

COMMON CAUSE

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POLICY-ORIENTED JOURNAL SINCE 1982

Is your car built on broken fingers?

'Safe in India' tells us the story of an avoidable tragedy

Editorial: Avoidable Human Suffering	03	Crushed, Bruised And Broken	20
Safe In India	04	Gang of Shramikpur: Real Life Episodes	24
How To Take Responsibility?	06	Global Work-Life Balance	30
What About Legal Remedies?	10	Common Cause Updates	36
Common Cause Events	16		



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AN AVOIDABLE TRAGEDY

Worker Safety is a Matter of Justice

Cars made in India are racing on motorways across the world. It is a matter of pride for us that we are exporting automobiles to the US, Europe, and the rest of the world. We too are driving super sophisticated vehicles on our newly minted expressways. And these are not just global brands like the Hondas, Renaults or Toyotas but also our homegrown Tatas, Eichers and Mahindras that are earning international recognition. The auto industry today contributes seven percent to India's GDP and generates huge employment at all levels.

But this shining India story comes with an entirely avoidable dark side. Thousands of workers lose their fingers, palms, and sometimes whole hands, while making parts for these vehicles at the sites of Original Equipment Manufacturers (OEMs). Most of the victims are in their twenties and thirties. The OEMs are typically contractors and sub-contractors sometimes several rungs down the line. Big brands pretend as if they have nothing to do with preventable accidents because they happen away from their factories. But can they evade moral responsibility?

As more and more swanky cars roll out of our factories, the situation only gets worse. In 2021, over 10855 auto sector workers suffered injuries nationwide but that number was crossed in the first three quarters of 2022, as estimated by an amazing organisation called Safe in India (SII) in "Crushed," its report on auto sector injuries. I call them amazing because SII is an organisation of conscientious citizens who, in between their daily jobs, take out time to mitigate human sufferings. They petition the government, courts, media, manufacturers etc for their attention. They also provide actionable insights by preparing meticulous reports with data and real-life stories.

SII's "Crushed" series of reports reveal that our mounting miseries have not led to sensitive policymaking. They also caution that the actual number of worker accidents is much greater than estimated. Sadly, the ordeal of the injured workers does not stop at the accident. Insult is added to injury when they are denied compensation and proper medical treatment. This happens because the factories – and the sweatshops run by the OEMs – do not enrol all workers in order to dodge legal compliances. At best, the manufacturers come across as clever by half because they save pennies at the cost of miseries to others and at a huge loss of productivity to themselves.

And how well the government authorities fare? They tend to look the other way when laws are flouted. They also allow the global auto giants to conveniently shift the blame to sub-contractors or the victims. What else can explain declining factory inspections? In Maharashtra and Haryana, the total number of factory inspections have declined by 83% and 86% respectively, according to official figures quoted by SII. Factors like these have plummeted India's standing in the labour productivity index by 13 notches from 115 in 2021 to 128 in 2022.

This issue of your journal is dedicated to worker safety and related matters. We have attempted to explain the issue through the work of SII and its amazing team of volunteers. We also give you an idea of the legal remedies available to the victims and the global practices regarding worker safety. It must be reemphasised that most of these accidents are easily preventable if only the stakeholders are willing to take moral responsibility.

To us at Common Cause, these accidents are not just matters of legality. These are as much about justice, human rights and our society's collective conscience. These accidents are remediable injustices crying for our attention. It is in this spirit that Common Cause works with SII as a partner organisation. Please let us know what you think at commoncauseindia@gmail.com

Vipul Mudgal
Editor

SAFE IN INDIA

Journey Since the Birth of the Organisation

Tushar Dhara*

It was the winter of 2014 when a news item posted in the WhatsApp group of an Indian Institute of Management (IIM) alumni group triggered an intense debate. The article by Supriya Sharma¹ of *Scroll.in* laid bare how “crush” injuries were taking place with alarming regularity in the automobile industry in Haryana. Twenty cases every day at a single hospital!

The article was titled “Your car has been built on an assembly line of broken fingers” and was initially greeted with scepticism and incredulity. But it also led to a debate about whether the dreadful figures quoted could be true. The alumni of the 1991 batch had people who were now in senior management positions at investment banks, consultancy firms and large corporates around the world. They had gained material success and some were thinking of “giving back” to society. The article was the right catalyst.

It was at this point that three of the alumni, Sandeep Sachdeva, Prabhat Agarwal and Ravi Gulati, decided to “look into this”. Sachdeva was a banker with HSBC Plc in the UK and in his mid-40s. Agarwal was



founder and coach at Aravali Scholars where students from lower income backgrounds were mentored and provided with academic resources. He was also a known face in Gurgaon, which is one of the largest auto manufacturing hubs in India. Gulati had founded a number of social enterprises that focused on youth and education. Together they founded Safe in India (SII), through which they hoped to make a difference to the lives of auto-sector workers who suffered shop floor injuries or were vulnerable to them.

In September 2015, the three, in collaboration with a Gurgaon-based NGO called Agrasar, released a comprehensive report² based on 20 case studies of workers who had suffered workplace injuries. This report, which focused on factory accidents and the post-injury

phase where workers often had to fend for themselves, was a significant milestone in their efforts to understand occupational safety and health.

Born in early 2016, SII started by partnering with Udaipur-based Ajeevika Bureau to understand how to run a successful social enterprise. Financial accounts were submitted to Ajeevika for audit and their administrative procedures were adopted. The Rajasthan NGO, which works on livelihoods and labour rights, mentored the young social sector start-up for three years.

SII can be described as a collective of well-wishers who care about the well-being of workers in the Indian automobile sector and are dedicated to bringing about systemic change. India is among the top three or four automobile manufacturing countries in the world. The auto sector contributes roughly seven percent to the country’s GDP which comprises half of Indian manufacturing and employs tens of millions of workers. However, many of the workers are unskilled and have limited awareness about their rights and benefits. Moreover, the auto-sector is made up of auto companies and their

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supply chains. The companies (such as Maruti-Suzuki, Honda, Hero, TVS) assemble vehicles in their factories with parts that they source from their Tier-1 suppliers, who in turn get raw materials from Tier-2 suppliers and so on. The supply chain could have as many as four to five tiers, with the bottom rung comprising small parts workshops known to work mostly as sweatshops. For instance Maruti-Suzuki has 475 Tier-1 suppliers, while the Tier-2 may be four times that number³. The auto companies claim that they are not even aware of who makes up the tail of their supply chains!

