HEALTH AND SAFETY AT WORKPLACES IN INDIA

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*[**Abstract**: Voices have been raised by leaders in the Government and Corporate sector against inflexible labour laws which have been limiting the rate of growth. But in spite of these laws, it has been possible to record high growth rates—there has been growth in almost all the sectors including in hazardous processes of mining machinery and building activities. However, the laws pertaining to health and safety of workers at workplaces have remained static. There is an upward swing in the number of accidental deaths and injuries and occupational diseases—but the figures reported are much lower than the actual figures. Specialised manpower and related infrastructure for dealing with health and safety aspects of workers and surrounding populations have not been developed as per the desired requirements. Though, a National Policy on Workers Safety has already been announced in 2010, it lacks guidance in implementation. Developed countries like the UK have placed in position an umbrella legislation and an apex institution to cover health and safety of workers in all the sectors and have devised sound mechanism for achieving significant development results. It is imperative that India also adopts a similar approach within a compressed time frame. It is one labour reform which governments and corporates should perceive as a productivity investment strategy targeted at both early gains and long-term goals.]*

There is a common refrain amongst the entrepreneurial class that inflexible labour laws stifle economic growth. Supporting voices to such a belief have been coming from the noted economist, Prime Minister Man Mohan Singh[1], and also from his economic advisers[2]. Such a view seems to suggest that strict adherence to labour standards can hinder efficiency, productivity and growth. Recognising the fact that high growth rate of 9% had bypassed 77% of population, National Commission for Enterprises through its Chairman, Late Arjun Sengupta, had observed that inflexibility of labour laws had neither really helped workers nor posed any hurdle for employers. He reasoned that after all, economic reforms with high growth rate since 1991 had gone ahead despite the existence of present labour laws[3]. If there is a consensus that the limit to economic growth has set in because of inflexible labour laws, then let there be suitable reforms with a *quid pro quo*, for e.g., unemployment insurance and safer and healthier working conditions across the sectors of economy. Stricter labour standards and their meticulous implementation in regard to occupational safety may in fact be the contributing factor in bringing about higher

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[1] "Labour laws hurting employment growth need to be revisited: PM," *The Economic Times*, 23rd November 2010.

[2] "Basu pitches for changes in labour laws, calls for debate," *The Economic Times*, 6th September 2010.

[3] "High growth rate of 9% has bypassed 77% of population," *The Times of India*, 1st February 2008.

efficiency, productivity and growth. In the last fifty years, Indian Industry has grown rapidly and more so in the last two decades. This has resulted in increased manufacturing activities, technological advancements and change in work practices. Such a change in business environment would have affected the health of working population which would call for application of stricter and refined regime of occupational safety at workplaces so that the productivity of workers continues to rise in the competitive market economy. However, there are several instances available which belie such an expectation. Rather such instances are a pointer to the fact that working conditions have become more hazardous. In 1984, Ponds set up a thermometer factory in Kodaikanal by transporting a dismantled plant from the US. The plant was taken over in 1997 by Hindustan lever limited. In 2001, a case of dumping by the plant was uncovered. The factory had not only exposed its workers to the hazardous mercury, but also released tons of mercury waste into its surroundings. Mercury is a neurotoxin and it can damage the brain, heart, kidney, and liver. Workers were not informed about the hazardous nature of mercury, nor were they given any protective gear. This has led to at least 19 deaths till date and the workers have been pushed into destitution because of huge medical bills. The company has disowned any liability and is delaying clean up to international standards[4]. This is surely not an isolated case of exposing workers to hazardous working conditions. Stone-quarrying companies in the National Capital Region had imperilled the lives of thousands of quarry workers by exposing them to silica poisoning causing irreversible lung diseases. In the same vein, more than 1,00,000 workers are working in asbestos industry under the pretence of a doctored study[5]. There are many such instances of increased hazards for workers in various sectors including in the expanding health sector where the workers are exposed to an array of unknown hazards.

It is expected that those in authority who advocate labour reforms for higher economic growth should be aware of their constitutional responsibilities as mandated under Articles 39(e), 41, 43, 48A "to make the life of the workman

[4] "Occupational Safety & Health," New Trade Union Initiative (NTUI).
[5] *Ibid*.

meaningful and purposeful with dignity of person". The State shall direct its policy towards securing:

a) the health and strength of workers, men and women;

b) that the tender age of children is not abused;

c) the citizens are not forced by economic necessity to enter vocations unsuited to their age or strength; and

d) just and humane conditions of work and maternity relief.

