health Promotion, 1978." See, <http://www.who.int/healthpromotion/conferences/previous/jakarta/declaration/en/index.html>, last accessed on December 21, 2010.

⁹⁵ WHO, "Stresa Declaration on Workers Health" has adopted by the "WHO Collaborating Centers in Occupational Health," Stresa, Italy, 2006. The declaration focuses on the health of the workers and specifically noted as, " There is increasing evidence that worker' health is determined not only by the traditional and newly emerging occupational health risks, but also by social inequalities such as employment status, income, gender and race, as well by as health-related behavior and access to health services, therefore, further improvement of the health of workers requires a holistic approach, combining occupational health and safety with disease prevention, health promotion and talking social determination of health and reaching out workers families and communities."

⁹⁶ WHO, "Worker's Health: Global Plan of Action, Sixteenth World Health Assembly," http://www.who.int/occupational_health/en/, last accessed on December 21, 2010.

⁹⁷ http://www.who.int/topics/mental_health/en/, last accessed on December 22, 2010.

Various definitions of healthy workplace include WHO' definition of health and have been developed over the past several years. After a lengthy process of debates and discussions upon healthy workplaces among professionals, globally and meetings of experts in this concerned area and scrutinizing the laws, strong and successful policies and programs of occupational health, healthy workers and healthy workplace have been legislated.

The Stresa Declaration of 2006, the Jakarta Declaration of 1997, the "Global Compact and the Global Plan of Action for Workers Health of 2007" have significant components when exertions are being composed for the creation of healthy workplaces and healthy workers.

Workplace is an appropriate premises or locations that provides to workers a place of work which includes any place within the premises or part of premises to which a person has right to use freely at work and any room, corridor, road, stairway or any other place make use of or access to or way out from the workplace.⁹⁸

WHO' definition of healthy workplace, however, envisages a broader range of considerations such as:

- * A healthy work place is one in which workers and managers collaborate to use a continual improvement process to protect and promote the health, safety and well-being of all workers and the sustainability of the workplace by considering the following, based on identified needs as,
- * health and safety concerns in the physical work environment, health,
- * safety, well-being concerns in the psychosocial work environment
- * including organization of work and workplace culture, personal health

⁹⁸ Jeremy Stranks, *Health and Safety at Work: Key Term* (Butterworth-Heinemann, Oxford Univ. Press, 2002), 198.

resources in workplace and ways of participating in the community to improve the health of workers, their families and other members of community.⁹⁹

The most important factor of this definition is prevention, i.e. to prevent from diseases, injuries and illnesses happens at workplace. The employer may also consider the word prevention, providing occupational health service to the employees under "personal health resource." The healthy workplace in the wider sense must contain health promotion and health protection.¹⁰⁰

The "WHO Regional Office for the Western Pacific" also presents elaborated definition of healthy workplace as under:

It describes that everyone should work together to attain goals of health, safety and welfare of the employees, it gives workforce to all members with conditions to promote health and safety and it also facilitate workers and managers to improve and increase their health to become strong and healthy.¹⁰¹

⁹⁹ http://www.who.int/occupational_health/healthy_workplaces/en/index.html, last accessed on December 22, 2010.

¹⁰⁰ Madi HH and Hussain SJ, "Health Protection and Promotion: Evolution of health promotion: a stand-alone concept or building on primary health care," *Eastern Mediterranean Health Journal* (2008): 14. See, http://www.emro.who.int/publications/emhj/14_S1/index.htm, last accessed on December 23, 2010.

¹⁰¹ WHO, "Regional Guidelines for the Development of Healthy Workplaces, WHO Regional Office for the Pacific," 1999 has defined the healthy workplace as, "A healthy workplace is a place where everyone works together to achieve an agreed vision for the health and well-being of workers and the surrounding community. It provides all members of the workforce with physical, psychological, social and organizational conditions that protect and promote health and safety. It enables managers and workers to increase control over their own health and to improve it, and to become more energetic, positive and contented." See, http://www.who.int/occupational_health/publications/en/, last accessed on December 23, 2010.

Various experts and professionals of the era have pointed out their distinctive works, concepts and definitions of healthy workplace. Grawitch MJ et al have written that the definitions of healthy workplace rely on the messenger. They assert that the workers' families consider as a central part of the healthy workplace based on preface of successful work-life balance interventions and work institute for health and productivity administration puts emphasis on the programs related to the health and welfare of the employees aimed at particular physical health risks, stresses on the task of organizational culture and utilize company growth and stock recital as secondary options for its efficiency and excellent performance.¹⁰²

Benach, Muntaner and Santana have established the concept of "Fair Employment" in their work for Employment Conditions Knowledge Network (EMCONET) to supplement the ILO's notion of decent work.¹⁰³

This concept of fair employment and the ILO' concept of decent work connected with the principles laid down and elevated by the Global Compact. The Global Compact' Principles connect with different ethics of business related to several human rights, environment protection, and fortification against corruption and labour standards.¹⁰⁴

¹⁰² Grawitch MJ et al, "Leading the healthy workforce: the integral role of employee involvement," *Consulting psychology Journal: Practice and Research* (2009).

¹⁰³ Benach J, Muntaner C, Santana V and Chairs, "Employment conditions and health inequalities. Employment Conditions Knowledge Network," *Final Report to WHO Commission on Social Determinants of Health* (2007). See, http://www.who.int/social_determinants/themes/employmentconditions/en/, last accessed on December 24, 2010.

¹⁰⁴ UN (United Nation) Global Compact describes ten Principles. See, <http://www.unglobalcompact.org/aboutthegc/thetenprinciples/index.html>, last accessed on December 24, 2010.

CHAPTER 2

LEGISLATIVE FRAMEWORK FOR OSH IN USA LEGAL REGIME

For the health and safety of the workers at workplace, USA has taken a number of legislative, protective and preventive measures.

2.1 Historical Background of OSH

The Occupational Safety and Health Act of 1970 of the United States created a new legislative era in the history of health and safety measures for the workers. In OSH, serious efforts were made to safeguard the workers from accidents, injuries and diseases occurred at the different workplaces.

The OSH Act was formulated to protect the complete work force from job related injuries, illnesses and casualties occurred at the workplaces. It was the first legislative measure which aimed at a law enforceable nationwide. It is the most important legislative achievement for the welfare of the workers at large scale in a decade. Policy tools and other procedural regulations provided for the systems safety at the workplaces were with the hazardous communication and chemical related operations.¹¹⁸

In the 19th century, industrial revolution increased the opportunities for the workers and laborers as more employees were hired by the businessmen to produce more goods for selling in the markets. However, the workers at that time were mostly unprotected on their jobs and suffered from health and safety hazards largely. In 1911, disaster happened

¹¹⁸ Sec.2 of the OSH Act, 1970.

such as the Triangle Shirtwaist Fire in which 145 workers were killed in the USA.¹¹⁹ In 1970, the National Safety Council (NSC) and the Public Health Service conducted a research, result of that was around 14,000 workers die of injuries, and 100,000 might be carried off by occupational illnesses every year. Every year, there were also 4 million new occupational illnesses and 2 million new disabling injuries, which were causing different types of disabilities in the workers.¹²⁰

Many standards setting institutions and organizations worked to control all possible problems regarding OSH in their jobs through the American National Standards Institute of 1926 and Industrial Health Foundation of 1935. It also created different medical associations like the American Occupational Medical Association of 1915, the American Industrial Hygiene Association of 1939 and the "American Conference of Government Industrial Hygienists of 1938" and the most significant step for public debate in the National Safety Council of 1913.¹²¹

Several movements started by the industrial unions brought many new leaders of the United Steelworkers, United Rubber workers as well as Chemical, Atomic and Oil workers. These leaders were very determined about the issue of health and safety and were aware of the potential as a central point for the rank-and-file dissatisfaction.¹²²

¹¹⁹ Berman, Daniel M, "Death on the Job," (New York: Monthly Review Press, 1978): 9.

¹²⁰ Ashford, Nicholas A, "Crisis in the Workplace," (Cambridge MA: Massachusetts Institute of Technology Press, 1976): 84, 92.

¹²¹ <http://www.osha.gov/history/index.html>, last accessed on December 30, 2010.

¹²² Weir and Stanley, "U.S.A: The labour revolt," in Maurice Zeitlin, ed. (American Society, Inc, 1970): 466-501.

These situations within the labour movements facilitated to formulate the policy development but they were insufficient steps in this regard.¹²³

In the meanwhile, a tragedy happened by the explosion at the Consolidate Coal Company's mine at Farmington, West Virginia and 78 miners died in 1968. This disaster activated the unions and the congressional action and a rank-and-file movement strengthened the United Mine Workers. Many miners protested against this disaster with wildcat strikes and marched in the West Virginia for the demand of protection.¹²⁴

The Congressional Democrats and President Johnson anticipated new safety and health legislation in 1968 and the united labour was halfheartedly in its support.¹²⁵

The last step for promulgation of the new Act was taken in 1969 when newly elected President Richard Nixon and the Republicans in Congress initiated new version of the bill of OSH. Labour Unions and their leaders motivated by the disaster and aghast at the opportunity of the weak Republican version passing and its result, forestalling federal actions for many years, put together the passage for actions of a strong OSH bill at their highest legislative preference.¹²⁶

¹²³ Donnelly and Patrick G, "The origins of the Occupational Safety and Health Act of 1970," *Social Problems* 30(1): 13-25.

¹²⁴ Mendeloff, John, "Regulating Safety," (Cambridge, MA: Massachusetts Institute of Technology Press, 1978): 17.

¹²⁵ Page, Joseph A and Marry-Win O'Brien, "Bitter Wages," (New York: Grossman 1973): 143.