Accidents like crush injuries and hacked limbs occur because providing training to unskilled labour or adding safety measures to heavy machinery may raise the cost of production. And it is not just male workers who are injured. SII has documented numerous instances of female workers who have suffered from injuries, especially from power press machines. SII's work has revealed that 90 percent of auto-sector workers are migrants, 65

percent have work contracts that are precarious, 50 percent are under 30 years and 65 percent have lost fingers or hands. And yes, 20 workers do lose their limbs every day, just in Gurgaon.

Over time, SII has evolved four "pillars of action" to address shop floor injuries. The first is assisting injured workers get employee state insurance, which is their statutory right. SII has assisted more than 2,500 workers get ESIC compensation. The second is improving workplace safety in auto manufacturing, with a focus on the supply chain, by engaging with the auto companies, industry associations and governments. The third pillar is to improve ESIC's healthcare and compensation system nationally by engaging with the government body that pays out the insurance. They provide recommendations based on their experience of helping workers. The final pillar is to increase awareness about occupational safety and health (OSH) by engaging with workers.

During the COVID-19 lockdown, SII temporarily repurposed their

services to support workers around Manesar. As factories stopped production and workers lost their homes and income, the organisation distributed over 450,000 adult ration packs and 25,000 masks. It also helped workers get back home.

SII publicises its work through reports and is now expanding from its home base of Gurgaon to other auto-hubs across the country like Pune, Chennai, Karnataka and Uttarakhand. The organisation is able to raise resources from corporate donors as well as the IIM and IIT-Roorkee alumni networks of the founders.

Endnotes

1. Sharma, Supriya (December 01, 2014). Your Car Has Been Built On An Assembly Line of Broken Fingers. *Scroll.in*. Retrieved May 15, 2023 from <https://bit.ly/473COYw>
2. Agrasar, Safe in India (2015). What Can Safeguard Workers? Retrieved May 15, 2023 from <https://bit.ly/43Ca4TF>
3. Shared by Safe in India Team

HOW TO TAKE RESPONSIBILITY?

Excerpts from SafetyNiti 2022

Can auto companies prevent thousands of workers from losing their fingers and hands?

Odd question, right? But have you ever wondered how many hands it took to manufacture your car? Not many of us think about this while driving to work or while stuck in a traffic jam, but the sad reality is that many of the hands that built our cars are missing fingers. Or entire limbs.

The Indian automobile industry uses manufacturing processes that put worker health at risk by making them operate machines which can hack off fingers or entire limbs if not handled with care. Unfortunately, the volumes and tight schedules mean that workers regularly end up losing digits.

This is where Safe in India (SII) has made an invaluable intervention. When it comes to gauging the occupational safety and health (OSH) conditions at Indian automobile companies, SII has been mapping worker health in the major auto hubs across the country. Consider the following:

- In the last 5+ years, SII has located and assisted 3,955 injured auto sector workers in the auto hubs of Haryana (Gurugram, Manesar, Bawal, and Faridabad). In FY21-22 alone it provided assistance to 800 workers.

- On an average, 1.97 fingers are lost to “crush injuries”. These are injuries that result from force or pressure applied to a body part, typically heavy machinery in factories. Crush injuries have a devastating financial and psychological impact on workers and their families and restrict their already limited livelihood options
- Most auto-sector workers in the supply chains of the auto companies are migrants (80%) and contractual workers (60%).
- Nearly two-thirds of the assisted workers didn't have ESI cards when the injuries occurred, despite paying the insurance premiums. The Employees' State Insurance scheme (ESI) is a mandatory government social security programme for workers that protects against sickness, death and injury and applies to factories and establishments with 10 or more employees.
- Such a high toll of injuries and disablements has an enormous economic impact on the nation's stock of skilled labour and productivity. India has dropped further from 115 in 2021 to 128 in 2022 in terms of labour productivity.

These are some of the eye-popping findings in SafetyNiti 2022, an annual report by SII which examines the

OSH policies of the top 10 automobile manufacturers in India (Ashok Leyland Ltd, Bajaj Auto Ltd, Eicher Motors Ltd, Hero Motocorp Ltd, Honda Motorcycles and Scooters India Pvt Ltd, Hyundai Motor Company India, Mahindra and Mahindra Ltd, Maruti Suzuki Ltd, Tata Motors Ltd, and TVS Motor Company Ltd).

This year's report is the second after the inaugural one in 2021. It looks at publicly available OSH documents that Original Equipment manufacturer (OEMs, which are the actual automobile companies) have for their own factories and those of their supply chains. SII went through these documents to ascertain what processes were in place to prevent accidents, learn from past accidents, and improve worker safety.

As an illustration of the impact that the report is having, SafetyNiti 2022 has found improvements in the OSH policies of many of the top 10 OEMs in line with recommendations made in SafetyNiti 2021.

Following are some of the findings of SafetyNiti 2022.

FINDING 1

OSH Policy in Public Domain

Although all 10 OEMs mention

SII has recorded first-hand this dismal state of worker safety by locating and assisting 3,000+ injured workers in the past five years with 1000+ workers just in FY 21-22 only in Haryana.

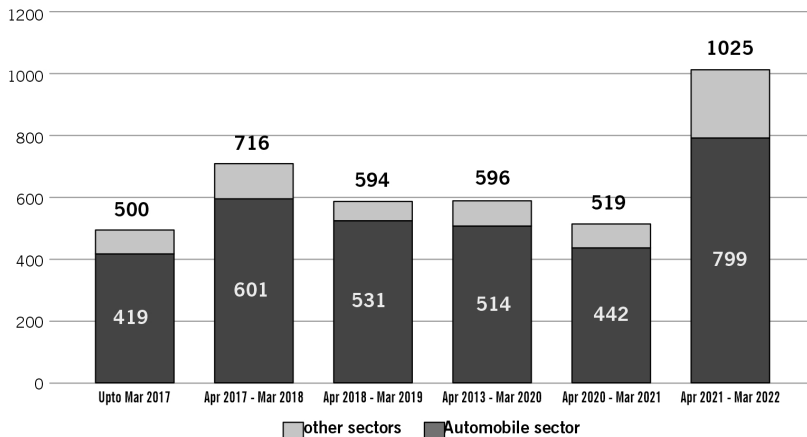


Figure 01: Number of injured workers from the auto sector SII has assisted during Dec 2016-Mar 2022 and the continuing high proportion of auto-sector injuries in them.

Source: SafetyNiti 2022 report by Safe in India

they have an OSH policy for their own factories, six have it in the public domain (Bajaj, Hero, Honda, Mahindra, Maruti Suzuki, Tata), while the remaining four (Ashok Leyland, Eicher, Hyundai, TVS) claim to have a policy but these documents are not available in the public domain.

