



A COMMENTARY ON THE NEW DEVELOPMENTS UNDER THE OCCUPATIONAL HEALTH AND SAFETY ACT 2006

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INTRODUCTION

The Occupational Safety and Health Act 2006 (OSHA) is an ambitious piece of legislation that imposes strict regulation of the workplace. The most conspicuous feature in the OSHA is the extension of the scope of the regulated workplace moving the traditional factory to practically any workplace. The Act also imposes the reasonably practicable standard of care on the employer in all his/her duties of ensuring health and safety at the workplace. It will also be noticed that the employer's responsibility is extended to all those who may be affected by his undertaking not necessarily the employees alone. The same Act imposes a host of obligations on the employee which were hitherto non-existent in statutory form. Most importantly the OSHA has introduced enhanced powers of the inspectors who may now issue prohibition orders against errant workplaces. Despite the rigorous regulation, the OSHA introduces a hitherto unknown regime of self regulation at the workplace with great involvement of the employee and worker organizations.

HIGHLIGHTS

1. EXTENDED SCOPE

- Effect of extended scope
- Workers Compensation Insurance
- Saved Statutory Instruments under Repealed Act.
- Breach of Statutory Duty.

2. ADMINISTRATION OF ACT

- Enhanced Powers of Inspectors
- Powers of entry and search of workplace
- Powers to examine articles, machinery at workplace and to take away for further investigations
- Powers to prosecute in Magistrates Court
- Powers to issue Prohibition Orders.

3. DUTIES UNDER THE ACT

- Duties of Employer
 - General Duties
 - Specific Duties
 - Reasonably Practicable Standard of care
 - Duty to protect environment from operations of undertaking
 - Duty to persons other than employees.



- Duties of Employees
 - Duty to take care of self and others affected by self
 - Duty to cooperate with Employer
 - Duty to report dangerous situation to immediate supervisor.

- Duties of Inspectors
 - Duty of confidentiality regarding trade secrets and complaints under Act.

4. OTHER SALIENT FEATURES OF OSHA

- (i) Self regulation
- (ii) Worker participation in OSH
- (iii) Penalties under OSHA
- (iv) Criminal liability of corporations and officers
- (v) Leasehold Agreements of Workplace
 - Extent of control
 - Power of Court to modify agreement
 - Apportionment of expenses.

- (i) Effect of OSHA on other Acts
 - Rights and duties created under OSHA additional and not substitutinal.



PART I

A. SCOPE

OSHA has introduced a rigorous regime of regulating safety at the workplace which was hitherto only known to the Factories.

S.1 Factories Act provided that:

"Except as otherwise expressly provided in this Act, this Act shall apply only to Factories as defined by this Act, but shall except where the contrary intention appears apply to all those factories".

S.4 of the Factories Act gives the interpretation of a factory as:

"Subject to this section factory means any premises in which or within the close or cartilage or precincts of which, persons are employed in manual labour in any process for or intended to any of the following purposes –

- (a) making of any article or part of any article,*
- (b) the altering, repairing, ornamenting, finishing, cleaning, washing, or the breaking up or demolition of any article or,*
- (c) the adapting for sale of any article, being premises in which or within the close or cartilage or precincts of which the work is carried on by way of trade or for purpose of gain and to or over which the employer of the persons employed therein has the right of access or control."*

Clearly the foregoing section restricts the definition of a factory to premises where persons are employed in manual labour in the making of any article by way of trade for the purpose of gain. One could dare say that this excluded factories which did not thrive on manual labour and ostensibly those that were non profit making.¹

This definition left the majority of workplaces unregulated. Prior to the passing of the OSHA, these employers obligations were purely common law based and regulation seemed to be drawn to post injury situations under the Workers Compensation Act.

The OSHA now applies to all employment situations including mines which were hitherto not covered by the Factories Act.

S.2 ascribes the same meaning to a workplace to that of a working environment. Working environment is specifically defined in the same section as –

¹ Though S.4(10) extended scope to charitable institutions.



"means all places of work and all sites and areas where work is carried out including not only the permanent, indoor, stationary places of work, such as factories, offices and shops but also temporary places of work such as civil engineering sites, open air places such as fields, forests, roads, oil refineries and mobile places of work such as labs, trucks, seats of tractors and excavators, ships, galleys, freight deck of aircraft, and without exception; places where workers are found as consequence of their work (including canteens and living quarters on board ship)".

We can therefore safely conclude based on this definition that the scope of the OSHA would extend to wherever workers are found as a consequence of their work. This should include the domestic arena though its doubtful as to whether Parliament intended to include the same.

B. EFFECT OF EXTENDED SCOPE

(i) INSURANCE POLICIES

The Workers Compensation Act under S.18 requires employers to take out insurance policies in respect of injuries arising in the course of employment. With the passing of the OSHA the employer is statutorily mandated to ensure the Health and Safety of the workplace. Several duties are imposed on the employer the breach of which in some cases would amount to a criminal offence.