¹²⁶ Andrew Szasz, "Industrial Resistance to Occupational Safety and Health Legislation: 1971-1981," *Social Problems* 32, no.2 (1984): 103-116. It was also stated in this article after the discussion between both bills in the Congress. The discussion on both the versions of legislation, the Republicans tried to limit the future regulatory agency's powers. This goal was supported by the industry to create an agency which would not do its research but depended on the research of the American National Standards Institute and supported weakening enforcement powers of OSHA. The second goal was to lobby for the creation of procedure to allow industry to include the agency's impact later in the new legislation. In this discussion, the industry fought for procedures that would compel OSHA to examine many hearings, drafts and debates before making an OSH standard and standard could be appealed to board and to courts.

However, the industry had historically made strategies to continue the relative issue of health and safety to end the policy agenda that had miserably failed. When they failed, industrial lobbyists could not press the “genie back into the bottle.”¹²⁷

After the long discussion, the Occupational Safety and Health Act was promulgated by the Congress in 1970. It was very close to the version of Democratic which was supported by the organized labour than to the Nixon’s version preferred by the industry. The Congress cooperated on some issues and compromised on some demands of industry. By passing this Act, the Congress declared its major objective “to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources.”¹²⁸

This Act created an organization of the Department of Labour namely OSHA.¹²⁹ It also established an independent OSHRC¹³⁰ to have powers of review the enforcement measures, cases and precedents as well as it set up a self-regulating research institute named as NIOSH.¹³¹

2.2 Current Statutory Regulations on OSH

The OSH Act of 1970 is the basic statutory federal law enacted by the Congress, which administers OSH in the private and government sector organizations in the USA. The most important purpose is to guarantee that the employers provide a working atmosphere

¹²⁷ Wilson, James Q, “The politics of regulation,” in James W. Mackie, (ed.) Social Responsibility and the Business Predicament, (Washington DC: The Brookings Institute, 1974): 135-168. He says in his writing that it is right when he says that “control over the public agenda” is “the decisive stage” in the social conflict over and above the concerned policy.

¹²⁸ United States Code, this Act titled as 29 in USC, Chapter- 15- 651(b).

¹²⁹ <http://www.osha.gov>, last accessed on December 30, 2010.

¹³⁰ <http://www.oshrc.gov>, last accessed on December 31, 2010.

¹³¹ [http:// www.cdc.gov/NIOSH/](http://www.cdc.gov/NIOSH/), last accessed on December 31, 2010.

which is free from all identified hazards like toxic chemicals, mechanical dangers, unsanitary conditions, heat or cold stress and excessive noise levels to the employees.

This Act was only passed to provide working conditions free of dangers and to prevent workers from accidents, injuries and illnesses at the workplaces. It is the incumbent obligation of the employers providing working conditions free from all hazards and dangers to the employees at the work.¹³²

2.3 Concept of Healthy Workplaces

The concept of healthy workplace was emerged in the USA by the initiative steps of the NIOSH. Work Life initiatives defined as follows:-

“Envisions workplaces that are free of recognized hazards, with health promoting and sustaining policies, programs and practices and employees with ready access to effective programs and services that protect their health, safety and well-being.”¹³³

The main objective of this work life initiative is to improve and maintain worker's health, safety and well-being through improved work based policies, practices and programs.

Various Surveys also mentioned that for American Companies, “reducing health care and insurance costs” was one of the important reasons for providing the better wellness programs to the employees.¹³⁴

¹³² Section 2 of the OSH Act, 1970.

¹³³ <http://www.cdc.gov/niosh/worklife/>, last accessed on December 30, 2010.

¹³⁴ Buck Survey, “Working well: A Global Survey of Health Promotion and Workplace Wellness Strategies: Survey Report by Buck Consultants” (2009).

Section 19 (a) (1) of the OSH Act of 1970 provides that it is the responsibility of head of each Federal Agency to provide Safe and Healthy workplaces which are consistent with the provisions laid down under Section 6 of this Act.¹³⁵

The well-known Corporate Health Achievement Awards plan which is supported by the "American College of Occupational and Environmental Medicine" confers prestigious awards to those organizations which fulfill the requirements and criteria for a healthy working environment. Health promotion and physical safety and health are the primary two areas to meet the criteria of the healthy workplaces.¹³⁶ For the workplace health promotion, the "Healthy People 2010" initiative describes two important goals:-

- First is to raise the proportion of the worksites presenting a detailed health promotion program to the employees; and
- Second is to enhance the proportion of the employees who take part in the health promotion programs.¹³⁷

2.4 Legislative Framework on OSH

The statutory framework of the USA regarding the OSH system provides many legislative steps to improve conditions of the workers regarding health and safety at

¹³⁵ Section 19 (a) (1) of the OSH Act, 1970 stated as, "It shall be the responsibility of the head of each Federal agency (not including the United States Postal Service) to establish and maintain an effective and comprehensive occupational safety and health program which is consistent with the standards promulgated under section 6. The head of each agency shall (after consultation with representatives of the employees thereof), provide safe and healthful places and conditions of employment, consistent with the standards set under section 6."

¹³⁶ American College of Occupational and Environmental Medicine, Guide to a Healthy Workplaces: Corporate Health Achievement Awards, no date. See, <http://www.chaa.org/application.htm> , last accessed on January 1, 2011.

¹³⁷ U.S Department of Health and Human Services, Healthy People 2010: Understanding and Improving Health and Objectives for Health, 2nd ed. (U.S Government Printing Office, 2000).

workplace. Different Acts on OSH are the landmark legislations which provide standards required to be enforced by the Federal Agency.

2.4.1 Standards of Occupational Safety and Health and Procedure for Promulgation

The Occupational Safety and Health Act of 1970 provide the standards and procedure for the promulgation of the OSH laws and regulations.

Section 3(8) of the OSH Act of 1970 defines the OSH Standard as under:

“Occupational Safety and Health Standard means a standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment.”¹³⁸

The Act speaks about two safety standards which will be promulgated by the Secretary, one is the “national consensus standard”¹³⁹ and the second is “established federal standard.”¹⁴⁰ These standards assure the strong protection of safety and well-being of the affected workers but the secretary will not promulgate the OSH standards for the

¹³⁸ Section 3(8) of the OSH Act 1970. See also 29 USC 652(8).

¹³⁹ Section 3(9) of the OSH Act 1970 explains it as, “national consensus standard” means “any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization under procedures whereby it can be determined by the Secretary that persons interested and affected by the scope or provisions of the standard have reached substantial agreement on its adoption, was formulated in a manner which afforded an opportunity for diverse views to be considered and has been designated as such a standard by the Secretary, after consultation with other appropriate Federal agencies.”

¹⁴⁰ Section 3(10) of the OSH Act 1970 states the definition as, “established Federal standard” denotes “any operative occupational safety and health standard established by any agency of the United States and presently in effect, or contained in any Act of Congress in force on the date of enactment of this Act.”

specially selected employees in case of conflict.¹⁴¹

For the promulgation of the OSH standards, the secretary will take suggestions from the "Advisory Committee" selected in the section 7 of the OSH Act 1970. He provides all relevant information to the Advisory Committee as well as to the "Secretary of Health and Human Services."¹⁴² It is the discretionary power of secretary to promulgate, modify or revoke any standard.¹⁴³

Section 6 (b) (5)¹⁴⁴ explains promulgation of the standards for the dangerous materials and for harmful physical agents, the secretary shall set out standards by taking the best available evidence regarding the matter that no employee will be diagnosed by any material impairment to health during the exposure of the hazards.

Section 6 (b) (7) also provides, standard suitable protective equipment, technological procedures to be used for the disclosure of the hazards and makes available all necessary measures for the employee exposure at every location, such standards may be essential

¹⁴¹ Section 6 (a) of the OSH Act 1970

¹⁴² Ibid, section 6 (b) (1)

¹⁴³ Ibid, section 6 (b)

¹⁴⁴ Ibid, Section 6 (b) (5) of OSH Act, 1970 expresses the details of the substances as: "The Secretary, in promulgating standards dealing with toxic materials or harmful physical agents under this subsection, shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life. Development of standards under this subsection shall be based upon research, demonstrations, experiments and such other information as may be appropriate. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws. Whenever practicable, the standard promulgated shall be expressed in terms of objective criteria and of the performance desired."

for the protection of the employees.¹⁴⁵

The secretary for the promulgation of the standards shall adopt the prescribed procedure in the 6 (b) of this Act.

Section 6(c) (1) states that the secretary shall take steps for the promulgation of the emergency temporary standards to be published in the Federal Register, if he determines that the employees are exposed to great danger from the exposure of the toxic materials, harmful physicals agents and determined new hazards and important for the protection of the employees from this grave danger.¹⁴⁶

Section 6(e) give details on the duty of the secretary under this Act that he shall promulgate any standard, formulate any rule, decisions and orders, permits any extension of time, compromises, exemptions, diminishes and settles any penalty and also submits rationale of the act published in the "Federal Register."¹⁴⁷

Section 6(g) asserts that the secretary shall give due consideration to the urgency of the necessity while determining priority for establishing rules and standards for the

¹⁴⁵ Section 6(b) (7) of the OSH Act 1970.

¹⁴⁶ Section 6(c) (1) of the OSH Act 1970 put emphasis as, "The Secretary shall provide, without regard to the requirements of chapter 15, title 5, Unites States Code, for an emergency temporary standard to take immediate effect upon publication in the Federal Register if he determines (A) that employees are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful or from new hazards, and (B) that such emergency standard is necessary to protect employees from such danger."

¹⁴⁷ Ibid, section 6 (e) describes as, "Whenever the Secretary promulgates any standard, makes any rule, order, or decision, grants any exemption or extension of time, or compromises, mitigates, or settles any penalty assessed under this Act, he shall include a statement of the reasons for such action, which shall be published in the Federal Register."

obligatory safety and health standards especially for industries, crafts activities, trades, work environments and place of employment.¹⁴⁸

The standards promulgated under this Act are only to provide safe and healthy working conditions for working people at the workplaces and working environment.