FINDING 2

OSH Policy for Non-Permanent Workers at Par with Permanent Workers

The occupational safety and health policies of most OEMs do not explicitly state that they cover contract/ casual/ temporary workers and other categories such as trainees/apprentices/ probationers even in their own factories. Two OEMs have a charter of workplace guidelines for contract workers which

includes health and safety (Bajaj) or a code of conduct that covers OSH and is applicable to contract workers (Hero).

Five OEMs have mentioned compulsory safety induction/ trainings of contract workers in their reports (Eicher, Mahindra, TATA, Ashok Leyland, TVS) while four OEMs have told Safe in India that their OSH policies cover them (Honda, Hyundai, Maruti Suzuki, TATA).

FINDING 3

Supplier Code of Conduct

Four OEMs (Eicher, Mahindra, Tata, Honda-parent company) now have Supplier Code of Conduct (SCoC). Mahindra mentions that its SCoC is applicable to all suppliers, and it includes OSH compliance. Suppliers at each tier are

expected to exercise due diligence in regard to social and environmental responsibility. Honda mentions that its SCoC is applicable to all suppliers “to disseminate these guidelines to sub tiers throughout the supply chain”. Eicher has an SCoC which includes OSH and expects “the Supplier shall implement a sustainable procurement policy for its own suppliers, aligned to EML’s Supplier Code of Conduct”.

FINDING 4

Human Rights Policy in public domain

Four OEMs now have a stated human rights policy in the public domain (Bajaj, Eicher, Mahindra, Honda- parent company). Hyundai Motor’s parent company has a human rights policy, which also mentions OSH, working hours, and grievance redressal. The company told SII verbally last year that the policy is applicable to the Indian subsidiary too. Ashok Leyland, Hero and TVS have covered human rights only partially (child labour and/or forced labour etc.) as Indian legislation covers these. Maruti Suzuki, Tata and TVS have confirmed in their documents that their human rights policy has been formulated, but is not available in the public domain.

FINDING 5

Standard Operation Procedures (SOP) for deeper supply chain

None of the OEMs appears to have an SOP or an implementation plan for their

supply chains, which is the same position as last year.

...However, there are some good practices

Mahindra reports that it implements its Human Rights Policy through contractual agreement. Maruti, Honda, and Hero are members of the ISH-Maruti-Honda-Hero-SII joint platform at Gurugram to prevent accidents in the auto-sector supply chain. Thirty audits of suppliers have been conducted by the three OEMs and a report on best practices across the deeper supply chain is awaited.

The Tata CoC states that “We shall comply with the laws of the countries in which we operate and any other laws which apply to us. With regard to those provisions of the Code that are explicitly dealt with under an applicable law or employment terms, the law and those terms shall take precedence. In the event that the standards prescribed under any applicable law are lower than that of the Code, we shall conduct ourselves as per the provisions of the Code.”.

The Honda supplier sustainability guidelines state “We expect our suppliers to uphold these guidelines and cascade them down to their supply chain”. And as per the auto maker’s general purchase agreement (GPA), a penalty is imposed on suppliers if they do not adhere to the supplier sustainability guidelines.

Maruti and its suppliers have

established the MACE (Maruti Centre for Excellence) which will conduct trainings on OSH in the near future, including lessons on operating press machines safety.

Policy Recommendations

- Include all contract workers in own factories in the OSH policy framework
- Create, publish, and implement a Supplier Code of Conduct (SCoC)
- Create, publish, and implement a standard operating procedure (SOP) for supply chain factories
- Report annually on Indicator 8.8 of SDG 8 (the only SDG indicator about worker safety)
- Demand minimum compliance from the supply chains (e.g., all workers should be covered by ESIC from their first workday)

Operational Recommendations for OEM boards

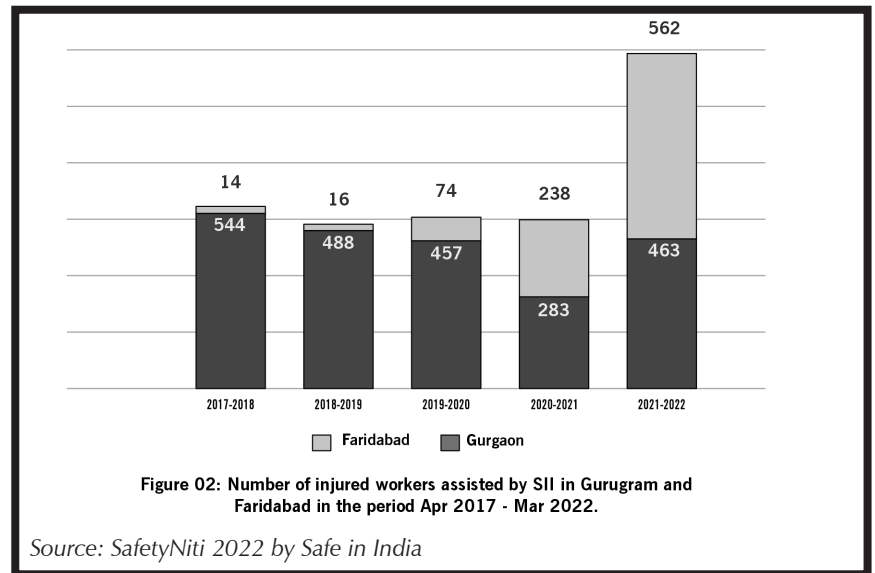
- Take responsibility for worker

safety in the deeper supply chain

- Create a joint industry-level task force with Society of Indian Automobile Manufacturers (with some participation from SII)
- Map the deeper supply chain
- Improve transparency and accountability of accident reporting in the supply chain, weed out habitual offenders and reward safest factories, commercially
- Initiate ground-level actions, e.g., honest worker safety audits and worker training

For the Society of Indian Automobile Manufacturers (SIAM)

- Bring the auto industry together to create a joint task force for OEMs and other stakeholders to prevent accidents in the auto-sector deeper supply chain, while also improving productivity.



- Set up a permanent joint safety team/working group of SIAM and Automotive Component Manufacturers Association of India (ACMA), with SII's participation as required, to showcase good practices and train members on strategic and tactical costs of accidents and how to reduce them.
- Establish industry standards for safety in auto sector manufacturing.
- Integrate worker safety and health as core organisational values of its members.
- Support SIAM and ACMA members in complying with National Guidelines on Responsible Business Conduct (NGRBC) for long-term business success and compliance.

For the Central and State Labour Ministry

- Central and State Labour

Ministries should drive calibrated actions to achieve the objectives of the Occupational Safety and Health Policy, 2009.