Besides, various judgements of Supreme Court have under Article 21—right to life—upheld the right of employees' health. The Court has noted that "occupational accidents and diseases remain the most appalling human tragedy of modern industry and one of its most serious forms of economic waste." Though for argument's sake, the Directive Principles may not be enforceable, any acquiescence, by the State towards negating the directive principle would be hard to justify legally; however, such acquiescence may be economically rewarding.

On behalf of corporate and business it is in vogue to talk about Corporate Governance and Corporate Social Responsibility. Surely, good business practices include sound labour practices which provide for healthy and safe working environment for workers and the community at large. An enlightened management would so orient their procurement policies to exclude such establishments which fall short of safety standards.

Since the beginning of liberalisation in 1991, many regulations have been brought about to facilitate economic growth and development but hardly any initiative has been taken to ameliorate the working conditions of labourers even from health and safety angle. Despite the increasing manufacturing and mining activities, regulatory authorities ensuring occupational safety have been limited to 1,400 safety officers, 1,154 factory inspectors and 27 medical inspectors. These numbers are grossly inadequate even for the inspection of formal units that only employ 10% of India's

total workforce (around 26 million), let alone the millions who work in the informal sector with absolutely no safeguards. It is estimated that unsafe work conditions is one of the leading causes of death and disability among India's working population. These deaths are needless and preventable. Unlike growth rates and GDP figures that are flaunted every quarter, the figures of dying and ailing workers who are participants in India's growth story are never recorded or spoken about. The only way to get an idea of the scale of the problem is from data released by the ILO, which estimates that around 4,03,000 people in India die every year due to work-related problems, that is, about 46 every hour[6].

Legislation on occupational health and safety has existed in India for several decades. The principal health and safety laws are based on the British Factories Act. The Factories Act, 1948 has been amended in 1954, 1990, 1976 and 1987. Following the Bhopal gas disaster, a special chapter on occupational health and safety to safeguard workers employed in hazardous industries was added. The amendments demanded a shift from dealing with disaster or disease to prevention of its occurrence. The Act, however, is applicable only to factories that employ 10 or more workers; it covers only a small proportion of workers. Other key legislations dealing with occupational safety and health (OSH) are: Mines Act, 1952, Dock Workers (Safety, Health and Welfare) Act, 1986; Plantation Labour Act, 1951; Explosives Act, 1884; Petroleum Act; 1934; Insecticide Act, 1968; Indian Boilers Act, 1923; Dangerous Machines (Regulations) Act, 1923; Indian Atomic Energy Act, 1962; Radiological Protection Rules; 1971; Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989; Electricity Act, 2002.

The Directorate General of Factory Advice Service and Labour Institutes in the Ministry of Labour provide inputs for national policies on occupational safety and health in factories and docks, and enforcing them through inspectorates of factories and inspectorates of dock safety. Directorate General of Mines Safety, Ministry of Labour, oversees the health and safety of mine workers and implementation of Mines Act, 1952.

[6] Pandita, Sanjiv, "Status of occupational safety and health in India," *Infochange Agenda*.

Worker's Compensation, sometimes referred to as 'Workman's Compensation' or 'Worker's Comp', is the name given to a system of laws meant to protect injured workers The goal is to make sure that somebody who is injured at work receives appropriate medical care, lost wages relating to the on-the-job injury, and, if necessary, retraining and rehabilitation, so as to be able to return to the workforce. When workers are killed on the job, members of the workers' families are ordinarily eligible for benefits. Besides this, there is the Employees' State Insurance Act which protects the workers in case of sickness, maternity and disabilities caused by injuries and resultant loss of wages.

There are at least 18 ILO conventions that are targeted at addressing the issue of Occupational Safety and Health (OSH). So far, India has ratified only three such conventions. India is yet to ratify important conventions like Convention 155 on occupational safety and health and the working environment, Convention 161 on occupational health services, Convention 167 on safety and health in construction, Convention 176 on safety and health in mines, Convention 184 on safety and health in agriculture, Convention 187, the promotional framework for occupational safety and health[7].