2.4.2 Statutory Standards for the Workers Rights and Employer Liability

The OSH Act of 1970 exclusively stipulates many standards for maintenance of the employer-employee relationship.

Section 3(5) of OSH Act, 1970 defines Employer as under:

“Person engaged in a business affecting commerce who has employees but does not include the United States or any state or political subdivision of a State.”¹⁴⁹

Section 3(6) has defined the Employee as:

“An employee of an employer who is employed in a business of his employer which affects commerce.”¹⁵⁰

The Act relates to the relationship of employers and workers in different domains like long shoring, manufacturers, law firms, labour unions and construction companies. It is necessary to state that the Act also sets up program for federal government

¹⁴⁸ Ibid, section 6 (g) affirms as, “In determining the priority for establishing standards under this section, the Secretary shall give due regard to the urgency of the need for mandatory safety and health standards for particular industries, trades, crafts, occupations, businesses, workplaces or work environments. The Secretary shall also give due regard to the recommendations of the Secretary of Health and Human Services regarding the need for mandatory standards in determining the priority for establishing such standards.”

¹⁴⁹ Section 3(5) of the OSH Act 1970.

¹⁵⁰ Ibid, section 3(6)

employees.¹⁵¹ It excludes family farms, employees of state and local government, self-employed persons, workplaces covered by other federal laws and federal agencies like “United States Postal Services.”¹⁵²

Section 5 of the OSH Act 1970 contains the “general duty clause.” This “general duty clause” imposes the following duty on employers:

“To furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees; to comply with occupational safety and health standards promulgated under this Act.”¹⁵³

Section 5(b) of the Act obligates the Employer as follows:

“To comply with occupational safety and health standards and all rules, regulations, and orders issued pursuant to this Act which are applicable to his own actions and conduct.”¹⁵⁴

Several rights have been awarded to the workers under this Act. Some of those are as follows:

- Employees are entitled to the working conditions which do not cause a danger of the serious harm.
- Workers have the right to submit the statement to any dangerous and hazardous conditions at the workplaces to the OSHA.¹⁵⁵

¹⁵¹ <http://www.dol.gov/compliance>, last accessed on January 2, 2011.

¹⁵² <http://www.osha.gov/Publications/3302-06N-2006-English.html>, last accessed on

¹⁵³ Section 5(a) of the OSH Act, 1970.

¹⁵⁴ Ibid, section 5(b).

¹⁵⁵ <http://www.osha.gov/workers.html>, last accessed on January 3, 2011.

When the worker reports to the OSHA and files a complaint to the OSHA, the inspector of the OSHA will carry out investigations regarding complaint.¹⁵⁶

Section 21 insists on the Training and Education of the employees and requires the implementation of training program after the “consultation with the Secretary and with other Federal Departments and agencies” in following manner:

- Conducting education programs and provides “qualified personnel” to achieve the best objectives of the Act.
- Organizing “informational programs” on the operation of the equipments relating to health and safety.¹⁵⁷

2.4.3 Non-Compliance of the Employer with the provisions of the Act

The OSH Act of 1970 also imposed penalties¹⁵⁸ upon the employers for the non-compliance of the statutory standards prescribed in the Act. Section 10(a) of the Act provides that the Secretary of the Labour will decide the total amount of the penalty and he will access and notify to the employer. Moreover, if the employer does not contest the assessment within 15 days, it “shall be deemed to be a final order of the Commission and will not be subject to review by any court or agency.”¹⁵⁹ The cases challenging the provisions of the Act on behalf of the employer in addition to an undue liability on the employer to provide evidence to his innocence have consistently disappointed. The

¹⁵⁶ www.osha.gov/as/opa/worker/complain.html, last accessed on January 4, 2011.

¹⁵⁷ Section 21(a) of the OSH Act, 1970.

¹⁵⁸ Section 17 of the OSH Act, 1970 deals with the penalties lies on the employers. Sec. 29USC 666.

¹⁵⁹ Section 10(a) of the OSH Act, 1970. See 29 USC 659(a).

employer who wishes to contest is entitled to hearing before any adverse deductive reasoning is imposed on him by the Secretary as a proof.¹⁶⁰

Hearings on the contested citations have conducted before the hearing examiner; such proceedings shall be reviewed by the Commissioner himself.¹⁶¹ The Commissioner is empowered by the act to announce an edict upon the record "affirming, modifying, or vacating the Secretary's citation or proposed penalty,"¹⁶² relating to evidence review by the OSHRC.¹⁶³ The Commissioner' powers to impose penalties discourage the employers from seeking review of the Commissioner.

Section 17 of the OSH Act of 1970¹⁶⁴ imposes penalties upon the employers if they willfully violate the conditions prescribed in Section 5 of the Act, order promulgated under the Section 6 of the Act and the regulations prescribed in this Act. A civil penalty may be charged of \$ 70,000 but it shall not be less than \$ 5,000.¹⁶⁵ The Commissioner is authorized to evaluate all the civil penalties by taking into consideration aptness of penalties, size of the business, the good faith of the employer, the gravity of the violation and history of the previous violations as well.¹⁶⁶

¹⁶⁰ Ibid, Sec. 10 (c), 29 U.S.C 659(c).

¹⁶¹ Ibid, Sec. 12 (j).

¹⁶² Ibid, Sec. 10 (c).

¹⁶³ Ibid, Sec. 11 (a).

¹⁶⁴ Section 17 also declares that if the employers found guilty and do not obey the provisions of the Act, then the Financial Penalties will be imposed. It put emphasis on employer in this section 17(a) as, "Any employer who willfully or repeatedly violates the requirements of section 5 of this Act, any standard, rule, or order promulgated pursuant to section 6 of this Act, or regulations prescribed pursuant to this Act, may be assessed a civil penalty of not more than \$70,000 for each violation, but not less than \$5,000 for each willful violation." Section 17(b) also put liability on the employees such as, "Any employer who has received a citation for a serious violation of the requirements of section 5 of this Act, of any standard, rule, or order promulgated pursuant to section 6 of this Act, or of any regulations prescribed pursuant to this Act, shall be assessed a civil penalty of up to \$7,000 for each such violation."

¹⁶⁵ Section 17(a) of the OSH Act, 1970.

¹⁶⁶ Ibid, Section 17(j)

2.5 Administration and management of an OSH System

The OSH Act establishes several systems of administration to administer the standards and regulations regarding the OSH system.

2.5.1 Occupational Safety and Health Administration (OSHA)

OSHA is the main federal agency of the United States Department of Labour (DOL) established by the OSH Act of 1970, to set out occupational safety and health standards and supervise the state compliance with the Act. Each state has the right to make its own laws and standards for health and safety at work only if the OSHA approves them.¹⁶⁷

OSHA is empowered to conduct inspections at the workplaces. Workplace inspections are conducted to ensure that the employers are complying with the set standards by providing safe and healthy workplace to the employees. Rights of employers in relation to the inspection of the workplace are enumerated in the Act.¹⁶⁸

The employers must fulfill the record keeping¹⁶⁹ requirements in order to keep OSHA record keeping¹⁷⁰ of job related illnesses, diseases and accidents updated and to maintain record of accidents, illnesses and the injuries at any time of the year in different forms.¹⁷¹

¹⁶⁷ <http://www.osha.gov>.

¹⁶⁸ Section 8(a) of the OSH Act, 1970 described the detailed procedure for inspection of any establishment.

¹⁶⁹ Section 8(c) (1) of the OSH Act, 1970 provides detailed procedure for record keeping.

¹⁷⁰ Standards-29 CFR 1910.440 for record keeping requirements under OSHA.

¹⁷¹ OSHA, "Record Keeping Requirements under the OSH Act of 1970," (U.S Department Labour (DOL), Bureau of Labour Statistics, 1983). The OSHA compliance of the record keeping should be retained in two forms as, "The Log and Summary (OSHA NO.200) implies only record of the illnesses and injuries and to make notes relating to the extent and outcome of every case. The Summary sheet may be applied to conform to the employer posting conditions. It also includes the total summary of the previous year's injuries and illnesses at the workplaces and the Supplementary Record (OSHA NO.101) requires the additional information about the recorded injuries. Many other records will be maintained regarding the

The goal of Hazard Communication standard¹⁷² is made certain that hazards of all the chemicals, toxic materials and harmful physical agents produced or imported in United States must be identified to provide all relevant information on the subject of preventive and protective actions to their workers at large extent.

Hazard Communication standard entails that the entire manufacturers, importers and distributors of the chemicals conduct hazards evaluation of the product in different ways. If the chemical product is to be dangerous and hazardous in the requirement of the OSHA standard then they will guarantee that the "material safety data sheets (MSDS)" has to be labeled on the appropriate containers of the substances with the consignment of the hazardous chemicals to an inexperienced customer.¹⁷³

The employer also ensures that for each hazardous chemical there must be MSDS. Employee's guidance and training to deal with the hazardous chemicals is essential to provide all important information about it and conducting the hazard communication programs is the responsibility of employer.¹⁷⁴

worker's compensation, insurance and reports to comply with all the requirements required on OSHA NO.101."

¹⁷² "Hazard Communication Standards, 29 CFR 1900.1200." See, http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=10099, last accessed on January 6, 2011.

¹⁷³ Ibid, 29 CFR 1900.1200(b) (1).

¹⁷⁴ OSHA, "Occupational Safety and Health Administration Hazard Communication: Final Rule, Federal Register, 29 CFR parts 1910, 1915, 1917, 1918, 1926 and 1928, 1987." See, <http://www.osha.gov>, last accessed on January 8, 2011.