- Use data from ESIC to determine selection of factories for inspection and conduct safety surveys and studies.
- Create a reliable accident/injury reporting and governance system, and use it for constant continuing improvements, including strengthening of ISH in the states to improve factory inspections (irrespective of their new role as 'facilitators') and penalties for repeat offenders.
- Set up a confidential helpline for workers to report unsafe conditions and accidents in factories.
- Introduce a practical policy and mechanism for safety training of contract and

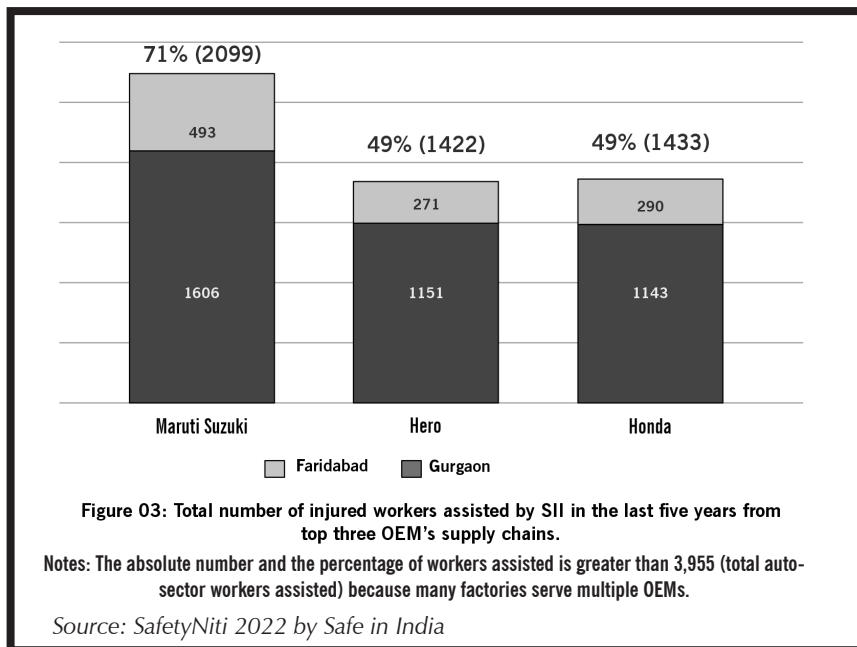
migrant workers.

The Crux of the Matter...

SafetyNiti 2021 reported that, in India, most industrial accidents occur while operating machinery, according to 2014-2017 data from IndustriALL, a global union of workers. A news article reported the Labour Ministry's response in Parliament in 2021, on data pertaining to factory deaths between 2014 and 2018 (the latest that the Ministry had) – factory deaths rose by 20 percent between 2017 and 2018 according to the ministry.

A relatively small outreach team at SII, which operates mainly in Gurugram, Manesar, and more recently also in Faridabad, has met and assisted 3955 such injured workers during 2016-2022. Of which, 80 percent are from the auto sector supply chain and 63.6 percent of them have lost hands and/or fingers, disabling them permanently. Just in FY21-22 SII assisted 1000+ workers of whom 80 percent were again from the automobile industry. This increase is mainly due to SII expanding its operations in Faridabad, which appears to have even poorer working conditions than Gurugram.

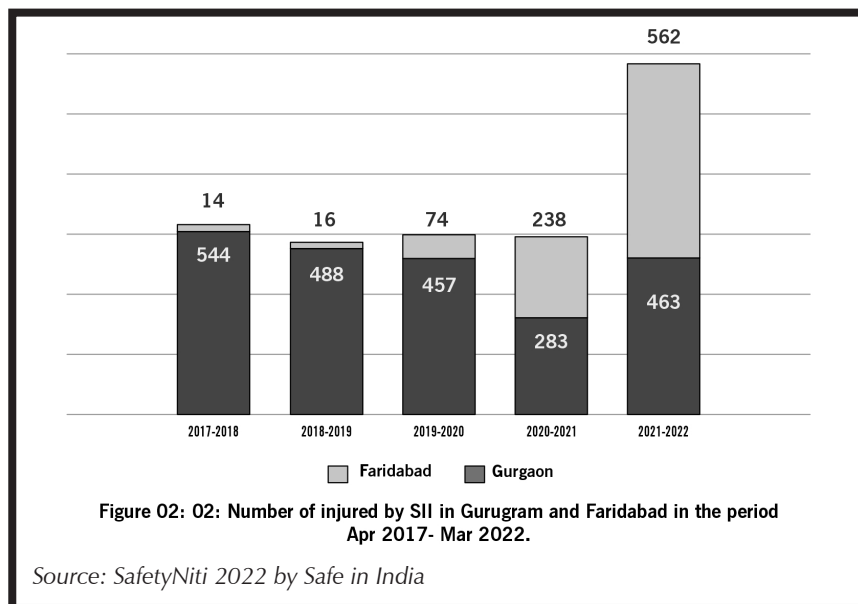
Most injured auto-sector workers in the Gurugram-Manesar-Faridabad industrial belt continue to be from factories supplying to three largest OEMs in Haryana. Approximately 80 percent of workers in the automobile sector assisted by SII in FY21-22



reported that they were injured in factories supplying to one or more of the three largest OEMs in the Gurugram-Manesar-Faridabad belt: Maruti Suzuki, Hero and Honda. Although this has reduced from 90 percent in the past year, the impact of Covid-19 on this trend is unclear. These three, therefore, remain the largest OEMs with the most potential to improve this situation.

Migrant workers continue to be the most vulnerable and largest in proportion in the automobile sector

In FY 21-22, 87 percent of the injured workers assisted by SII were interstate migrants from across India; 80 percent of these had migrated from Uttar Pradesh and Bihar. This proportion dropped from 92 percent in the previous five years reported in CRUSHED 2021, probably on account of reverse migration during Covid lockdowns. As stated in past reports, the quality of lives and work of Indian migrants is intertwined to a significant extent with the quality of work offered by India's auto sector – the largest GDP contributor to overall manufacturing sector. Without improving working conditions for these migrant workers – there are around 450 million of them in the country – and indeed non-migrants, we cannot achieve a decent work environment for workers or expect a thriving country that is equitable for all its citizens.



Contractual employment remains a dominant pattern of employment for auto-sector workers in Haryana (Gurugram and Faridabad) and indeed nationally

In FY 21-22, 56 percent of the total workers assisted by SII were in contractual employment. This is a reduction from the previous years, especially in Faridabad, which appears to have a lower proportion of injured contract workers (47 percent, down from 64 percent) in the year than Gurugram (68 percent, down from 75 percent). This drop may be a result of Covid reverse-migration when contract workers may have left in larger numbers than permanent workers. Alternatively, the working conditions for permanent workers may have deteriorated further given that the total injured workers assisted were back to pre-Covid levels. This will be explored further in CRUSHED

2022. The above is broadly in line with ACMA reports that state that in the components industry, nearly 70 percent of the workforce comprises contract workers. SafetyNiti 2022 therefore specifically seeks treatment of contract workers at par with permanent workers in OEM policies for their own factories and those of their suppliers.