Legal framework for the protection of workers in the formal units which employ only 10% of the workforce, has been in existence for long but the implementation has been lax. Number of safety officers, factory inspectors and medical inspectors has remained below optimal level. According to a recent assessment[8], there are twenty one institutions across the country capable of training 460 specialists. This number is obviously inadequate considering the population of India's working class. There are around 1,000 qualified occupational health professionals in India and only around 100 qualified hygienists. At present, the need for occupational health specialists in the country is much higher and there is a significant gap in the demand and supply of this specialist service.

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7 *Ibid*.

8 Zodpey, S.P., Himanshu Negandhi and R.R. Tiwari (2009), "Mapping 'Occupational Health' courses in India: A systematic review," *Indian Journal of Occupational & Environmental Medicine*, 13(3), Pp. 135–140.

Accidents, despite being visible, are grossly underreported in the Indian context. The reporting of insidious occupational diseases therefore stands little chance. If an analysis is made of the workers who die because of their work environment, most of them succumb to occupational cancers and other work-related illnesses. This is contrary to the common belief that most work-related deaths are caused by accidents. In most places, occupational safety and health invariably means prevention of accidents, very little attention is paid to occupational diseases. An accident free workplace by no means implies a safe workplace.

Occupational diseases—including cancers caused by various materials in the workplace, including asbestos, carcinogenic chemicals, silica, cotton, dust, and radiation, job stress and work shifts—usually take a long time to develop (sometimes more than 10 years). Given the changing work practices, most of the establishments tend to hire workers on short-term contract. By the time they develop a disease, it becomes impossible to link the same to their working environment. Non-communicable diseases result in more deaths than communicable diseases. Overall, people are more likely to die of work-related diseases than childhood or infectious diseases.

Not many doctors are able to correctly diagnose an occupational disease. In fact, certain occupational diseases like byssinosis and silicosis are often wrongly diagnosed as tuberculosis. In a community where having a doctor is a privilege an OSH specialist is simply out of question.

Most workers in India (90%) work in the vast informal sector. The variable and insecure nature of the work means that more and more workers are pushed into taking up hazardous and precarious employment both in the informal economy as well as informal work in the formal sector. For these workers, employment not only fails to bring about a successful escape from poverty, it may contribute to existing vulnerabilities. There is very little awareness about workplace hazards due to lack of access to information, or even any kind of formal education. Informal workers give low priority to OSH, as having work is more important than the quality of the job. Many workers argue that they may die of work, but if they do not work their families

would die of hunger. In any case, family members of those active in the informal sector also get exposed to work-related risks. Diagnosis of occupational diseases is difficult even in the formal sector; in the informal sector it is almost impossible.

The impact of OSH hazard on women and children would be much harder. In addition to paid work, women also do other demanding jobs like cooking, cleaning and bearing and taking care of children. The extended work hours puts tremendous pressure on women's bodies and minds. Because of uncomfortable positions at workplaces and that too for long hours, women develop muscular-skeletal disorders. Pregnant women working with chemicals like solvents in the fields are exposed to chemical poisoning; in the process, their foetuses are also exposed to the toxins in workplaces. As a result, their children's developing bodies are susceptible to harm[9]. Over the years, the proportion of female working population particularly in the farm and rural sectors is on the rise. OSH issues among female workers are thus becoming alarming due to certain diseases and stress which can cause irreversible harm to newborns.[10]

Thus, the occupational health scenario has undergone a paradigm shift due to rapid industrialisation. Inadequate attention to the developing shift from leaders in the society bespeaks of indifference to the very basic human resource which contributes to growth. Productivity at work is directly influenced by the health status of workers. An unhealthy workforce is a drag on workplace productivity; affecting overall national productivity. Poor occupational health and reduced working capacity of the workers may cause an economic loss of up to 10–20% of GNP. WHO estimates that only 10–15% of workers have access to basic occupational health services. The burden of disease attributed to occupational diseases is high and it is estimated to be about 11 million cases annually, with about 7,00,000 deaths. According to a World Bank estimate, two-thirds of the occupationally determined loss of disability-adjusted life years could be prevented by occupational health and safety programmes. With over 40 million belonging to the working population, India has a