The OSHA therefore gives opportunity to an insurer to repudiate a policy or to decline to indemnify an employer of an injury that arose as a result of a breach of the OSHA.

For example, an employer whose employee is injured while exiting the workplace through a staircase without a guardrail may fail to obtain indemnity from his/her insurers. This is for the reason that the employer is required under S.56 to ensure that staircases on the premises shall have handrails and guardrails for safe access and exit of the workplace.

It can reasonably be anticipated that insurance companies will henceforth require employees under the doctrine of uttermost good faith, to warrant that they are compliant with the provisions of the OSHA.

Non compliance of the OSHA would automatically invalidate the policy leaving the employer fully exposed to liability arising under the Worker's Compensation Act.

(ii) STATUTORY INSTRUMENTS OF REPEALED ACT

S.121 of the OSHA saves all statutory instruments made under the repealed Act and the same shall continue in force with necessary modifications until otherwise revoked. These statutory instruments bear a host of further obligations on employers or occupiers particularly those in specified sectors. Employers will



therefore have to look a step further than the OSHA to determine their full obligations under the Act. These include:

(SEE SCHEDULE II)

(iii) BREACH OF STATUTORY DUTY

Like we have noted earlier, the OSHA imposes several duties on various persons in the Act including the employer, employee and occupier. Breach of such duties may in some cases lead to Tortious liability. As the learned authors of *Clerk and Lindsell on Torts* put it:

*"liability for breach of statutory dutyis in reality sui generis and independent of any other form of liability. As the construction of each statute turns ultimately on its particular wording,to establish civil liability for a breach of statutory duty a plaintiff must show that (a) the injury he suffered is within the ambit of the statute (b) the statutory duty imposes a liability to civil action (c) the statutory duty was not fulfilled and (d) the breach of duty has caused injury."*²

The OSHA would therefore grant a cause of action to an individual who falls within the above categories.

Going by the famous case of *Lonrho Ltd vs Shell Petroleum Co. Ltd (No.2)*³ it would be arguable as to whether persons other than workers were contemplated in the making of the Act. On our part, since the OSHA extends the duties of employers beyond employees to all persons who may be affected by the employers undertaking,⁴ we would dare say that liability would accrue in favour of all persons that may be affected by the occupiers undertaking.⁵

To determine liability, courts have accordingly developed rules to provide guidance as to when a breach of statute will give rise to civil action. If no penalty is prescribed in the Act, for example, then it is more likely that a breach is actionable.⁶ It is noteworthy that several breaches in the OSHA are not followed up with penalties. These could be a recipe for claims in breach thereof.

² Clerk and Lindsell on Tort at 11.06 Page 562.

³ [1982]AC 173.

⁴ S.13, 23 OSHA.

⁵ Preamble to OSHA "An Act to consolidate, harmonize and update the law relating to occupational safety and Health....."

⁶ Murkman on Employers Liability, P8 page 136.



PART II

ADMINISTRATION AND ENFORCEMENT OF ACT

The Commissioner for Occupational Safety and Health shall be responsible for enforcing the provisions of the OSHA.⁷

It is noticeable that the Act has enhanced the powers of the Commissioner and his/her team of inspectors who shall have the power to enter any workplace whether day or night to do any of the following acts:

- (i) Inspection of a workplace.
- (ii) Require the production of registers certificates, notices or any documents under the Act.
- (iii) To require any person to give information regarding the occupier of the workplace.
- (iv) To examine any person or to require the examination of any person.
- (v) In case of an occupational physician to carry out medical examinations as may be necessary.⁸
- (vi) To take measurements and photographs and make such recording as found necessary.⁹
- (vii) To take samples of any article or substance found in any premises of its vicinity.¹⁰
- (viii) To dismantle or to test any article or chemical substance found on the premises.¹¹
- (ix) To detain any article or substance discovered on the premises.¹²
- (x) To prosecute before a magistrate any breach of the OSHA.¹³
- (xi) To issue prohibition orders.¹⁴

In exercising the aforementioned powers an inspector shall be entitled to be furnished with means necessary for entry, inspection, examination, inquiry and taking of samples for the exercise of his/her powers in relation to the workplace.¹⁵ It shall be an offence to obstruct, delay, withhold or conceal information from an inspector whilst carrying out his/her duties.¹⁶ Inspectors shall further not be liable for any damage caused to articles inspected in the course of their duty.¹⁷

⁷ S.4 OSHA.

⁸ S.6

⁹ S.6

¹⁰ S.6

¹¹ S.6.

¹² S.6

¹³ S.6

¹⁴ S.94.