To be sure, Safe in India is not a trade union. Neither is it affiliated to any political party or labour organisation. The organisation came together to create a positive impact for the safety of Indian auto workers. The organisation doesn't charge workers for assistance rendered, but instead raises funds from the alumni networks of its founders and well-wishers. SII is "solution centric" and seeks systemic long term solutions to the problems faced by automobile workers.

WHAT ABOUT LEGAL REMEDIES?

The Indian Legal Framework for Worker Safety and Health

Poulomi Chatterjee and Radhika Jha*

India's industrial sector, comprising manufacturing, mining, construction, and other industries, is crucial to the country's economic growth and employment generation. However, the pursuit of economic development often takes precedence over safety measures and worker protection, leading to a disregard for labour rights and compromising the overall welfare of workers. Industrial accidents reflect the complex interplay between economic priorities, profit-driven industries, and the rights and well-being of workers.

According to government data accessed by IndiaSpend, an online news portal, three workers on an average died every day in Indian factories between 2017 and 2020.¹ The reported figure of 1,109 deaths and more than 4,000 injuries on an average each year in the same period might be just the tip of the iceberg, since these are only the official numbers from registered factories. According to data from the Ministry of Micro, Small & Medium Enterprises (MSME), the total number of the unregistered small-scale industries (SSI) sector is estimated to be 91,46,216 units. Of these, more than a third were primarily involved in product manufacturing/assembly/

processing (36.12 percent)².

Even as there is a sustained focus on MSME and 'Make in India' by the present government, with financial support and subsidies to boost growth, far from comparable emphasis has been made towards ensuring adherence to safety standards. In recent years, the government has relaxed inspections and licensing to allow self-certification and has exempted some companies from reporting on health and safety to ease business and support small enterprises³. This can have serious implications on the already dire safety situation in Indian industries.

An oft-quoted argument is that industrial accidents are almost unavoidable due to the inbuilt 'probability of failure' associated with technology, as well as the inborn nature of persons to commit mistakes through omission or commission⁴. Evidence suggests, however,

that it is the lack of regulatory framework and oversight mechanisms that contribute heavily to industrial accidents. Research indicates that not only do a majority of industrial accidents go unreported, but the probability of such accidents also increases in smaller, unorganised, "Tier III" companies⁵ that form a bulk of the industrial manufacturing.

Despite such troubling evidence, the legal framework for industrial safety in India remains limited in scope. In the following section, we look at the national statutory safety requirements in place that industries need to comply with as well as some of the international provisions that may apply in India.

Remedies Available Towards Industrial Accidents

In cases of industrial accidents, legal remedies can be availed



* Poulomi Chatterjee is an intern at Common Cause and Radhika Jha is the Project Lead (Rule of Law) at Common Cause

majorly through the Factories Act of 1948, the Mines Act of 1952, and the Code on Occupational Safety, Health, and Working Conditions prescribed by the Ministry of Labour and Employment. Aside from the above, the National Policy on Safety, Health and Environment at Work Place was declared by the Ministry of Labour and Employment, Government of India in February 2009 after consultations with the partners of the International Labour Organization (ILO).

However, the *grundnorm* i.e. the foundation of all laws in force being the Constitution of India, we must also look for guidance in its provisions, wherein the rights of citizens and the principles of governance, i.e., the Directive Principles of State Policy, have been mentioned. According to these directive principles, it is expected of employers and all authorities hiring employees to secure the safety, health, as well as the strength of their employees, as mentioned under Article 39 of the Constitution⁶. Moreover, Article 42 provides that such employers must also ensure that just and humane conditions of work are provided to employees.

Legal Remedies before 2020

Even as the legal remedies for industrial accidents are not very extensive, there are nonetheless some provisions under which workers can seek recourse. Until 2020, most of these remedies

“ **However, the *grundnorm* i.e. the foundation of all laws in force being the Constitution of India, we must also look for guidance in its provisions, wherein the rights of citizens and the principles of governance, i.e., the Directive Principles of State Policy, have been mentioned.** ”

were scattered and some provisions under various legal statutes could be applicable. Some of the key statutes that are applicable in such cases are as follows:

1. **The Factories Act, 1948:** This legislation lays down regulations for the safety, health, and welfare of workers employed in factories. It requires factory owners to maintain certain safety standards, provide necessary safeguards, and take precautions to prevent accidents. If an industrial accident occurs due to non-compliance with these regulations, the affected workers can seek remedies under the Act.
2. **Workmen’s Compensation Act, 1923**, now known as **the Employee’s Compensation Act**,

1923: This Act provides for compensation to workers in the event of an employment-related injury or death. It mandates that employers will compensate workers or their dependents for injuries, disabilities, or fatalities arising from accidents occurring during the course of employment. The compensation amount varies based on the nature and extent of the injury.

3. **Employees’ State Insurance Act, 1948:** This Act establishes a social security system for workers in certain sectors. It provides benefits such as medical care, cash during temporary or permanent disability, and compensation for death resulting from employment-related accidents. Employers contribute to the Employees’ State Insurance Corporation (ESIC) to fund these benefits.
4. **Criminal Liability:** Industrial accidents resulting from negligence or violation of safety regulations may attract criminal liability under various provisions of the Indian Penal Code (IPC). Sections such as 304A (causing death by negligence) or 336 (endangering the life or personal safety of others) can be invoked to hold individuals or organisations accountable.
5. **Civil Remedies:** Affected individuals, including

workers, can file civil suits seeking compensation for the damages suffered due to an industrial accident. They can claim compensation for medical expenses, loss of earnings, disability, pain, and suffering, among other losses. The claimants must establish the liability of the responsible party through evidence.

The Occupational Safety, Health and Working Conditions Code, 2020 (OSH Code)

In 2020, the Government introduced the Occupational Safety, Health and Working Conditions Code, 2020 (OSH Code) which streamlined various laws related to OSH and working conditions. The Code was introduced as a part of the government's efforts to rationalise labour laws to ensure better protection for workers and promote ease of doing business. It replaces 13 existing laws and covers a wide range of sectors, including factories, mines, construction sites, and establishments employing contract labour or interstate migrant workers.

The OSH Code sets forth provisions to ensure the safety, health, and welfare of workers. It mandates employers to provide a safe and healthy working environment, maintain standards for accident prevention, and handle hazardous substances responsibly. The Code also

addresses workers' welfare, including employment conditions, working hours, leave entitlements, and social security benefits. It introduces simplified compliance procedures through the Shram Suvidha Portal, streamlining registration and reporting requirements. Additionally, the OSH Code establishes advisory boards to provide guidance and recommendations on policy formulation and enforcement.