A comprehensive standard developed by the OSHA on Personal protective equipment,¹⁷⁵ for each industry separately wants that the employers provide the “Personal Protective Equipment (PPE) designed for the protection and safety of the employees from dangerous hazardous materials without any cost to the employees. PPE includes wide range of the equipments to safeguard the employees from the injuries occurred at the workplaces during the course of work like protective clothing, helmets preventing head wounds at the workplace, exclusive safety glasses for the welders and long cuff gloves for the iron workers.”¹⁷⁶

The test method of the PPE provides different protective materials to safeguard the workers from hazardous materials described as, “Totally-encapsulated chemical protective suit (TECP suit)”, and “Protective clothing material” and “Gas tight.”¹⁷⁷

Section 19(a) (2) of the OSH Act of 1970 implies to provide all the PPE to the employees for their protection from hazards.¹⁷⁸

¹⁷⁵ “Standards- 29 CFR-1910.132” provides detailed standards of PPE. 29 CFR-1910.132 (a) asserts as, “Application. Protective equipment, including personal protective equipment for eyes, face, head, and extremities, protective clothing, respiratory devices, and protective shields and barriers, shall be provided, used, and maintained in a sanitary and reliable condition wherever it is necessary by reason of hazards of processes or environment, chemical hazards, radiological hazards, or mechanical irritants encountered in a manner capable of causing injury or impairment in the function of any part of the body through absorption, inhalation or physical contact.” See, http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=9777, last accessed on January 10, 2011.

¹⁷⁶ http://www.osha.gov/dcsp/compliance_assistance/index.html, last accessed on January 10, 2011.

¹⁷⁷ “Standards-29CFR-1910.120 App A” explains “Personal protective equipment test methods.” See, http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=9766, last accessed on January 10, 2011.

¹⁷⁸ Section 19(a) (2) of the OSH Act, 1970 states as, “to acquire, maintain, and require the use of safety equipment, personal protective equipment, and devices reasonably necessary to protect employees.”

“Standards 29 CFR 1910” explains the “Occupational Safety and Health Standards” which provide wide-ranging provisions for the wellness of the workers at work.¹⁷⁹

The relevant standards and regulations issued by the OSHA from “29 CFR Parts 70 to 2400” cover a broad range of the prescribed standards on the subject including the safety standards, health standards, statistical data of the occupational injuries and diseases at work, standards for PPE and criteria for assessment of penalties.

2.5.2 National Institute of Occupational Safety and Health (NIOSH)

NIOSH¹⁸⁰ was formed by the OSH Act of 1970, responsible for handling research and formulating recommendations for the health and safety of the workers preventing them from work related injuries and illnesses. This federal agency is a main branch of the “Center for Diseases Control and Prevention (CDC)” in the “Department of Health and Human Services” to carry out policy lay down in Section 2 of the OSH Act.¹⁸¹

“Section 22 of the OSH Act of 1970” authorizes NIOSH to develop any recommended standards of OSH¹⁸² and manage research and experimental programs for the progress of the improved criteria for OSH and make recommendations for these new and improved criteria of the OSH.¹⁸³ It is the responsibility of the NIOSH is to maintain adequate

¹⁷⁹http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=9696, last accessed on January 11, 2011.

¹⁸⁰ Section 22 of the OSH Act, 1970 created a federal agency. See 29 USC 671.

¹⁸¹ Ibid, section 22 (a).

¹⁸² Section 22 (c) of the OSH Act, 1970.

¹⁸³ Ibid, section 22 (d)

figures of the OSH professionals and researchers by creating, strengthening and developing special training grant program¹⁸⁴ and the educational program.

NIOSH extends and evaluates the prevention measures like the Personal Protective Equipment (PPE), work practices and control technology by identifying risks at the workplaces. It also provides worker's health programs and charts by evaluating the epidemiological analyses at the work place and effective training programs for the workers.¹⁸⁵

The NIOSH Strategic Plans (2004-2009) for the compliance of the OSH are assembling for institutional objectives and allocating resources. The Institute has three objectives¹⁸⁶ such as, "To conduct research to reduce work-related illnesses and injuries; to enhance global workplace safety and health through international collaborations; to promote safe and healthy workplaces through interventions, recommendations and capacity building."

In 1996, the NIOSH and its partners established a comprehensive program recognized as the "National Occupational Research Agenda (NORA)"¹⁸⁷ to meet the demand of new research on the OSH conditions. The first step is taken in a broader meaning to coordinate research on the OSH at the workplaces.

¹⁸⁴ Ibid, section 22 (g)

¹⁸⁵ Worker Health Chart book, (2004). See, <http://www.cdc.gov/niosh/docs/2004-146/ch2/ch2-12.asp.htm> last accessed on January 12, 2011.

¹⁸⁶ NIOSH, NIOSH Strategic Plan Outline 2004-2009. See also, <http://www.cdc.gov/NIOSH>, last accessed on January 16, 2011.

¹⁸⁷ Rosen stock L, Olenec C and Wagner GR, "The National Occupational Research Agenda: a model of broad stakeholder input into a priority setting," *Am J Public Health* 88: 353-56.

NIOSH work life Initiatives¹⁸⁸ provide not only protection to the workers in the workplace but also raise awareness of healthy workplaces by sustaining and developing better work- related programs, practices and policies for the OSH.

The Health Hazard Evaluation (HHE) program conducted the workplace assessments to find whether these materials put effect on the physical condition of the employees while they are working with the hazardous chemicals and materials.¹⁸⁹

It is important for the NIOSH to develop a strategy to conform to the mandatory stipulations of the OSH Act of 1970 and to inspect and investigate the occupational hazards which are reported by the workers. The “Secretary of the Health and Human Services” is empowered under the Act to perform the following functions:

“Following a written request by any employer or authorized representative of employees, to determine whether any substance normally found in the place of employment has potentially toxic effects in such concentrations as used or found.”¹⁹⁰

Employers’ responsibility and liability is to cooperate with the NIOSH officials when they are ready to do an evaluation of the hazards.¹⁹¹

2.5.3 Occupational Safety and Health Review Commission (OSHRC)

“Section 12 of the OSH Act of 1970” created OSHRC to take decisions on the contest of act or process of citing referred to precedents and penalties imposed by the OSHA officials during their inspection of the workplaces.

¹⁸⁸ <http://www.cdc.gov/niosh/worklife>, last accessed on January 17, 2011.

¹⁸⁹ <http://www.cdc.gov/niosh/hhe/HHEprogram.html>, last accessed on January 18, 2011.

¹⁹⁰ Section 20(a) (6) of the OSH Act of 1970.

¹⁹¹ <http://www.cdc.gov/niosh/hhe/HHEprogram.html#protect>, last accessed on January 19, 2011.

Review Commission is operated as an administrative court with the legally recognized standards and carrying out hearings of the parties, recording evidence of the parties and announcing judgments by its "Administrative Law Judges (ALJs)" appointed by the Review commission.¹⁹²

The rules of procedure are provided under this Act provides two-steps of the adjudications. The first step is related to the hearing before ALJs and the next step is to review the decision of the ALJs by Commissioner of agency in the Washington if one party files the new review petition.¹⁹³

The "Occupational Safety and Health Review Commission Strategic Plan (Revised) (2000-2005)" of 2000 proposed consistency with the Government Performance and Results Act (GPRA) requirement to enforce the agencies to review and renew their all-strategic plans after 3 years.¹⁹⁴

OSHA Review Commission¹⁹⁵ highlighted the standards concerning review commission. It prescribed the provisions regarding the pleadings, hearing procedures, settlement judge procedures and review of judges' decisions.

¹⁹² <http://www.oshrc.gov/index.html>, last accessed January 18, 2011.

¹⁹³ <http://www.oshrc.gov/about/how-oshrc.html>, last accessed on January 19, 2011.

¹⁹⁴ http://www.oshrc.gov/strategic/strategic_2000-2005.html last accessed on January 19, 2011.

¹⁹⁵ Standards-29 CFR 2200. See, http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=11388, last accessed on January 20, 2011.

2.6 Comprehensive work of OSHA and NIOSH on Hazardous Materials,

Occupational Diseases and Injuries

OSHA and NIOSH ensure healthy and safe working conditions for the employees by setting and enforcing regulations and standards to control harmful hazardous materials, chemical exposures, physical and biological hazards and occupational diseases and injuries.

Standards- 29 CFR 1910 subpart H provides guidelines and information about the Hazardous Materials which are commonly presented forms of the Hazardous Materials like compressed gases,¹⁹⁶ Acetylene,¹⁹⁷ Hydrogen,¹⁹⁸ Oxygen,¹⁹⁹ Nitrous oxide,²⁰⁰ Flammable and combustible liquids,²⁰¹ and explosives and blasting agents.²⁰²

¹⁹⁶ Standards-29 CFR 1910.101 and 29 CFR 1910.101(b) defines the "Compressed Gases" as, "The in-plant handling, storage, and utilization of all compressed gases in cylinders, portable tanks, rail tank cars, or motor vehicle cargo tanks shall be in accordance with Compressed Gas Association Pamphlet P-1-1965, which is incorporated by reference as specified in Sec. 1910.6." See, http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=9747, last accessed on January 21, 2011.

¹⁹⁷ Standards-29 CFR 1910.102 and 29 CFR 1910.102(a) defines as, Cylinders. Employers must ensure that the in-plant transfer, handling, storage, and use of acetylene in cylinders comply with the provisions of CGA Pamphlet G-1-2003 ("Acetylene") (Compressed Gas Association, Inc., 11th ed., 2003).

¹⁹⁸ Standards-29 CFR 1910.103 explains different forms of hydrogen. See, http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=9749, last accessed on January 22, 2011.

¹⁹⁹ Standards-29 CFR 1910.104 expresses the definition of the various forms of oxygen. See, http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=9750, last accessed on January 22, 2011.