¹⁵ S.7 OSHA

¹⁶ S.8 OSHA

¹⁷ S.74 OSHA



In a bid to better administer the Act all workplaces are required to be registered not less than one month before use¹⁸ and a certificate issued to the occupier in the prescribed format upon payment of the requisite fees.¹⁹

Any construction at or of workplaces or alterations of existing buildings shall have to be first approved by the Commissioner.²⁰

The enhanced powers of the inspectors under the act naturally exposes them to confidential information of employers and manufacturers. The OSHA appropriately imposes a duty of confidentiality on these persons and any breach of the same would be a criminal offence for which a culprit is liable to a fine of 150 currency points or imprisonment not exceeding 26 months.²¹ It is our considered opinion that the penalty does not offer sufficient protection to employers who could easily have their intellectual property duplicated by unscrupulous inspectors for onward transmission to fellow competitors or speculators at a much higher consideration than what would make one worry about a fine of 150 currency points or a prison sentence of 26 months in jail.

The OSHA accords protection to the whistle blowers under the Act by imposing a duty of confidentiality on the inspectors.²²

The OSHA establishes the Occupational Safety and Health Board which shall give expert advice to the Minister on matters of occupational safety and health, welfare and the working environment.²³ The Minister shall also have the option of appointing advisory panels to give assistance in workplace process, chemical, hazard, injury and disease.²⁴

Prohibition Order: The most conspicuous aspect of the inspectors enhanced powers is their power to issue prohibition orders against any employer or worker, prohibiting the use of any machinery, plant, appliance or fitting that may threaten the health and safety of any person.²⁵

A person aggrieved by an order of prohibition may by compliant to magistrate apply for the same to be set aside or varied.²⁶

We note here that the prohibition order may be issued against the worker, too.

¹⁸ S.840(2) OSHA.

¹⁹ S.41 OSHA

²⁰ S.42 OSHA

²¹ S.106 OSHA

²² S.10 OSHA

²³

²⁴ S.11

²⁵ S.94(1).

²⁶ S.94(2)



PART III

DUTIES OF EMPLOYERS

The OSHA imposes a myriad of duties on the employer owed both to workers and the general public. These duties are categorized as general duties variously but become more specific depending on the category of employers i.e. manufacturing, suppliers, chemical and hazardous industries etc. These are largely modeled on the common law duties of care, but may require a rather higher standard with the introduction of the “as far as is reasonably practicable” standard. Probably the biggest innovation of OSHA, the “so far as is reasonably practicable” standard introduces a new twist to the standard of care of an employer/occupier.

REASONABLY PRACTICABLE STANDARD OF CARE

Almost every primary obligation of health and safety is followed by the catch phrase “in so far as is reasonably practicable”. In our judgment this may have the effect of placing a greater burden on the employer/occupier. A case in point would be a workplace where an employer complies with S.25 by aptly displaying guide safety information in the prescribed format. By doing this the employer would have discharged his duty ordinarily in respect of literate persons. However, in the event that the employer has in his/her employment illiterate persons, it is most unlikely that he would have discharged his duty under the ‘in so far as is reasonably practicable’ standard in spite of his compliance.

Essentially the occupier under the OSHA would have to do more than what is stipulated to extent of what is reasonable. It is very probable for a court to hold that an occupier being compliant with his duty under the Act did not meet the general standard of care under the “as far as is reasonably practicable” test if the circumstances required that he do more. Occupiers therefore should not look merely at what they are specifically required to do but should always apply the reasonable standard test.

Unlike the Factories Act which evidently contained very elaborate requirements concerning matters to do with mechanical power, prime movers, steam boilers etc, the OSHA undeniably contains some of the same but however its general bias seems tilted towards establishing broad standards of duty especially through the “as far as is reasonably practicable” standard.

The overriding duty of care is imposed on the employer by S.13(1)(a).

It is the responsibility of an employer:

- (a) *to take, as far as is reasonably practicable, all measures for protection of his or her workers and the general public from the dangerous aspects of the employer’s undertaking at his or her own cost.*
- (b) *To ensure, as far as is reasonably practicable, that the working environment is kept free from any hazard due to pollution by –*



- (i) *employing technical measures applied to new plant processes in design on installation or added to existing plant or processes; or*
- (ii) *employing supplementary organizational measures.*

The second part of S.13 typically goes on to prescribe the employers duties more specifically, thus illustrating our earlier contention that compliance of specific duties may not be enough to discharge the general standard in the Act.

Reminder of the section stipulates the duties as being: –

“(2) without prejudice to the generality of an employers duty in subsection (1) the matters to which the duty extends include in particular –

- (a) *the provision and maintenance of plant and systems of work that give, as far as is reasonably practicable, a safe working environment including its vicinity;*
- (b) *arrangements for ensuring, as far as is reasonably practicable, safety and absence of risks to health, in connection with the use, handling, storage and transport of articles and substances;*
- (c) *the provision of adequate and appropriate information, instructions, training and supervision necessary to ensure, as far as is reasonably practicable, the safety and health of the employees, and the application and use of occupational safety and health measures, taking into account the functions and capabilities of the different categories of workers in an undertaking;*
- (d) *as far as is reasonably practicable, regarding any workplace under an employer’s control, the maintenance of the workplace in a condition that is safe and without risks to health, and the provision and maintenance of means of access to and exit from the workplace, that are safe and without such risks;*
- (e) *the provision and maintenance of a working environment for the workers, that is, as far as is reasonably practicable, safe, without risks to health and which is adequate, regarding facilities and arrangements for the welfare of workers at work;*
- (f) *the provision of correct information of the real and potential dangers of substances used in an undertaking including any toxicity tests and environmental impact assessment involved in the use of the substances, to all concerned;*
- (g) *the provision, where necessary, of adequate personal protective equipment to prevent, as far as is reasonably practicable, the risks of accidents or of adverse effects on health.”*