[9] Pandita, o*p. cit.*
[10] Saiyed, Habibullah N. and Rajnarayan R. Tiwari (2004), "Occupational Health Research in India," *Industrial Health*, 42, Pp. 141–148.

very large population base engaged in industrial activity. The health needs of these populations also differ according to the industry of work. The knowledge and orientation for diagnosing such occupation-specific conditions are evolving globally in the form of speciality health care.[11] However, for changing the mindset of the leaders in different sectors, it would be necessary to integrate various tasks involved into a single multi-disciplinary authority that would be capable of multi-tasking across all the sectors. Presently, existing fragmented approach of relying on sector specific legislation, administered by fragmented agencies will not do. Structural changes have been brought about in the UK, way back in 1974 when that country enacted The Health and Safety at Work etc. Act 1974 (HSWA 1974). Through this Act, an attempt was made to rationalise the then existing complex and confused system of legislation in this area. The broad objectives of the Act were stated as follows:

- Securing the health, safety and welfare of persons at work.
- Protecting persons, other than persons at work, against risks to health or safety arising out of or in connection with the activities of persons at work.
- Controlling the keeping and use of explosive or highly inflammable or otherwise dangerous substances, and generally preventing the unlawful acquisition, possession and use of such substances.
- As originally enacted, there was a fourth objective: Controlling the emission into the atmosphere of noxious or offensive substances.

This provision was repealed when control of emissions was brought under a uniform scheme of legislation by the Environmental Protection Act 1990.

The UK Act of 1974 provided that the provisions relating to the making of health and safety regulations and agricultural health and safety regulations and the preparation and approval of codes of practice shall in particular have effect with a view to enabling the enactments as specified in its schedule to be governed by such regulations and codes.

[11] Zodpey *et al.*, o*p. cit.*

Thus, the Act of 1974 became the Principle Act to govern the health and safety at work across the sectors. The Act has since created statutory instruments in the form of codes of practices for specific areas. Such examples are: Control of Substances Hazardous to Health Regulations 2002; Management of Health and Safety at Work Regulations 1999; Personal Protective Equipment at Work Regulations 1992 and the Health and Safety (First Aid) Regulations 1981. Such statutory instruments have laid down detailed requirements in fulfilment of the objective of rationalising the existing complex and confused system of legislation.

The Act at one place defined general duties of employers, employees and contractors and suppliers of goods and services, persons in control of work premises, and those who maintain and manage them, and persons in general.

The Act has created Health and Safety Executive (HSE) at the apex level with extensive enforcement powers extending from unlimited fine and/or imprisonment for up to two years. As litigation by individuals may not be practicable, HSE itself enters into litigations on behalf of the aggrieved through its inspectors or designated personnel. HSE has extensive powers of inspections, injunctions, seizures, taking of evidence, etc., through its inspectors. HSE can issue notices for improvement, prohibition and, if necessary, launch prosecution. Reviewing the performance of the Act in 2008, it was observed:

> "Between 1974 and 2007, the number of fatal injuries to employees fell by 73 per cent; the number of reported non fatal injuries fell by 70 per cent. Between 1974 and 2007, the rate of injuries per 1,00,000 employees fell by a huge 76 per cent, and Britain had the lowest rate of fatal injuries in the European Union in 2003, which is the most recent year for which figures are available. The EU average was 2.5 fatalities per 1,00,000 workers; the figure in the UK was 1.1."

HSE has come to be recognised as the national independent watchdog for work-related health, safety and illness. It is an independent regulator and acts in public interest to reduce work-related death and serious injury across the Great Britain's

workplaces. The Health and Safety Executive is governed by the HSE Board and the Senior Management Team. The Board comprises nine members who are appointed after statutory consultation with representatives of: employers (three members), employees (three members) and other organisations concerned with health and safety including local authorities (LAs) and public interest (up to three members) while the Senior Management Team has twelve members who hold key positions including Directors of Divisions, Chief Executives and Legal Advisor.

It would be instructive to glance through the career graph of the chairperson and Members of the HSE towards establishing their commitment to the cause for which they have been nominated.