²⁰⁰ Standards-29 CFR 1910.105.

²⁰¹ Standards-29 CFR 1910.106.

²⁰² Standards-29 CFR 1910.109. See, http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=9755, last accessed on January 23, 2011.

List of the “Highly Hazardous Chemicals,” Toxics agents and Chemical Reactive describes all the relevant hazards.²⁰³

Chemical safety from the hazardous chemicals and toxic substances, detailed regulations and standards asserted by the OSHA and health effects information exposed to number of hazardous chemicals by the NIOSH.

“Benzidine-based chemical substances: significant new uses of certain chemical substances: Final Rule of 1996²⁰⁴, Final Rule-Toxic Substances Control Test Guidelines of 2000,²⁰⁵ Methylene chloride: Final Rule of 1998²⁰⁶ and Hazardous Waste Operations and Emergency Response: Final rule of 1994²⁰⁷ established guidelines and procedures regarding the issue concerned.

Standards – 29 CFR 1910 subpart Z describes the standards for the toxic and hazardous substances. A detail of these substances imparted in the OSHA regulations.²⁰⁸

NIOSH contains cumulative list of the Chemicals and provide the database information of the chemicals on the “reactivity, explosiveness and other physical properties.”²⁰⁹

²⁰³ Standards-29 CFR 1910.119 App A. See, http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=9761, last accessed on January 24, 2011.

²⁰⁴ <http://www.federalregister.gov/articles/1996/10/07/96-25650/benzidinebased-chemical-substances-significant-new-uses-of-certain-chemical-substances>, last accessed on January 28, 2011.

²⁰⁵ <http://cfr.vlex.com/vid/799-tsca-acute-oral-toxicity-19834216>, last accessed on January 29, 2011

²⁰⁶ Standards-29 CFR Part 1910.

²⁰⁷ Standards-29 CFR 1910/1926.

²⁰⁸ Standards-29 CFR 1910 subpart Z. See,

http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=10147, last accessed on January 30, 2011.

²⁰⁹ <http://www.cdc.gov/niosh/topics/chemical-safety/>, last accessed on February 2, 2011.

“International Programme on Chemical Safety (IPCS),” ILO, WHO and NIOSH developed a project by a joint venture called “International Chemical Safety Cards (ICSCs).” The ICSCs sum up information relating to the dangerous chemicals which are used at the “shop floor” leveled by the employers and workers at their workplaces.²¹⁰

--- Many life-threatening occupational diseases have been developed including Asbestos,²¹¹ Cancer,²¹² lung Cancer,²¹³ Tuberculosis,²¹⁴ Respiratory Disease, ²¹⁵ Asthma and Allergies.²¹⁶

There are many occupational diseases²¹⁷ relation to occupational health and safety at workplaces but only a few of them has been mentioned here which are common diseases and are more harmful to the worker's health.

²¹⁰ <http://www.cdc.gov/niosh/ipcs/ipscard.html> , last accessed on February 2, 2011.

²¹¹ Standards-29CFR 1910.1001 applies to the exposure of the asbestos. See, http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=9995, last accessed on . NIOSH also explains information on asbestos for the welfare of the employees at work. See, <http://www.cdc.gov/niosh/docs/81-123/pdfs/0041.pdf>, last accessed on February 3, 2011.

²¹² Cancer is a bundle of different diseases, and there are many factors causing cancer. See, <http://www.cdc.gov/niosh/topics/cancer/>, last accessed on February 2, 2011. Many agencies and organizations provide different rules and information to safe the workers from chronic disease of cancer like “American Cancer Society, National Cancer Institute and University of Pennsylvania Cancer Center.” Carcinogens is a source of the Cancer disease, OSHA assert standards on Occupational Safety and Health Standards – Carcinogens, 1974 Code of Federal Regulations, Title 29, Chapter 17, Part 1910 Occupational Safety and Health Standards 39, no.20 (Washington, D.C., USA): 3755-97.

²¹³ The Work-Related Surveillance Report, 2002 provide information about lung cancer. See, <http://www.cdc.gov/niosh/docs/2003-111/2003-111.html>, last accessed on February 3, 2011.

²¹⁴ Tuberculosis is a contagious and life- threatening disease. Regulations deals with the recognized risk to the life of the workers See, <http://www.cdc.gov/niosh/topics/tb/> , last accessed on February 3, 2011.

²¹⁵ OSHA standards 29 CFR Part 1926 affirm the Respiratory Protection; Final Rule, 1998 that put emphasis on respirators and the health and safety training. NIOSH Occupational Respiratory Disease Surveillance that provide systematic collection of data of the workers for detecting the health problem relating to respiratory disease. See, <http://www.cdc.gov/niosh/topics/surveillance/ORDS/>, last accessed on February 4, 2011.

²¹⁶ <http://www.cdc.gov/niosh/topics/asthma/OccAsthmaPrevention.html>, last accessed on February 4, 2011.

²¹⁷ Details of all the occupational diseases relating to OSH are available on the NIOSH. <http://www.cdc.gov/niosh/topics/>, last accessed on February 4, 2011.

Occupational Radiation Protection: Final Rule of 1998 explains the permissible radiation, measured quantity, radiation monitoring and safety standards on radioactive sources.²¹⁸

OSHA and NIOSH highlighted the concerned issue with detailed standards and regulations relating to hazardous materials, chemical safety and occupational injuries to safeguard the workers at workplace.

2.7 Data Sources for Collection of Statistics of Occupational Diseases and Injuries

Two significant methods are used for evaluating the statistical data of the "Occupational Fatalities." Reliable and accurate data is acquired by the "Census of Fatal Occupational Injuries (Fatality Census)" retained and calculated by the "Bureau of Labor Statistics (BLS)."²¹⁹

The Fatality Census makes comparison to progressions of the registers and calculates the reported "Occupational Fatalities" registered at least in two major systems. The "National Traumatic Occupational Fatality (NTOF)" sustained and collected by the NIOSH for the collected of statistical data from the several countries by the death certificate is the

²¹⁸ OSHA affirms standards to the regulatory-based requirement of the radiation protection by the Occupational Radiation Protection: Final Rule, 1998. See, http://www.ilo.org/dyn/cisdoc/cisdoc_legosh.view_record?p_mfn=75329&p_ctry=usa&p_lang=E, last accessed on February 6, 2011.

²¹⁹ Toscano GA, Derstine B, Jack T, Kanestant A, Windau J and Zak M, "Fatal workplace injuries in 1993: A collection of data and analysis," (Washington, D.C. U.S Bureau of Labour Statistics. 1995).

exclusive data basis.²²⁰ The death certificates are the chief source of the “Fatality Census” and NTOF system which underestimate the evaluation of “Occupational Fatalities.”²²¹

In 2008, the current rate of the Fatal Injuries²²² in USA was 3.6 fatal work related injuries but the fatal work related injuries rate in 2007 was 4.0, up from the final rate in 2008.²²³ The most quoted data source in the USA is the “BLS Annual Survey Occupational Injuries and Illnesses (Annual Survey),”²²⁴ this Survey was relied on the extort model for the private firms. The latest figures of the occupational injuries can be resulted from the sources such as the Annual Survey and Reports of National Council on Compensation Insurance 1992-93.²²⁵

“Census of Fatal Occupational Injuries (CFOI)”²²⁶ published facts on the Occupational Injuries “annually with a one-time revision of the data approximately eight months after the initial release.”

Non-Fatal Occupational Injuries and Illnesses provide all the relevant information and data of the workers who suffered into non-fatal illnesses and diseases.²²⁷

²²⁰ National Institute for Occupational Safety and Health (NIOSH), Fatal injuries to workers in the United States, 1980-1989. See, <http://www.cdc.gov/mmwr/preview/mmwrhtml/00032345.htm>, last accessed on February 8, 2011.

²²¹ Ruble R, “An evaluation of certificates of death as a source of data on fatal work injuries the Indiana Experience. In: US Department of Labour. Fatal workplace injuries in 1991: a collection of data and analysis,” 30 (Washington, D.C. U.S Bureau of Labor Statistics, 1993):3.

²²² <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5613a1.htm>, last accessed on February 8, 2011.

²²³ www.bls.gov/iif/oshcfoi1.htm, last accessed on February 10, 2011.

²²⁴ <http://www.bls.gov/iif/>, last accessed on February 10, 2011.

²²⁵ National Council on Compensation Insurance, Workers compensation experience countrywide: Ultimate report basis exhibit 5B. Boca Raton, Florida: “National Council on Compensation Insurance” 1992-93.

²²⁶ <http://stats.bls.gov/iif/oshcfoi1.htm>, last accessed on February 11, 2011.

²²⁷ <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5616a3.htm>, last accessed on February 12, 2011.

“NIOSH Fatality Assessment and Control Evaluation (FACE)” plan started in 1982 with the objectives and goals to make available the access of the fatality investigation reports for the users.²²⁸

OSHA constructed regulations and standards for recording of injuries and illnesses completing the requirement of the reporting in the standard called as, “Occupational Injury and Illness Recording and Reporting Requirements- Final Rule, 2002.”²²⁹

2.8 Worker’s Compensation

Various changes came about in the environment of accidents in the workplace united to draw employers and the employee’s interests in ascertaining the workers’ compensation. The contribution of the workforce in the unsafe and precarious industries increased a series of employer’s liability laws adopted by the legislature. Many of the employers faced actions to raise their accident liability and against indecision for future changes in their liability, favored the approval of the worker’s compensation in 1910.²³⁰

Employer’s obligation to compensate the workers was firstly established by the common law rules²³¹ of the negligence. The burden of proving the allegation was on the employee. In order to get the accident compensation he has to prove that his employer was unsuccessful to provide “due care” in protecting the worker from the accident occurred

²²⁸ <http://www.cdc.gov/niosh/face/default.html>, last accessed on February 13, 2011.