The framing of the foregoing section is a common feature of how the OSHA has imposed duties on the employer/occupier. It occasionally sets a general standard²⁷ and then proceeds to play down more specific obligations as we have seen above. On the other hand however, where the general duty has been imposed without corresponding specific set of duties, as it is in S.23 and S.24 OSHA, the standard of duty in such cases would be lowered and in some cases non-existent if it is found to be reasonably impracticable.

Take for example S.23(1) –

"It is the duty of an employer to conduct his or her undertaking in a way that ensures as far as is reasonably practicable, that any person who is not in his or her employment but who may be affected by the undertaking, is not exposed to risks to his or her health or safety".

S.23(1) is not followed by any resultant further obligations in subsection (2). Short of any other specific duties imposed elsewhere in the OSHA, the standard therein would be somewhat lesser and in some cases non-existent. As Selwyn's Law of Employment puts it -

"The employer must weigh, on the one hand, the time, trouble and expense, etc of meeting that duty against the risks involved and the nature of the obligation on the other hand. Also the duty can only be performed against the background of the current knowledge which the employers knows or ought to know".

It can therefore be argued that carrying out the duties imposed in S.23 may be unreasonable to do in some cases like where the level of knowledge or research is still too little to impose the duty. In such cases the burden of proof would shift to the employer to show that imposing a duty on him would be reasonably impracticable. *R v. Swan Hunter Shipbuilders Ltd.*²⁸

The reasonably practicable standard may invariably turn out to be a sword and a shield at the same time for both the worker and the employer respectively. In other jurisdictions like in England, the most common defence for employers against actions under the equivalent of OSHA is that it was reasonably impracticable to carry out their duty. Courts have thus established a standard for applying the defence. In *Edwards v National Coal Board* [1949]1 KB 704²⁹ Asquith LJ stated –

"The onus was on the defendants to establish that it was not reasonably practicable in this case for them to have prevented a breach of S.49. The construction placed by Lord Atkin on the words 'reasonably practicable' in Coltnession Co. V Sharp [1938]AC 90 seems to me with respect right.

²⁷ S.13, 28, 26

²⁸ [1981]1 CR 831 Per Dun LJ

²⁹ [1938]AC 90



Reasonably practicable is a narrower term than 'physically possible' and seems to me to imply that a computation must be made by the owner, in which the quantum of risk is placed on one scale and the sacrifice involved in the measures necessary for averting the risk (whether in money, time or trouble) is placed in the other, and that if it be shown that there is a gross disproportion between them – the risk being insignificant in relation to the sacrifice – the defendants discharge the onus on them.....”

We wait to see what attitude our own courts will take regarding the reasonably practicable standard of care and in whose favour the pendulum will swing between the employer and the worker/public. One thing is for sure, that both sides are going to be tagging on it and without a doubt it is going to be the most litigated term under the OSHA.

OTHER DUTIES OF EMPLOYER

Environment:

The OSHA imposes a strict obligation on the employer and occupier especially in hazardous sectors to preserve the environment around them including atmosphere, lakes, rivers, soil etc. S.18 imposes a duty on the employer to monitor and control the release of dangerous substances into the environment.

A host of other provisions require the employer/occupier to ensure that the vicinity of his workplace is free from health risks arising from his undertaking.³⁰

Duties to persons other than employees:

As we have seen earlier, the statutory duty of care is not confined to safeguarding employees. S.23 extends this duty to persons not in the employers employment who may be subject to the risks of the employer's undertaking. A similar obligation is placed on self-employed persons.³¹

³⁰ S.23, S.13 & S.27 OSHA

³¹ S.24 OSHA



PART IV

SALIENT FEATURES

A. SELF REGULATION

Much as the OSHA introduces a rigorous regime of strict regulation of the workplace, it is manifestly evident that Parliament desired that employers who can, ought to regulate themselves probably saving the wrath of the Act for the more errant workplaces and or sectors. A number of innovations have been introduced in this regard being:

- i. Written Statement of Safety and Health Policy, S.14.
- ii. Worker participation in Health and Safety S.17.
- iii. Safety Representatives S.15.
- iv. Safety Committees S.16.
- v. Employers duty to supervise health of workers, S.21.
- vi. Employers duty to monitor and control release of dangerous substances in environment, S.18.