Present Chairman, Ms. Judith E Hackitt, is a non-political, professionally qualified and practising Chemical Engineer. She began her working career in 1975 with Exxon Chemicals where she spent 15 years in various process management roles at Fawley. Thereafter she has been European operations Director of a pigment business before becoming Group Risk Manager with world-wide responsibility for health and safety; insurance and litigation. She is also president-elect of Institution of Chemical Engineers for the year 2013–14.

Other Members are:

Isobel Garner: A Chartered Civil Engineer, she has had a varied career in both the private sector and the public sector. She uses her skills and experience to help bring about successful, sustainable improvements within public services.

Robin Dahlberg: Has been Board level Appointee in organisations in the private, public and non-profit sectors. Also a volunteer Generalist Adviser at Westminster Citizens Advice Bureau.

David Gartside: Consulting engineer and worked for engineers and contractors on bridge design and construction. He rose to become Vice President, Safety Health and Environment for AstraZeneca.

Paul Kenny: Has been General Secretary of the GMB trade union.

Nick Baldwin: Fellow of the Institution of Mechanical Engineers and Institution of Engineering and Technology. Has also worked in the capacity of Chief executive of Powergen, and, Non-executive Director of Scottish and Southern Energy and the Nuclear Decommissioning Authority.

Prof. Richard Taylor: Has had a lengthy career in health and safety – including nuclear safety – both in industry and academia. He has held a range of senior safety management positions with CEGB, Nuclear Electric plc, Magnox Electric plc, etc.

Ms. Frances Outram: Has been in HR field in private sector for 20 years and has held public sector NED positions. She has also worked in the capacity of Non-executive Director with Associated with Dorset Healthcare University NHS Foundation Trust.

Hugh Robertson: Is a Chartered Fellow of the Institution of Occupational Safety and Health and an Honorary Fellow of the Faculty of Occupational Medicine. He is Vice-chair of the Panel of Experts on Occupational Diseases of the ILO.

Ms. Elizabeth Snape: Worked as Legal officer. Her experience as union safety representative at Unison has given her experience of workers' health and safety concerns.

John Spanswick: Known for integrating and promoting the construction industry’s participation in the development and delivery of the Health and Safety Executives’ strategy and programmes.

Management Team, as on date, is composed of professionals who have extensive specialisation and hands-on experience in the area of health and safety in different sectors ranging from manufacturing, nuclear to engineering, management, financial and legal.

In compliance with the provision contained in section 1(2) of HSE Act 1974 to the making of health and safety regulations and the preparation and approval of codes of practice shall, in particular, have effect with a view to enabling the enactments specified in the third column of Schedule 1 and the regulations, orders and other instruments in force under those enactments to be progressively replaced by a system of regulations and approved codes of practice operating in combination with the other provisions of this Part and designed to maintain or improve the standards of health, safety and welfare established by or under those enactments.

The legislative initiative taken by UK in 1974 through the enactment of HSE Act 1974 and with the creation of a broad-based and multidisciplinary HSE (assisted by a multidisciplinary administration structure), it has been possible to set very high standards of health and safety in UK at workplaces and beyond though in a free democratic society there would always be a reason for improvement and thus criticism. The example set by UK has been emulated in advanced market economies of the European Union, Australia, New Zealand, Canada, etc., with considerable improvements in health and safety norms at workplaces and beyond[12].

India, on the other side, has remained static in its legislative approach and also in developing infrastructure and manpower while expanding its manufacturing and industrial base many times over. Rather, on the smallest provocation, labour laws and their inflexibility have been highlighted as factors limiting growth. Resultantly, health and safety at workplaces has been allowed to be neglected and no worthwhile initiatives have been taken to improve upon manpower and infrastructure. The present state of Occupational health in India has been described as follows by a visiting scholar to India[13].

> “I spent 2 weeks in Hyderabad, India, as guest of the Indian Institute of Public Health and generously supported by a Faculty of Occupational Medicine Mobiles, Travelling Fellowship. It was a privilege to witness occupational health practice in a different country and to realise that, although we talk

[12] *Op. cit.* 4

[13] Brecker, Naomi, “Occupational health in India,” Letters to the Editor.

about significant unmet need for occupational health in the UK, the magnitude of problems facing people working in India is far greater.