²²⁹ “Standards- 29 CFR Parts 1904 and 1952” concerned on “Occupational Injury and Illness Recording and Reporting Requirements- Final Rule, 2002.” See, http://www.osha.gov/FedReg_osha_data/FED20010119.html, last accessed on February 14, 2011.

²³⁰ Lubove, Roy, “Workmen’s Compensation and the Prerogatives of Voluntarism,” *Labor History* 8, (1967): 254-79.

²³¹ Shawn Kantor and Price Fishback, “Non-fatal Accident Compensation and the Common Law at the Turn of the Century,” 11(J. L., Econ and Org. 406, 1995).

and employer was liable to cause the injury due to his negligence²³² prior to the worker's compensation.

Worker's compensation included following two elements of compensation:

- Worker's compensation enhanced the fair amount of the post accident payments that the injured worker would receive and the worker's compensation increased expected post accident payments between 75 to 200 percents approximately.
- Worker's compensation fundamentally permitted to enter into a "contract" in which the workers waived their right to take action against the employer in case of injury at the job in lieu of their benefits during job.²³³

Section 27 of the OSH Act of 1970 copes with the standards of the "National Commission on State Workmen's Compensation Laws." It provides "basic economic security" to the American workers who suffered in "disabling injury or death" as well as they will be compensated not only by establishing a complete system of the worker's compensation but also to formulate effectual program on OSH.²³⁴

The important rationale of the section 27 is to sanction vital analysis and "objective evaluation of the State workmen's compensation laws"²³⁵

²³² William Landes & Richard Posner, "The Economic Structure of Tort Law" 85-87, 1987.

²³³ Price Fishback & Shawn Kantor, "Did Workers Pay for the Passage of Workers' Compensation Laws?" 110 Q. J. Econ, 713 (1995), The Origins of the Workers' Compensation in the United States, chapter. 3, (1998).

²³⁴ Section 27 (a) (1) (A) of the OSH Act, 1970.

²³⁵ Section 27 (a) (2) of the OSH Act, 1970.

It can be summarized that:

- I. The OSH Act of 1970 formulated standards to prevent hazards and chemicals exposures providing procedural framework for OSH at workplace.
- II. OSHA standards "29 CFR Parts 70 to 2400" covered a broader range of regulations to resolve the issue of OSH.
- III. NIOSH coped with plans of research by conducting training and educational programs to make awareness to the workers for their health and safety.
- IV. OSHRC administrated rule of law to enforce the strategic regulations and also provide justice to the workers.

Health and Safety Laws in USA are better equipped to make appropriate measures for the well-being of the workers.

CHAPTER 3

NATIONAL LEGISLATIVE AND POLICY FRAMEWORK ON OSH

The national context for OSH is elaborated and explained by the constitutional will and obligation, international commitments and framework of the labour policy and prescribed labour laws.

3.1 Constitutional Commitments

The constitution of the Islamic Republic of Pakistan sets out fundamental rights and the state is responsible for the protection of these rights. It is obligatory on the state to institute a system which based upon the principles of social and distributive justice, fair economic privilege, social protection and personal development.²³⁶ The Constitution particularly obliges to the state to ensure abolition of entire shapes of exploitation and implementation of the primary principles for everyone in keeping his ability to settlement at his employment.²³⁷

The State is specially implored to provide for guiding policy and governance structure to achieve compliance with “just and humane conditions of work” in the employment.²³⁸ In a broader perspective, the Constitution and the national institutions focuses on an inclusive economic growth and social progress by adopting policies to discourage

²³⁶ The Constitution of Islamic Republic of Pakistan, 1973, updated as of 2001 (herein after referred to as a Constitution) Art. 2-A.

²³⁷ Ibid, Art.3.

²³⁸ Ibid, Chapter.2, Principles of Policy, Art.35 and 37(e).

concentration of wealth, resources of production and distribution in a few hands. This puts forward equitable adjustment of rights between employer and the worker, decent working circumstances and safeguard against infirmity, sickness and unemployment.²³⁹

The task of national planning and economic coordination has been delegated to the federal government by guaranteeing the coordination of these objectives and direction of the policies.²⁴⁰ Its executive power expands to all matters on which the parliament can formulate laws.²⁴¹ The Article 70(a) when read with the Fourth Schedule of the Constitution, authorizes the federal government on the relevant issues like welfare of the labour, decent working conditions, health and safety, employer's liability and workmen's compensation.²⁴²

These are substantive thresholds for the providence of rights to individual and efficient governance enforced by the process of law. The specific reference to the adjustment between the rights of the employers and employees, decent working conditions, health and safety, employer's liability and workmen's compensation may bring out constitutional resolve for the assurance to get all these rights for the protection of the workers at large scale.

3.2 Laws of Occupational Safety and Health in Pakistan

In Pakistan, the term OSH enshrined in the Chapter III of Factories Act of 1934 and provided regulations of health and safety for the workers at their working environment.

²³⁹ Ibid, Art. 38.

²⁴⁰ Ibid, Fourth Schedule, Part-I Federal Legislative List, Serial 32.

²⁴¹ Ibid, Art.97.

²⁴² Ibid, Fourth Schedule, Part-I and Concurrent Legislative List Serial 26,27,28,30 and 31.

The Labour Laws in Pakistan broadly incorporate the concept of the OSH system and try to meet the standards envisaged in the international standards but current scenario does not meet the situation exists in the OSH.

The OSH policy in Pakistan emphasized in the national labour laws that governs manufacturing and mining industries. Every business involving manufacturing activities followed by the prescribed OSH rules and standards and the management in these businesses strictly complies with the rules of OSH.

The legal requirement for the very commencement of the business, prior notice to the inspector in the Section 9 of The Factories Act of 1934 is conditioned regarding the sort of the work process and number of the workers employed and physical facilities conferred them for the business.²⁴³ This assists the public authorities to ascertain the special and general OSH prerequisites in a specified case.

The general principles for all the businesses operations i.e. manufacturing are entailed to be conducted under the healthy and safe circumstances. Section 13-22 of The Factories Act of 1934 are provisions specifically focused on the Health and Safety for adequate arrangement of Cleanliness,²⁴⁴ Disposals of wastes and effluents,²⁴⁵ Ventilation and

²⁴³ Section 9 of The Factories Act, 1934. Section 9 (1) explains the requirement as, "Before work is begun in any factory after the commencement of this Act, or before work is begun in any seasonal factory each season, the occupier shall send to the Inspector a written notice containing; the name of the factory and its situation, the address to which communications relating to the factory should be sent, the nature of the manufacturing processes to be carried on in the factory, the nature and amount of the power to be used, the name of the person who shall be the manager of the factory for the purposes of this Act and such other particulars as may be prescribed for the purposes of this Act."

²⁴⁴ Ibid, Section 13.

²⁴⁵ Ibid, Section 14.

Temperature,²⁴⁶ "Dust and Fume,"²⁴⁷ Artificial Humidification,²⁴⁸ Overcrowding,²⁴⁹ Lighting,²⁵⁰ Drinking Water"²⁵¹ and Precautions against contagious or infectious occupational disease.²⁵² Some special provisions relating to safety facilities have been prescribed in the Hazardous Occupations (LEAD) Rules of 1963 relating to chemical, mechanical and Hazardous processes at work. The Hazardous Substances Rules of 2003 made provisions of the treatment, transportation, collection, storage and importation of the hazardous substances.

Schedule of the Provincial Employees' Social Security (Occupational Diseases) Regulations of 1967 provided the List of prescribed diseases like Anthrax, Twister' cramp, Occupational Asthma, asbestosis and pneumoconiosis. Schedule III of the "Workmen's Compensation Act of 1923" also describes the detailed list of occupational diseases.

Management in these situations is obligated to provide Safety Mechanism and Equipment to the employees under Section 26, 27, 29-33-G and 33-Q (4) with a view to lessen harm to their health and to reduce risk of accidents.²⁵³ Administratively, a structure of reporting of accidents²⁵⁴ and medical check-up of the employees on monthly basis either they

²⁴⁶ Section 15 of The Factories Act, 1934.

²⁴⁷ Ibid, Section 16.

²⁴⁸ Ibid, Section 17.

²⁴⁹ Ibid, Section 18.

²⁵⁰ Ibid, Section 19.

²⁵¹ Ibid, Section 20.

²⁵² Ibid, Section 23.

²⁵³ Ibid, Section 26, 27, 29-33-G and 33-Q (4) provide safety gear and equipment to the employees as such, "fencing of machinery, striking gear and devices for cutting of power, hoists and lifts. pressure plant, protection of eyes and hazardous operations."

²⁵⁴ Ibid, Section 33-N gives explanation of the notification of the matter concerned with accidents as, "Where in any factory an accident occurs which causes death, or which causes any bodily injury whereby

suffered in "contagious and infectious diseases" or not by issuing "Hygiene Card"²⁵⁵ establishing by the management at every workplace.

Qualifications of the medical Advisor stipulated in the Provincial Employees' Social Security (Medical Advisor' Qualifications) Rules of 1966.

Risk and accident factors relating to preventing and controlling danger to the health of workers' and guarantee of compliance with the statutory provisions by the management investigated by the government' inspector.²⁵⁶

Section 11 of The Factories Act of 1934 awarded powers to the inspector to look into the threshold of OSH. The inspectors are authorized under the prescribed rules of OSH to check the workplaces and to guarantee compliance of the rules and standards of OSH.