(i) Written Safety Policy

Except for employers who employ less than 20 employees, it shall be the duty of every employer to prepare and revise as often as is appropriate a written statement of his general policy with respect to health and safety at the workplace of all his employees and arrangements to bring the statement to the notice of all employees.³²

The OSHA gives some guidelines on how to prepare and comply with the policy under the 2nd Schedule to the Act.³³ A cursory look at the 2nd Schedule and the Act in general seems to imply that there's no all size fit kind of policy. Every employer is expected to sit down and think about his/her safety problems akin with his/her trade and workforce and work out necessary solutions.

Recommendations:

- (i) It is suggested upon looking at the guidelines, that the safety policy should at least deal with the responsibility of all employees, including Board of Directors, all levels of management, supervisors and other employees and arrangements for dealing with special hazards and emergencies including fire drills, training, research and consultative arrangements. It would also be good practice to file the safety policy with the Commissioner and the safety representatives.³⁴

³² S.14 OSHA.

³³ S.14(2).

³⁴ S.15(2)



- (ii) It is further suggested that the statement of policy should be synchronized with the mission and vision statements of the employer along with the codes of ethics to demonstrate that the employers strategy for success is hinged on the health and safety of his/her workers.
- (iii) It is also recommended that the language of the policy should be simple and translated in all the languages that the employees understand.

(ii) Safety Representatives and Safety Committees

The Minister shall make regulations to provide for appointment of safety representatives in prescribed cases.³⁵ It shall be the duty of employers to consult a safety representative in developing measures to ensure safety.³⁶ A safety representative may in turn request an employer to establish a safety committee for a workplace.³⁷ The role of the safety committee shall be to review measures taken to ensure safety and health of employees and any other functions prescribed.

(iii) Health Supervision

S.21 requires employees to provide for supervision of the health of workers exposed to occupational hazards prior to assignments, periodically and post assignment. The employer under this provision is obliged to inform the employee of any health hazards involved in his or her work.³⁸ Medical records resulting from S.21 are to be submitted to epidemiological and other research as shall be prescribed by the Minister.³⁹

(iv) Employers Duty to Monitor and Control Release of Dangerous Substances

S.18 requires the employer where there is major handling of chemicals or any dangerous substances which is liable to be airborne or to be released into rivers, lakes or soil and which are a danger to animal and plant life. It shall be the duty of the concerned employer to arrange for equipment and apparatus to monitor air, soil and water pollution and to arrange for actual monitoring of these mediums, with a view of rendering them safe from dangerous undertakings.⁴⁰

³⁵ S.15(1)

³⁶ S.15(2)

³⁷ S.16 OSHA

³⁸ S.20(3)

³⁹ S.22

⁴⁰ S.18



B. EMPLOYERS DUTIES VIS-À-VIS LANDLORD/TENANT RELATIONSHIP

The OSHA introduces a new unique arrangement of responsibility on both employers/occupiers vis-à-vis owners of premises. To begin with the primary responsibility to provide safe premises to which the OSHA applies shall be upon the employer.⁴¹

The OSHA seems to have anticipated that a great number of employers are tenants with limited control over their premises under their leases. For this reason S.26 appropriately places the duty to provide safe premises to the extent of the persons control over the premises. The section does not mention the term employer, or occupier but tactfully uses the term 'person' leaving of the duty upon the one with "control over the premises". It can be said therefore that where a landlord reserves much of the control over the exit, entry and other common areas, he automatically assumes a duty of care under the Act.⁴² Under no circumstances however would this derogate on the employers primary duty to provide safe means of access and exit.⁴³

Landlords who chose to reserve lots of powers and control under leasehold agreements will have to think twice. Short of this they will be inviting statutory responsibility under the Act. Potentially employees and others owed duties under the OSHA could sustain a cause of action for breach of statutory duty against such landlords..

S.27 further obliges the controller of the premises to keep it free and the surroundings from pollution. We would argue that a landlord retaining substantial control over premises on which a tenant employer is dispensing polluted substances would have invited responsibility in this regard.

C. POWER TO MODIFY AGREEMENTS

The OSHA uncharacteristically grants an occupier not being an owner of a workplace the remedy of applying to court to set aside or modify terms of a tenancy agreement to enable him or her comply with the Act.⁴⁴ In this regard the OSHA seems to put the provisions of the OSHA above the age old doctrine of freedom of contract.

It remains to be seen how this power will be used by the courts. In our humble opinion, this provision is unconstitutional and contravenes the right to property.

⁴¹ S.13

⁴² S.26(2)

⁴³ S.13(d)

⁴⁴ S.116



The OSHA further grants the occupier the remedy to apply to court for apportionment of expenses between owner and occupier where alterations on the workplace are carried out.⁴⁵

The foregoing provisions should be of concern to commercial landlords whilst drawing leasehold agreements. Equally the occupier not being owners should be concerned of their own responsibilities over a workplace before they sign up off a lease agreement considering their obligations under the OSHA.

D. WORKERS RIGHTS AND DUTIES

The duties under the OSHA are not only about the employer. S.35 imposes on the employee, the duty while at work:

- i) To take responsible care for the health and safety of himself and others who may be affected by his/her acts or omissions at work.
- ii) As regards any duty or requirement imposed on an employer or any other person by statutory provision to cooperate with the employer as far as is necessary to enable the duty or requirement to be performed or complied with.