Section 6(1) of the Code specifies that an employer must ensure that the workplace is free from hazards which cause or are likely to cause injury or occupational disease to the employee.

Further, Section 8 of the Code discusses the duties of designers, manufacturers, importers or suppliers, and the Original Equipment Manufacturers (OEMs) towards ensuring any articles approved by them are fit for use in all kinds of establishments. Similarly, Section 9 of the Code talks about the duties of the architect, the project engineer, or the designer involved.

International Provisions on Industrial Safety

Even though India is one of the founder members of the International Labour Organization (ILO), which came into existence in 1919, and has so far ratified 41 conventions of the ILO, Convention 155, or the Occupational Safety and Health

Convention, 1981 (155) has not been ratified by India.⁷ Similarly, Convention 187, or Promotional Framework for Occupational Safety and Health Convention, 2006 (C187) has not been ratified by India either.⁸

Nevertheless, following are some important international provisions on industrial safety:

1. **International Labor Organization (ILO) Conventions:** The ILO has developed several conventions related to occupational safety and health. Some of the key ones include:
 - **ILO Convention No. 155 on Occupational Safety and Health, 1981:** This convention provides a framework for promoting occupational safety and health, including risk assessment, prevention, and training measures. This has not been ratified by India.
 - **ILO Convention No. 187 on the Promotional Framework for Occupational Safety and Health, 2006:** This convention emphasises the need for a national system for promoting occupational safety and health, including policy, legislation, and enforcement mechanisms. This has not been ratified by India.
2. **United Nations Guiding Principles on Business and Human Rights:** These principles outline the

responsibility of businesses to respect human rights, including occupational safety and health, as part of their corporate social responsibility. The principles emphasise the duty of businesses to prevent and mitigate adverse human rights impacts, including those related to workplace safety.

3. **United Nations Sustainable Development Goals (SDGs):**

Some of the relevant SDG Targets related to Health and Safety at the Workplace include⁹:

- **SDG 3.9:** Substantially reduce the number of deaths and illnesses from hazardous chemicals and air, water, and soil pollution and contamination by 2030.
- **SDG 8.8:** Protect labour rights and promote safe and secure working environments for all workers, including migrant workers, particularly women migrants, and those in precarious employment
- **SDG 16.6:** Develop effective, accountable and transparent institutions at all levels

4. **International Organization for Standardization**

(ISO) Standards: ISO has developed various standards related to occupational health and safety, including ISO 45001:2018, Occupational Health and

Safety Management Systems, which provides a framework for organisations to manage risks and improve worker safety.¹⁰

Addressing the Loopholes in Ensuring Occupational Safety

In 2016, the landmark case of *People's Rights and Social Resource Centre & Ors. v. Union of India*¹¹ prompted the Supreme Court to lay down guidelines for certain environmental criteria for the industries operating in a safe, proper, and hazard-free work environment in Gujarat. In the same case, the Supreme Court also referred to the matter in relation to the *Occupational Health and Safety Association v. Union of India*,¹² wherein particular guidelines to reduce occupational hazards of employees in such industries were carved out.

“***Free and comprehensive medical treatment must be provided to all affected employees, in case they are found to be suffering from an occupational disease, ailment or accident, until cured or until death.***”

”

The maximum protection and the best legal remedy that can be availed after a harmonious construction of these guidelines and the existing acts are such that “free and comprehensive medical treatment” must be provided to all affected employees, in case they are found to be suffering from an occupational disease, ailment or accident, until cured or until death.¹³ This practice has been ensured in several prevailing cases of industrial accidents in the country.^{14,15}

However, a point that must be noted in the instant scenario, is such that although the Factories Act of 1948 provides for the payment of adequate compensation to affected workers, it does not, in the spirit of the law, actually aim to protect the workers from such industrial accidents, but simply compensated them for it happening. At this point there is an urgent need to review such incidents every five years, with follow-up reviews to understand the reasons and to take action. This is because simply condemning disasters and demanding compensation cannot by itself prevent industrial disasters.¹⁶ In June 2020, the IndustriALL Global Union, a global federation representing workers, warned the Government of India to take swift measures to prevent another Bhopal-like tragedy.¹⁷

Between 2014-2018, approximately 5800 workers

suffered fatal injuries as a result of factory accidents, and an average of about 1160 workers were killed in industrial accidents per annum.¹⁸ What makes these numbers heart-breaking is that some accidents were a result of non-application of safety standards and could have been avoided.¹⁹

Additionally, it is important to note that trade unionist G. Sanjeeva Reddy – President of INTUC and IndustriALL's local affiliate, the Indian National Metaworkers' Federation – had opined that the Indian Government must consider expert advice to address and prevent industrial accidents.²⁰

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COMMON CAUSE EVENTS

India Justice Report 2022 Launch Event --- April 4, 2023

Mohd Aasif*



India Justice Report 2022 released

reveals areas that require urgent intervention from policymakers. Government data pertaining to four key parameters of justice delivery - police, judiciary, prisons and legal aid are analysed. The four are considered to be the “pillars” of justice. After a rigorous 24-month quantitative research, where the IJR team analysed each pillar through the prism of infrastructure, human resources, diversity (gender, SC/ST/OBC), budgets and workload, with the intention of comparing each state’s actual capacity for justice delivery with the target

On April 4, 2023, the India Justice Report (IJR) 2022 was released at the India International Centre, New Delhi. IJR is a first of its kind annual report that tracks the performance of states and ranks them based on their justice delivery capacity. Initiated by Tata Trusts in 2019, the IJR is a collaborative effort of the Centre for Social Justice, Common Cause, Commonwealth Human Rights Initiative, DAKSH, TISS-Prayas and Vidhi Centre for Legal Policy. It is supported by IJR’s data and design partner, How India Lives.

IJR brings together and studies otherwise siloed data and



Address by Ms Maja Daruwala

* Mohd Aasif is the Research Executive at Common Cause

it set five years ago. For the first time the IJR report, third in the series, assesses the capacity of the 25 State Human Rights Commissions.

Introducing the report, the Chief Editor of India Justice Report, Ms Maja Daruwala points out, "As a member of the comity of nations, and more importantly as a commitment to itself, India has promised that by 2030 it will have ensured access to justice for all and built effective, accountable, and inclusive institutions at all levels. However, the official statistics compiled by and brought together in the IJR 2022 show that we have a long way to go...". She also spoke about making justice affordable, efficient and accessible, and the need to treat it on par with food, education, and health. Daruwala added that delivering on these goals would need a massive investment of resources.