The law particularly retained that every director of the defaulting company is answerable for the contravention of the OSH guidance and directives.²⁵⁷ By taking particular health and safety precautions, the management is to ensure that all the employees specifically understand the significance and procedures of sustaining OSH rules within the enterprise. This is to be achieved through dissemination of concerned information and posting of indispensable health and safety instructions of the workplaces.²⁵⁸

any person injured is prevented from resuming his work in the factory during the 48 hours after the accident occurred, or which is of any nature which may be prescribed in this behalf. the manager of the factory shall send notice thereof to such authorities, and in such form and within such time, as may be prescribed."

²⁵⁵ Section 23 and 23-A of The Factories Act, 1934.

²⁵⁶ Section 10 and 11 of The Factories Act, 1934.

²⁵⁷ Ibid, Section 70.

²⁵⁸ Ibid, section 25(7) and 76.

Section 60-69 of The Factories Act, 1934 imposed penalties and describes procedure for imposing the penalties for the non-compliance of the rules and regulations of the Act to the both manager and occupier.

3.3 Worker's Compensation and Employer's Liability

The Workmen's Compensation Act of 1923 expresses rules and standards to compensate the employees and to fulfill the liability of the employers as well.

"Section 2(e) of this Act" defines the employees as under:

Employee includes any body of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer, and, when the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, means such other person while the workman is working for him.

The term employer also includes a body of the persons, which is incorporated or not, "legal representatives of a deceased employer," a person obtained for the purpose to perform duties of the workman treated as an employer as well as the "managing agent of the employer."²⁵⁹

Section 2 (1) (n) read with the Schedule-II covered the definition of the workman and included the list of persons that comes in the ambit of the workman.²⁶⁰

²⁵⁹ Section 2(e) of The Workmen's Compensation Act, 1923.

²⁶⁰ Section (1) (n) and Schedule II extended the "list of persons."

Section 3 enlightens the Employers' Liability for Compensation as:

"If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this chapter."²⁶¹

If an employee during his employment and work has contracted, any kind of the occupational diseases mentioned in Schedule III peculiar to the employment, he will be awarded lump sum amount of the compensation.²⁶²

Section 4 read with Schedule IV explains the total sum of compensation awarded to the employees as under:

- When the death of the employee occurs, the receipt of the monthly wages falls in the ambit of the Schedule IV.²⁶³
- When "permanent total disablement" occurs in case of injury, the receipt of the monthly basis wages falls in the ambit of first column of Schedule IV.²⁶⁴
- When "permanent partial disablement" arises out of the injuries mentioned in Schedule I, compensation will be paid in accordance with the percentage of the loss of earnings.²⁶⁵
- When "temporary disablement" comes out of the injury, compensation will be paid in pursuance of the limits of first column of Schedule IV.²⁶⁶

²⁶¹ Ibid, Section 3 (1).

²⁶² Ibid, Section 3(2).

²⁶³ Ibid, section 4(A).

²⁶⁴ Ibid, section 4(B).

²⁶⁵ Ibid, section 4(C).

²⁶⁶ Ibid, section 4(D).

The amount of Rs.2, 00,000 will be paid as compensation in case of death and permanent disability while in case of temporary disability the compensation will be half- monthly payments.²⁶⁷

Commissioner is empowered to resolve the issue of compensation referred to him.²⁶⁸ Section 19-29 confers authority to take steps for deciding the matter submitted under this Act, to hold inquiry and to adopt the procedure under the "Code of Civil Procedure of 1908."²⁶⁹

3.4 Policy Premise

The entire national policy environment is enlightened and lead by the constitutional principles of social justice, non-exploitation, social justice and non-discrimination.²⁷⁰

The National Labour Policy of 2002 has constructed specific reference of ensuring decent working conditions and a Plan of Action (PoA) has been recommended by the law relating to occupational safety and health.²⁷¹ The policy accepts the participatory approach to encourage the workers and the enterprises to develop bilateral codes based on the reciprocal rights and privileges through collective settlement.²⁷² The most

²⁶⁷ Ibid, Schedule IV.

²⁶⁸ Ibid, section 19.

²⁶⁹ Ibid, Section 23.

²⁷⁰ The Constitution of Pakistan, 1973, Chapter I, Part-II Principles of Policies.

²⁷¹ GoP, M/o Labour, Labour Policy 2002, (hereinafter referred to as the Labour Policy 2002), p.25.

²⁷² Section 25 of IRO 2002.

important mechanism to promote understanding and cooperation between the enterprises is social dialogue.²⁷³

The PoA formulated categorical reference to the ILO's core conventions to promote the fair working conditions.²⁷⁴

The Labour Policy 2002 deals with the laws relating to the OSH and promises to establish "National Occupational Safety and Health Council" which elaborates and consolidates the laws concerning to OSH. The implementation of the plan of action of the related issue to OSH can be achieved not only changing the mindset and attitude of the employers but also mending the behavior of the employees through creating awareness of the working conditions.²⁷⁵

The establishment of National Tripartite Occupational Safety and Health Council is also a promise by the Labour Policy 2002 to meet the aims of providing safety and to make sure the compensation of the workers.²⁷⁶

The latest Labour policy of 2010 has also emphasized that the labour laws concerning OSH will be consolidated into one comprehensive law. It also undertakes to establish a Tripartite Council on Health and Safety identifying health and safety hazards for the welfare of the workers.²⁷⁷

²⁷³ Labour Policy 2002, p.16-17.

²⁷⁴ Ibid, p.25.

²⁷⁵ <http://dawn.com.pk/weekly/dmag/archive/030420/dmag4.htm>, last accessed on February 18, 2011.

²⁷⁶ GoP, M/o Labour, Labour Policy 2002, (hereinafter referred to as the Labour Policy 2002), p.25.

²⁷⁷ Labour policy 2010. See, <http://www.eobi.gov.pk/announcement/labour+policy+2010.pdf>, last accessed on February 20, 2011.

A full-fledged Labour Protection Policy (LPP) has introduced the strategic plans to cover the area of working environment by involving issues of work safety and health.²⁷⁸

A separate Labour Inspection Policy (LIP) has also been planned to get the objectives of LPP by guaranteeing compliance with the labour laws. The LIP envisages a full-fledged strategy to encourage enterprises to become submissive through a participatory approach, against the pre-arranged benchmarks.²⁷⁹

3.5 Participation of Different Organizations for the Improvement of OSH

The efforts made to improve the occupational safety and health by the outstanding involvement of the “American Industrial Hygiene Association (AIHA)” to create awareness on the one-day Conference of the “Challenges and Opportunities in Safety, Occupational Health and Environment in Pakistan” to emphasize on the various methods of improvement of the occupational health and safety laws as well as to update the out-dated laws according to current scenario.²⁸⁰

The “Centre for the Improvement of Working Conditions and Environment (CIWCE)” instituted in 1988 with the purpose of training and education, information and research of the safety and health as well as monitoring the physical and chemical hazards and to provide the advisory services to resolve the problems relating to health and safety.²⁸¹

²⁷⁸ GoP, M/o Labour Protection Policy, 2006, Ibid. See, <http://www.pakistan.gov.pk/labour-division/index.jsp> last accessed on February 22, 2010.

²⁷⁹ GoP, M/o Labour Inspection Policy, 2006, Ibid. See, <http://www.pakistan.gov.pk/labour-division/index.jsp>, last accessed on February 22, 2010.

²⁸⁰ See, <http://www.aiha.org/insideaiha/volunteergroups/Documents/iac-pakistan.pdf>. last accessed on February 23, 2011.

²⁸¹ <http://www.ciwce.org.pk/>, last accessed on February 25, 2011.

PILER is a Pakistan Institute of the Labour Education and Research to initiate the steps to strengthen the organizations of the workers by providing effective training and education, health and shelter and research.²⁸²

The overall objective of the PILER is to facilitate and inspire the workers of promoting "Decent Work through Tri-partite Consultation."²⁸³

It can be summarized that:

- I. Constitution of Islamic Republic of Pakistan provides the fundamental rights to ensure just and humane working environment to the workers at their workplaces.
- II. Chapter III of The Factories Act of 1934 only deals with the OSH.
- III. Labour Policy of 2002 made promise to enact the comprehensive laws and regulations on OSH to meet the requirement of today. Labour policy of 2010 also has the same footing as the Labour Policy of 2002.
- IV. Different organizations are working for the awareness of OSH in Pakistan.

The purview of health and safety laws and regulations enforced in Pakistan are, therefore, more vulnerable to work related accidents, diseases and injuries.

²⁸² <http://www.piler.org.pk/aboutus.htm> , last accessed on February 28, 2011.

²⁸³ <http://www.piler.org.pk/Programmes.htm>, last accessed on February 28, 2011.

CHAPTER 4

COMPARATIVE ANALYSIS OF USA LEGAL REGIME AND NATIONAL LEGISLATIVE FRAMEWORK ON OSH

In my thesis titled as "Occupational Safety and Health Laws" as well as conducted the comparative analysis between the USA legal regime on OSH and National legal framework. I explained both of the legislative regimes in detail in the previous two chapters of my dissertation to highlight the laws, rules, standards and regulations on OSH in USA as well as in Pakistan and now I emphasized on the comparative analysis of both the regimes as well.

The Occupational Safety and Health Act of 1970 provides that the employees will be provided a working environment free from all the hazards and physical agents. Chapter III of The Factories Act of 1934 deals with the regulations of fundamental standards for health and safety and hygienic conditions such like ventilations and temperature, dust and fumes, lighting, artificial humidification, sanitary facilities, overcrowding, disposal of water, provisions relating to canteen etc. and precautionary measures in case of fire, machine guarding, pressure vessels, dangerous fumes, eye protection, safety of building and machinery in the factories. Chemical substances and physical agents are frequently endangering the lives of the employees to the large extent in Pakistan which are not covered by any legislation to overcome these problems.