Employees are further required to report dangerous situations to their immediate supervisors where they have reasonable grounds to believe there is an imminent danger to life and health in the premises.⁴⁶

The OSHA makes it an offence to willfully misuse or refuse to use an appliance, convenience or other thing provided under the Act for securing the health safety and welfare of persons.⁴⁷

E. RIGHTS OF WORKERS

The several duties bestowed upon the employer and this Act naturally create rights accruing in favour of the worker. The OSHA however specifically and unequivocally stipulates the employers right to move away from a dangerous situation, the right not to lift heavy loads likely to cause injury and the right not to be punished as result of anything done under the Act.⁴⁸ Any dismissal in this regard would be rendered wrongful.

⁴⁵ .117

⁴⁶ S.36 OSHA

⁴⁷ S.99 OSHA, S.39.

⁴⁸ S.38 OSHA



E. CRIMINAL LIABILITY UNDER OSHA

The contravention of any provision in the OSHA by the owner or occupier regarding a workplace is made an offence under the general offences provisions under S.93.

Where the owner or occupier is a company or cooperative society or body of persons and it is proved to have been committed with the consent or connivance or neglect of a chairperson, director, manager, secretary or other officer of the company, the cooperative society or body of persons shall be deemed to have committed the offence along with that particular official.

The OSHA therefore creates corporate criminal liability which apparently shall be suffered by the officer directly responsible. This is where yet again job description has to be documented and clarified in the organizational structure so as to determine in the event of criminal liability, who the directing mind of the company was in that regard. This does not in any way suggest that the company in such an event would be absolved, however, it would demonstrate that the company in its structures provided for the carrying out of that duty but may have been let down by a particular officer. The company may henceforth mitigate its liability.

F. PROCEEDINGS UNDER OSHA

Proceedings under this Act regarding the commission of offences or where the actions of the inspector under the Act are challenged, shall be in the Magistrates courts presided over by a Chief Magistrate or Magistrate Grade I.⁴⁹

S.102 of the OSHA empowers the Magistrate to impose fines in cases of fatal and non fatal injuries against employers and the same may be applied to the benefit of injured persons or their families.

Fines imposed in this regard and set aside for the benefit of the injured persons shall by no means affect the rights of the injured employee under the Workers Compensations Act.⁵⁰

G. EFFECT OF THE OSHA VIS-À-VIS OTHER ACTS

S.118 OSHA provides that except where otherwise provided, this Act shall be in addition to and not in substitution for or diminution of any other law.

In our consideration opinion this provision preserves of the rights workers and other persons given in other Acts from being cancelled out OR REDUCED by the OSHA. It therefore follows that persons with remedies in other Acts of Parliament or other law should unless otherwise stipulated take the remedies herein as additional.

⁴⁹ S.110 OSHA

⁵⁰ S.118



SCHEDULE I
SCHEDULE OF EMPLOYERS DUTIES UNDER OSHA

1.	Duty to protect workers from own undertaking.	S.13
2.	Duty to protect general public from own undertaking.	S.13 & S.23
3.	Duty to ensure working environment is free from any hazard due to pollution.	S.13(b)
4.	Duty to meet cost of occupational health and safety.	S.13
5.	Duty to provide appropriate information and instructions to employees in respect of occupational health and safety.	S.13(c)
6.	Duty to train employees in application and use of occupational health and safety measures.	S.13(c)
7.	Duty to provide safe premises.	S.26
8.	Duty to provide safe access and exit from workplace.	S.13(d), S.26
9.	Duty to provide and ensure use of adequate personal protective equipment.	S.13(a) & S.19
10.	Duty to prepare and implement written health and safety policy.	S.14
11.	Duty to notify workers of written health and safety policy and any alterations thereto.	S.14(c)
12.	Duty to consult safety representative in making health and safety arrangements.	S.15(2)
13.	Duty to establish safety committee if requested by safety representative 6 months from registering workplace.	S.16 & S.41(2)
14.	Duty to consult with workers organizations.	S.17
15.	Duty to collaborate with workers at all levels in ensuring health and safety.	S.17
16.	Employer to monitor and control release of dangerous substances into environment.	S.18