"India has a working age population of approximately 500 million but less than 10% of workers are covered by existing health and safety legislation. There are frequent media reports of accidents at work. During my visit, the local paper reported 12 construction workers killed when a building collapsed, two workers killed by liquid ammonia, two nurses who died of smoke inhalation following a hospital fire and a dock worker who drowned.

"For the whole of India, epidemiologists have estimated an expected annual number of occupational fatalities of 36,700, with a further 18,300,000 occupational injuries and 1,85,0000 occupational diseases. However, under reporting and a paucity of reliable data are widely acknowledged. In Andhra Pradesh, 99 fatal occupational accidents were reported to the State's Factory Inspectorate in 2002. If occupational fatality rates from a comparable economy (Malaysia—11 fatalities per 1,00,000 workers) were applied to the 3,85,000 workers employed by the companies submitting a return under the Factories' Act, the expected number of fatalities would rise to 385. Applying the same rate to the Andhra Pradesh working age population would give a further 10-fold rise in incidence to 3,134 expected fatalities.

"Access to occupational health services is nonexistent for the vast majority of workers in India. I attended the Indian Association of Occupational Health annual conference and learnt that there is little provision outside larger national and international industries, a huge shortfall in trained occupational health professionals and limited provision of specialist training. Medical services attached to workplaces concentrate on general medical diagnosis and treatment, although exemplars of excellent occupational health practice exist. The situation may change with new national policy on safety, health and environment at work (February 2010), but while the document demonstrates intentions 'to ensure safety and healthy working conditions for every man and woman in the nation', the conference was told that it currently lacks plans for implementation or designated resources to achieve results.

> "There is no standard setting body for occupational medicine in India and hence no competence-based syllabus, guidance on expected standards of practice or specialist registration. The Indian Association of Occupational Health is the only focus of professional organisation, somewhat akin to the UK's Society of Occupational Medicine.
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> "The need for action to improve the health and safety of the working age population in India is enormous, requiring concerted national and local action."[13]

Voices have been raised by leaders in the Government and Corporate sectors against inflexible labour laws which have been limiting the rate of growth. But in spite of these laws, it has been possible to record high growth rates—there has been growth in almost all the sectors including in hazardous processes of mining machinery and building activities. However, the laws pertaining to health and safety of workers at workplaces have remained static. There is an upward swing in the number of accidental deaths and injuries and occupational diseases—but the figures reported are much lower than the actual figures. Specialised manpower and related infrastructure for dealing with health and safety aspects of workers and surrounding populations have not been developed as per the desired requirements. Though, a National Policy on Workers Safety has already been announced in 2010, it lacks guidance in implementation. Developed countries like the UK have placed in position an umbrella legislation and an apex institution to cover health and safety of workers in all the sectors and have devised sound mechanism for achieving significant development results. It is imperative that India also adopts a similar approach within a compressed time frame. It is one labour reform which governments and corporate should perceive as a productivity investment strategy targeted at both early gains and long-term goals.

The foregoing observations of the visiting scholar to India precisely sums up the inertia that prevails amongst the leaders in the country bordering on the insensitivity towards those human resources who tend to make the supreme sacrifice to sustain economic growth in a polity where there are constitutional directives to provide

measures so as to ensure safe and healthy working conditions for workers. If the Constitution makers had ordained that Governments would present an Annual Statement in Parliament on the implementation of Directive Principles, successive governments would stand censured for their total apathy and inaction in a world where strict safety norms were being placed in position elsewhere.

Development with inclusive growth would have no meaning if the leaders in government and in the corporate secure the same at the cost of health and safety of workers. Meaningful legislations and institutions have to be placed in position and developed a priori to ensure safe and healthy working conditions as professed in the National Policy[14] for the working population everywhere in the country and also for the public in general. The corporate sector, as a national commitment, should resolve to redesign institutional arrangements and supporting legislations to work towards the development of specialised manpower and placement of standards with implementation instruments in a compressed time frame. Labour Reforms towards better safety and health at workplaces should, in the minds of government and corporate leaders, be perceived as a long-term investment for better productivity and yet another business opportunity. It is high time that a consensus is built around an umbrella legislation and an umbrella institution, cutting across the sectors as in the UK.

[14] "National Policy on Safety, Health and Environment at Work Place," Ministry of Labour and Employment, Government of India.