Chemical safety and physical hazards problems are spreading rapidly in country like Pakistan. Although the laws and regulations in Pakistan deal with such like problems but even then there are no sufficient provisions available in the Factories Act to cope with such like problems which are taking birth by the use of chemicals and still the health and safety of the workers in danger. The circumstances need to review the Factories Act for the safety of the workers from all kinds of chemicals. This scenario is very different in USA laws and much better than that of Pakistan. The OSHA has many hazard communication standards which ensure chemical safety and also identifies chemicals harmful for the health of the workers.

The process of implementation of the laws in Pakistan is not to the extent as in the USA. The fore-most example of the non-implementation is the Labour Policy 2002 that is yet to be materialized if the policy is implemented in true sense then most of the issues of OSH will be resolved.

Record keeping of the occupational accidents, injuries and diseases under the Occupational Safety and Health Act of 1970 is the beautification of this Act. However, if the record is maintained, it will be helpful in saving the lives of the workers from accidents and diseases. The provisions requiring the record keeping imitate a perfunctory implication that no follow-up or certification is signified to attest degree of compliance by the businesses in Pakistan. In fact, no reliable data is available on the OSH because many of the accidents within the factories and industries are not reported to the Labour department.

In USA, different departments like OSHA and NIOSH have been established to administer health and safety at workplaces, to promote protective workplaces and to conduct research reducing occupational accidents, injuries and diseases. The whole picture is totally different in Pakistan because no separate law is promulgated for the occupational safety and health, only Chapter III of The Factories Act of 1934 deals with the provisions of health and safety. The National Labour Policy of 2002 promised to create the National Safety and Health Council and the National Tripartite Occupational Safety and Health Council to meet the objectives of ensuring health and safety at work. It also undertook to compose the outdated laws in the newly up-dated laws to congregate the needs of OSH but still there is no implementation.

Compensation to the workers for occupational injuries occurred during their employment at the workplaces has been comprehensively dealt with the OSH Act of 1970 in the USA legal regime and it emphasized on the delegation of powers to the commissioner to play active role in compliance of the provisions of the Act. The situation regarding the compensation to the workers in Pakistan is adverse. The Workmen's Compensation Act of 1923 provides compensation to the workers in case of death, temporary disability and permanent disability and the employer is duty bound to pay compensation under the Act. The procedure of compensation is so lethargic and lengthy due to which the workers cannot succeed to get compensation.

The system of punitive measures is very much strong under the OSH Act of 1970. If the employer fails to comply with the provisions of the Act then he will be punished with a civil penalty. The situation regarding punitive actions in Pakistan is hopeless. The

punitive action for non-compliance of the employers with the OSH provisions envisaged in the relevant Act does not impose incredible deterrence to prevent them from violation of law.

The OSH Act of 1970 provides detailed procedure for inspection and investigation. It is the primary duty of the secretary to inspect workplaces, all equipments of the machinery, materials and substances during working hours. In Factories Act of 1934, the inspectors are empowered to inspect the workplaces under the prescribed OSH laws and regulations in order to save the employees. They have also carried out inspections to ensure compliance of the statutory provisions of the Act by the employers but due to lack of punitive actions, the system of inspection has become ineffective. Although, Pakistan has ratified the Labour Inspection Convention 81 which is concerned with the procedure of labour inspection but even then no possible requisite change has occurred.

The concept of healthy workplaces emerged in USA by taking the initiative actions of the NIOSH to provide safe and healthy workplaces to the workers which is free from all kinds of hazards and risks but, the concept of healthy workplaces has not yet been introduced in Pakistan and Pakistan is devoid of such thought.

Amendments in the OSH laws are made according to the changing circumstances to meet the challenges relating to the health and safety at workplace of the workers in the USA but with compare to that, nothing is being done in Pakistan in this regard. A huge gap is visible under the existing OSH laws, regulations and policies in Pakistan. Labour Policy of 2002 acknowledges the need for health and safety at the workplaces and also promises

for the establishment of the National Occupational Safety and Health Council and National Tripartite Occupational Safety and Health. The latest Labour Policy of 2010 has also on the same footing to amend laws on OSH and to promote healthy working environment for raising overall level of productivity in the Pakistan.

The labour Protection Policy (LPP) ensures that the worker's rights should be protected and the working conditions are adequate and fair for the health and safety of the workers. It also emphasizes on the Government of Pakistan to legislate wide range of laws and policies covering the matters of occupational safety and health but the OSH Act of 1970 is a comprehensive law to deal with the occupational health and safety at workplace in USA.

CHAPTER 5

CONCLUSION AND RECOMMENDATIONS

5.1 Conclusion

OSH is an imperative subject matter of the Labour Laws. Health and safety of the workers at the workplaces has become a hot issue now-a-days. Occupational injuries, diseases, hazardous materials and substances result in greater problems to the workers worldwide. Due to all these issues, many workers get injury, disable, and sometime die because of non-providence of the health and safety equipments and other necessary tools to save the life of workers.

The broader responsibility may evade resolving this burning issue by promulgation of the laws, rules, standards and regulations for appropriate threshold of the OSH in the world.

ILO conventions, recommendations, protocols and codes of practice provide a wide-ranging round up of the major OSH concerns and spell out standards as well as procedural strategy for the implementation through national legislation by the member states.

A greater emphasis on the OSH concerns, occupational health and the healthy workplaces has been supported and complimented through guidelines and strategies of the WHO which lead to change the whole scenario relating to OSH.

Internationally, ILO and WHO have explained in detailed in their tentative work to resolve the issue of OSH concerns relation to the welfare, health and safety at workplaces by ensuring decent working culture. These standards defined in the conventions and declarations, being a reflection of international commitment to OSH policy, serve as a point of reference and behavior benchmarks for inter-governmental and national initiatives on OSH. The ILO' constitution requires the strict compliance of the OSH standards and regulations as well as provided effectual corrective measures in case of default.

Substantively, a statutory legal framework on OSH area, therefore, does exist in the labour laws of the USA. Almost all important areas of the OSH compliance get an adequate and sufficient conformity to the standards specified in the Occupational Safety and Health Act of 1970. OSH related issues are included in USA laws and no key departure from the international standards and rules is yet disclosed. The provisions concerning OSH are assembled in one statute that incorporates a comprehensive view of the OSH situations.

Legislatively, the OSH areas are found in a cumulative form of the Statute in the USA. However, this law deals with the relevant issues of the worker's interest and also focuses on the employer's liability. Default in non-compliance of the statutory provisions of the Act conduces to the liability of the employers.

The national plans and policies on OSH display to understand the concerned issue in its true perspective, underline national constitutional will, make out policy premise and

highlight the statutory framework on OSH in Pakistan. Being a member of the ILO and WHO, Pakistan has not ratified the Occupational Safety and Health Convention 155 but it has adopted the Protection of Worker's Health Recommendation-97 of the ILO. The constitution of the Pakistan ensures to provide the best facilities at work. The national labour policy accomplish the occupational health and safety at work to fulfill the promise of the constitution and further promise to make equitable settlement between the rights of the employees and employers as well.

Practically, a sufficient gap is detected between the policy premise and its implementation of the legislative initiatives on a decent work culture. The Labour Policy 2002 also promised to establish The National Occupational Safety and Health Council setting out laws on OSH is however, yet to be materialized.

Similarly, a wide gap is also found to exposure of the OSH systems under the prevailing law in Pakistan. The Factories Act 1934 only puts emphasis on the manufacturing businesses but it does not include labour laws relating to health care, construction, agriculture etc mainly addresses OSH subject matter. There is a drastic need to have the comprehensive laws that should cover all the commercial and industrial activities to make sure full compliance of the corporations with the OSH regulations and standards.

No proper legislation is available on OSH in Pakistan; only one chapter is given in The Factories Act of 1934 which is not sufficient to deal with the problems of the health and safety of the workers. There is immense need to legislate on this issue and some recommendations for improving the OSH issue in Pakistan as follows.

5.2 Recommendations

Pakistan, no doubt, is a highly legislated country while some other issues have not been taken into consideration such as, Occupational safety and health. Legislation of law is not adequate, proper, effective, sufficient and appropriate for the implementations of the measures that need to be scrutinized in order to make actual system efficient.

Our government should take effective steps for resolving the issue of OSH. Governments should make efforts to legislate on OSH to meet the requirement of today and to save the workers from occupational injuries and diseases and hazardous substances and implement the guidelines and strategies.

For the reduction of the occupational injuries, diseases and accidents, it is very essential to amplify the provisions and regulations relating to the workers' education and training in the field of OSH. The workers have need to access to training on the awareness of health and safety tools. Governments, employers and international organizations should cooperate to provide training to the workers needs with their respective areas.

ILO and WHO will be strengthened for the promotion of OSH concerns as well as for the protection of the health and safety of the workers from hazards at the workplaces.

Recommendations and strategic elements of the national plan as under,

- Updating and formulating the national legislation and policy on OSH and working environment
- Promulgating laws and regulations to give effect to the aims of OSH policy

- Ensuring tripartite collaboration among governments, employers and workers
- Conducting research on OSH
- Appointing and strengthening the senior management representative for implementation of OSH mechanism
- Inspecting system to guarantee accountability and compliance
- Regulating legislation and policy for the promotion of worker' health
- Improving registration systems of occupational accidents, diseases and hazardous exposures
- Improving system of compensation to the workers in case of death, temporary and permanent disability
- Enhancing penalties in case of non-compliance by the employers with the provisions of the laws
- Ensuring that the equipments are designed to provide the safety information and precautions
- Ensuring by the employers that the machinery equipment and processes are harmless and without danger to the health of the workers
- Providing protective equipments to workers
- Providing education, training and information on OSH to the workers
- Improving quality of the workplaces

To sum up, there is always a drastic need for the legislation of the statutory framework on OSH in Pakistan and it can be achieved by adhering to statutory laws and regulations, based on international shared standards of OSH.

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