The keynote address by Dr Bibek Debroy, Chairman of the Prime Minister's Economic Advisory Council, was about access to justice and highlighted issues that may be addressed in the future editions of IJR.

Former Supreme Court Judge, Justice (Retd) Madan Lokur said in an online address that, "The third IJR shows that states are making a substantive improvement in terms of adding new dimensions on diversity, training, and infrastructure. Some states have dramatically improved their performance

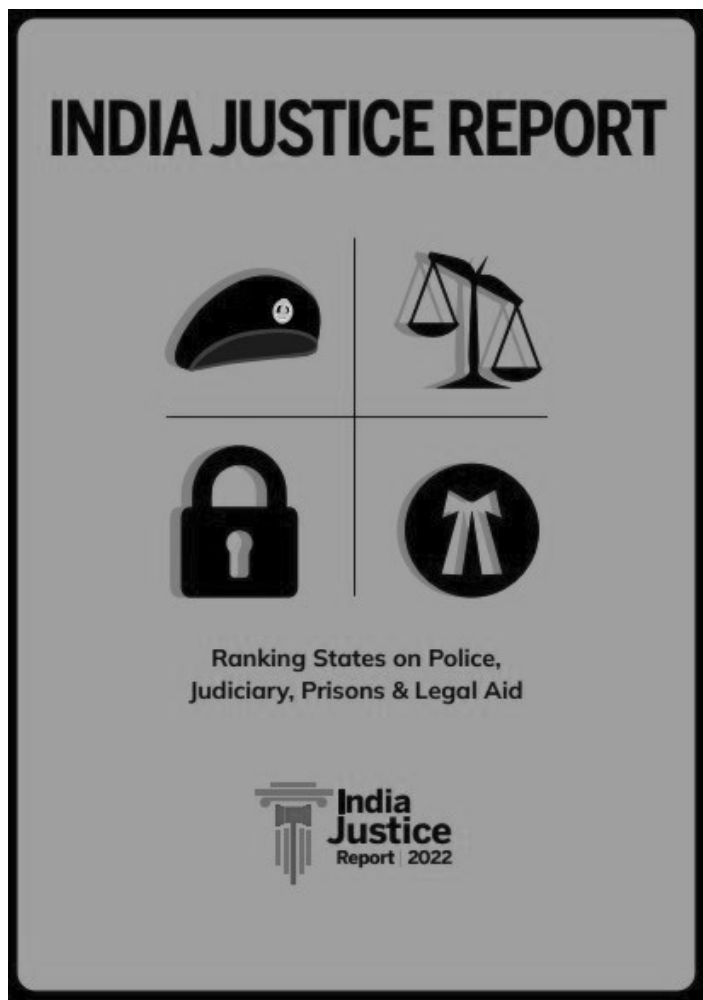
but there is a lot that needs to be done on the whole. So far as the police is concerned there does appear to be a shortage of women officers in police. Legal aid is doing better but still a lot of people need to be provided quality free legal aid, we need to increase the confidence that people have in our services".

Common Cause Director, Dr Vipul Mudgal said, "...most of the states see training of police personnel as a mere expenditure" and highlighted

that the police fails to deliver simply due to non-allocation of funds for the training of its personnel.

As per the 2022 Report, Karnataka topped the rankings amongst large and mid-sized states (population of over one crore), while Tripura was adjudged the best amongst small states (population less than one crore).

The key findings of the report are as follows:



- States are increasing budget allocation for legal aid. The report reflects that as of FY 2021-22, all states/UTs contributed more than 60 percent to their legal aid budget.
- The share of women in subordinate judiciary crossed 30 percent at the national level.
- In contrast to the findings of IJR 2020, the share of jails with video conferencing has increased to 84 percent from 60 percent.

In spite of the aforementioned

improvements IJR also noted the following lacunae:

- The prison occupancy rate at 130 percent (2021) is the highest since 2010. Two-thirds of inmates are awaiting the completion of investigation or trial.
- Despite the doubling of the number of women in the police force in the last decade, women's representation amounts to only 11.75 percent, with a high vacancy rate of 29 percent among police officers.
- More than half of the High

Courts are functioning at one-fourth of their sanctioned judicial strength.

- The report points out a drastic 44 percent fall in the number of legal aid clinics, from 23,022 in 2019-20 to 12,976 in 2020-21.

IJR 2022 has suggested immediate and systemic corrections that can lead to more efficient justice delivery, and has flagged the need to urgently fill vacancies and increase representation. To effect positive change, it has urged justice delivery to be designated as an essential service.

International Seminar on Media and Development: Retrospect and Prospect, Manipal University, Jaipur --- May 12, 2023

Poulomi Chatterjee*



One-Day International Seminar on Media and Development: Retrospect and Prospect, Manipal University, Jaipur

as something more fashionable and upmarket. Dr Mudgal said that the rural India was facing a multiple crises comprising lack of investment, low productivity, agrarian distress and dismal social indicators. He said a better-informed media coverage can help policymakers by improving the quality of discourse about rural India.

In another session, Dr Mudgal introduced im4change.org, which is a repository for journalists to write on issues that affect marginalised communities in rural India. Speaking to an audience of students and faculty, Dr Mudgal emphasised that the issues of rural India are inadvertently linked with that of urban India, and a good journalist's role, in this era of mis-information, would be to spend time with the marginalised communities at their locations, collect facts meticulously, and connect the dots without fear or favour.

The event came to a close with a question & answer session. The prime objective of the event was to bring the students to a platform where they could interact with the experts as well as to sensitise them to the issues of development and deprivation.

On May 12, 2023, Common Cause Director, Dr Vipul Mudgal joined Ms Lyndee Prickitt, Director of Village Square and Prof (Dr) Sanjeev Bhanawat, former head of the Centre for Mass Communication, Rajasthan University, at Manipal University, Jaipur, in a One-Day International Seminar on Media and Development: Retrospect and Prospect. The seminar explored the role of media in relation to rural development, the importance of Sustainable Development Goals (SDGs), and the role of alternative media in the context of rural development.

The Chief Guest, Prof (Dr) Ram Mohan Pathak, former Vice Chancellor, Nehru Gram Bharti, Prayagraj, spoke about the digital divide and highlighted the importance of alternate avenues for those who lack digital access.

Prof. Bhanawat urged young journalists to think out of the box and use resources like digital media creatively. Ms Prickitt shared her dismay about the national media's neglect towards local issues that plague the people, while favouring trending viral news.