17.	Duty to provide alternative suitable employment in cases of assignment involving exposure to agents harmful to health.	S.20
18.	Duty to supervise health of workers, particularly: i) pre-assignment medical examination regarding tasks with risks to health; ii) periodic medical examinations of workers assigned to hazardous tasks.	S.21
19.	To provide occupational health service in undertaking.	S.21(2)
20.	Duty to keep medical records of workers.	S.22
21.	Duty to display safety precautions to workers and public.	S.25
22.	Duty to manufacturers, suppliers and transporters to ensure agents used are without risk to health.	S.28
23.	Duty to carry out testing and examination of substances emitted into atmosphere.	S.28(b)
24.	Duty of manufacturers to ensure chemical agents used in process shall have no risks to health.	S.28(c)
25.	Duty of supplier of dangerous agents to ensure safety of agent.	S.30
26.	Duty of designer manufacturer to pretest articles S.31.	S.31
27.	Duty of importers to obtain adequate information and research of toxicing of substances imported and harmful effects to health and avail this information to any persons concerned.	S.33
28.	Duty to obtain pre-authorization before import, manufacture or use of highly toxic chemical substances.	S.34
29.	Duty not to penalize workers for complying with Act.	S.38
30.	Duty to register workplace one month before occupation.	S.40
31.	Duty to submit architectural drawings of a new work place or alterations of an existing workplace to commissioner for approval before construction.	S.42



32.	Duty to notify commissioner in business of the use of mechanical power at a workplace.	S.44
<u>HEALTH AND WELFARE</u>		
33.	Duty to keep buildings at work place in good state of repair.	S.45
34.	Duty to protect workers from weather.	S.45(2)(a)
35.	Duty to provide drainage of floors of workplace from any wetness.	S.45(3)
36.	Duty to keep workplace clean.	S.46
37.	Duty provide safe working environment free from overcrowding.	S.47(2)
38.	Duty to provide well ventilated working environment with appropriate temperature	S.47(1)
39.	Duty to ensure every workroom is 3 metres in height from floor to lowest point of ceiling.	S.47(3)
40.	Duty to ensure where mechanical means of ventilation are used, that odours or contaminations of atmosphere from workroom are removed.	S.S.47(5)
41.	Workplace to have suitable lighting.	S.48
42.	Duty to provide adequate sanitary conveniences which should be well light maintained and kept clean.	S.49
43.	Duty to provide sanitary conveniences of each sex which should have separate approaches and should be well marked.	S.49
44.	Duty to provide adequate wholesome drinking water which should be accessible to all workers.	S.50
45.	Provision of adequate washing facilities which should be accessible clean, and adjacent to sanitary conveniences.	S.51
46.	Provision of cloakrooms for workers.	S.52
47.	Provision of facilities for sitting down which seats should be of a design and dimension suitable for that work.	S.53

48.	Provision of facilities for meals which should be away from habitual working positions.	S.54
49.	Employer to provide a first aid room capable of being used for administering first aid with a first aid box of prescribed standard. Where workers are more than 150, an additional first aid box for every 50 workers.	S.55
50.	First aid room or box or cupboard to contain requisites as prescribed.	S.55(5)
51.	First aid box to be marked Factories (First Aid) Order.	S.13
52.	To provide a qualified person trained in first aid treatment. (S.3 Factories (First Aid Personnel) Rules). Qualified person to be registered nurse, enrolled nurse, nursing assistant or medical assistant or holder of a St. John Ambulance Association and Brigade or Uganda Red Cross Society or other organization approved by the Chief Inspector.	S.3 Factories (First Aid Personnel Rules)
53.	To display notice of name of qualified person in conspicuous place at workplace.	S.55(8)
	<u>SAFETY DUTIES</u>	
54.	To provide safe access to workplace at all times.	S.56
55.	To ensure that staircases on premises have handrails and guardrails property maintained at all times, necessary to keep persons from falling through.	S.56(3)&(4)
56.	To ensure that all openings in floors are securely fenced unless nature of work renders fencing impracticable.	S.55(6)
57.	Ladders and trestles and other similar immovable equipment enabling workers to ascend and descend should be of good construction, sound material and properly maintained.	S.55(7)
58.	To provide sufficient unobstructed space at every machine while in motion to eliminate unnecessary risk.	S.55(8)
59.	To provide fencing to ensure safety of workers working at heights of more than one metre.	S.55(9)
60.	To provide covering over excavated ground of 2 metres deep.	S.55(11)



61.	To provide fencing of tank, reservoir structure, pump or pit of which edge is one metre above adjoining ground.	S.55(12)
62.	To eliminate risk of injury through inflammability, explosivity, or toxicity.	S.55(15)
63.	To provide means of escape in case of fire for all workers or persons at workplace and keep the same free from obstructions.	S.57
64.	Door to fire exit not to be locked and should at all times save for sliding doors open outwards.	S.57(4)&(5)
65.	Every window door or other fire exit to be conspicuously marked by a notice printed in red letters of adequate size.	S.57(6)
66.	Duty to train workers to ensure that they are familiar with means of escape in case of fire.	S.58(7)
67.	Workplaces to have readily accessible means of extinguishing fire.	S.58
68.	To keep stocks of highly flammable substances in fire resistant stores or unsafe place outside occupied building.	S.59
69.	Occupier to ensure adequate preparedness and response to fire incidents.	S.60
70.	To ensure fencing of dangerous machinery, plant or equipment.	S.61
71.	To provide efficient means of controlling power in rooms where appliances are running by power.	S.63
72.	To provide safe use of driving belts.	S.64
73.	Machines driven by mechanical power to be encased.	S.67
74.	Self acting machines not to move in space or direction liable to be traversed by other workers in course of duty or employment and not to run 5 centimetres of fixed structure not part of machine.	S.68
75.	Occupier to notify commissioner of use of hoists or lift within one month of first use.	S.69



76.	Hoist or lift to be of good mechanical construction and to be properly maintained.	S.69
77.	Hoist lift to be marked conspicuously with the maximum loading capacity.	S.69
78.	Every hoistway or liftway of more than 2 floors to be completely closed with fire resistant materials.	S.69(9)
79.	Employer to provide register of lifting gear with particulars as prescribed.	S.75
80.	Steam boilers, air receiver and steam receivers, gas plants, shall be of good construction sound material and strength free from patent defects.	Ss.76, 77, 80 & 82
81.	Steam boiler attendant to be competent and properly instructed to perform duties.	S.76
82.	Electrical apparatus, fittings and conductors shall be sufficient in size and power for requisite work and shall be installed and maintained to prevent danger.	S.84
83.	Toxic materials to be used as last resort.	S.85
84.	Where dangerous or corrosive liquids are used drenching facilities must be readily accessible in emergencies.	S.86
85.	Where work is in confined places employer to provide adequate means of exit.	S.87
86.	Employee in confined place to be provided with safety belt securely attached by a rope held by a person on the outside.	S.87(b)(i)
87.	Confined place to be free of dangerous fumes and person entering to wear suitable breathing apparatus.	S.87
88.	Confined workplace should have sufficient number of employees readily accessible who are trained in the practice and use of breathing and reviving apparatus.	S.87
89.	Duty to protect workers from asphyxiants or irritants.	S.88
90.	Duty not to expose workers to ionizing radiation.	S.90
91.	Duty to provide personal protective gear free of charge with instructions for use.	S.91



92.	Duty to provide suitable goggles or effective screens to protect eyes of persons employed in the process.	S.92
93.	Duty to provide mechanical data sheets for hazardous chemicals containing identity, supplier and classification of chemical and hazards safety precautions provided by manufacturer or import of chemical.	S.96
94.	Duty to label hazardous chemicals.	S.97



SCHEDULE II

CHAPTER 220 THE FACTORIES ACT

S.I. No.		Page
S.I.220-1	The Factories (Establishment and Appointment of Advisory Board) Instrument	4669
S.I.220-2	The Factories (Plant Examination Fees) Rules	4673
S.I.220-3	The Factories (General Registers) Order	4683
S.I.220-4	The Factories (Notification of Dangerous Occurrences) Rules	4686
S.I.220-5	The Factories (First Aid) Order	4692
S.I.220-6	The Factories (First-Aid Personnel) Rules	4698
S.I.220-7	The Factories (Appeals to the High Court) Rules	4701
S.I.220-8	The Factories (Building Operations and Works of Engineering Construction) (Safety and Health) Special Rules	4705
S.I.220-9	The Factories (Building Operations and Engineering Construction) (Application of Provisions) Special Rules	4735
S.I.220-10	The Factories (Cotton Ginneries Fires) Special Rules	4738
S.I.220-11	The Factories (Dry Cleaning) Special Rules	4754
S.I.220-12	The Factories (Electricity) Special Rules	4757
S.I.220-13	The Factories (Metal Roofs and Walls) Rules	4773
S.I.220-14	The Factories (Prescribed Forms) Order	4776
S.I.220-15	The Factories (Preparation of Steam Boilers) Order	4780
S.I.220-16	The Factories (Gas) Rules	4781
S.I.220-17	The Factories (Prescribed Amendments to British Standards for Gas Plant) Order	4808
S.I.220-18	The Factories (Volatile Paint) Special Rules	4811



S.I.220-19	The Factories (Woodworking Machinery) Special Rules	4818
S.I.220-20	The Factories (Hoists or Lifts) (Exemption) Order	4828
S.I.220-21	The Factories (Hoistways and Hoists) (Exemption) Order	4829
S.I.220-22	The Factories (Steam Boilers) (Exception) Instrument	4833
S.I.220-23	The Factories (Temporary Factories) (Exemption Order)	4836
S.I.220-24	The Factories (Portable Electrical Apparatus) (Exemption from Rules) Notice	4837
S.I.220-25	The Factories (Hoists) (Mines and Quarries) (Exemption) Order	4842
S.I.220-26	The Factories (Lifting Gear) (Annealing) (Exemption) Instrument	4843
S.I.220-27	The Factories (Steam Boilers) (Steam Tube Ovens and Steam Tube Hotplates) (Exception from Statutory Requirements) Instrument	4844
S.I.220-28	The Factories (Steam Receivers) (Miscellaneous Types) (Exception from Statutory Requirements) Instrument	4847
S.I.220-29	The Factories (Steam Receivers) (Taps, Separators or Dryers, Strainers, De-superheaters and Oil Separators) (Exception from Statutory Requirements) Instrument	4853

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