Dr Mudgal juxtaposed development in rural and urban India and illustrated the links between the two. Recalling the government's proposal to the United Nations for declaring 2023 as the International Year of Millets (IYoM-2023) he emphasised India's dilemma and shared that on one hand, expensive breakfast cereals and honeydew oats, originating in rural India, have become aspirational products in urban India; while on the other hand, rural Indians consume millets but view white rice and wheat

* Poulomi Chatterjee is an intern at Common Cause

CRUSHED, BRUISED AND BROKEN

An Interaction with SII Team and Leaders



Safe in India Team

The third largest auto industry in the world functions with unsafe labour practices which are taking a brutal toll. Can it take steps to safeguard its worker's health?

Common Cause team reached out to Safe in India leaders, Sandeep Sachdeva and Chitra Khanna and their wonderful team of young professionals, to understand more about their work and contributions. The excerpts of the interaction are given below.

Safe in India has been trying to get the Indian auto industry to pay more attention to occupational safety and health. It engages directly with auto workers and companies in order to raise awareness about OSH. In an interview with Common Cause, members of SII, including the Co-founder Sandeep Sachdeva and the Head of the Safety Initiative Chitra Khanna, discuss their work.

1. Let's kick off the interview with a factoid from your website: 20 workers lose a finger or hand every day in Gurgaon's auto hub. That's a shocking statistic. How is this even possible, and why is this not more widely known?



Sandeep Sachdeva (Co-founder, SII):

The reasons for these accidents are understandably

complex, but at the root of them all is a poor safety culture and competitive pressures experienced by auto manufacturers, which result in a relentless chase for production at the lowest possible cost in their deep supply chain, disregarding worker safety and rights. This results in widespread non-compliance regarding adherence

to Indian factory laws and international guidelines.



Chitra Khanna (Head of the Safety Initiative, SII):

As reported in the CRUSHED series of

reports¹, worker accidents are under-reported. Official accident numbers are only a fraction of worker accidents, illnesses, and deaths nationally. This conceals the severity of the issue, and, therefore, most Indians do not know about the issue. Additionally, individual workers losing fingers or hands do not find a place in the news cycle, unlike fires or chemical leaks that are deemed newsworthy.

2. What is the figure for worker accidents in all the auto hubs in India?

Ankit Singh (Systemic Change Executive, SII): Such data is not



available from any government or private source in India, but we know that these are in thousands every year. In Haryana alone,

SII has found 5000+ such injured workers over six years, and this year we expect to find and help about 1,500 in just Haryana and Maharashtra. For CRUSHED 2022², we identified 50 injured workers in other auto hubs of Tamil Nadu, Gujarat, and Karnataka within a period of one month, indicating that the total accidents nationally are probably 5,000+.

3. How did Safe in India come about? What was the impetus to start working among auto workers?



Masab Shamsi (Head-Worker Assistance Center, SII): It started with a late 2014 media report, “Your car has been

built on an assembly line of broken fingers”³, which reported 20 cases of lost hands and/ or fingers in automotive sector factories every day in just one ESIC (Employee State Insurance Corporation) hospital in Gurugram. To investigate further into this article, an assessment was conducted in 2015 with case studies of 20 individuals by three IIM Ahmedabad alumni and we found that the information in the

article was indeed accurate and a majority were from auto sector suppliers. We have also observed that 60 percent of these accidents are related to power press machines which are widely used in the auto industry. So in March 2016, SII was formally launched, and our first Worker Assistance Centre was opened in December 2016 at Manesar, Gurgaon, a large auto sector hub for Maruti-Suzuki, Hero and Honda.

4. The backgrounds of the core team are interesting. You are an IIM graduate who worked in international finance and then quit to pursue your passion - Safe in India Foundation. How did you bridge these two, which lie at opposite ends of the spectrum? Would you advise other IIT-IIM graduates to forego corporate jobs and work in the social-impact space?

Sandeep: I quit the finance sector as I could not deal with the guilt of being part of the extreme form of capitalism we currently have, and which, I believe, continues to accelerate destruction of the environment and the human condition. It was then not difficult for me to start Safe in India, which has provided me an opportunity to do something, however small, in being part of the solution. The journey so far has been exciting, frustrating and fulfilling in equal measure.

I am no one to advise anyone to do what in their lives. I hope we all live with integrity with our values as much as we can. Corporate executives have the IQ and the power to contribute positively to the future of our world and all I would request is that they must not become slave to their job descriptions, but look up and look out at the world, and think hard about what their jobs are doing to people and nature and is that what they want to do for rest of their lives. They would be best at answering it to themselves and to their sons and daughters.

5. Can you break down the areas in which SII works: Worker compensation, improving workplace safety through advocacy and engaging with ESIC?



Dhanraj B (Consultant Project Manager, SII): SII works across four inter-twined and well-defined

pillars of activities to help Indian workers.

First, we have now supported 5,541 injured workers, in Haryana and Maharashtra to access better ESIC healthcare and compensation, of which 4,465 (nearly 80%) were injured in auto-sector factories.

Second, for improving workplace safety in the national auto-sector

supply chain for more than a crore workers, we have been engaging with the top 10 auto-sector brands, their apex bodies (SIAM and ACMA) and the government. SII also publishes an annual series of reports⁴: CRUSHED which focuses on worker accidents & SafetyNiti which focuses on the safety policies of the brands.

Third, to help more than three crore workers and their families, SII engages with ESIC regionally and nationally to improve ESIC's healthcare and insurance compensation services. ESIC has issued more than 10 national notifications based on SII's recommendations.

Fourth, for empowering workers through knowledge of ESIC and workplace safety, SII leverages in-person interactions like monthly worker support groups and at-scale outreach through social media. More than 2,500 workers have attended SII's support group meetings. More than 55,000 workers now follow its Hindi Facebook page.

Our last annual review has a short summary and video of all our work: <https://www.safeinindia.org/post/2022-year-in-review-thanks-for-your-support-on-this-long-journey-to-sab-ka-saath-sab-ka-vikas>

6. There are also trade unions that operate in auto hubs, including Manesar. Do you coordinate with them on issues of workers' safety,

advocacy etc?

Chitra: SII has tried to work with trade unions but it has not been successful. A major limitation of trade unions is that they largely represent permanent workers in the auto sector brands' own factories. The CTU unions (Central Trade Unions) are non-existent in smaller MSMEs. Most temporary workers and workers in the supply chain (mostly MSMEs except some big brands of specialised components like air conditioning, music systems or raw material) of the auto sector brands are not part of any unions. Almost all reported accidents occur in the supply chain of the brands and not in the brands' own factories. This limits our ability to work effectively with trade unions that operate in auto hubs.

7. What has your work at SII taught you about the structure of the auto-manufacturing industry in India?

Ankit: The auto-manufacturing industry in India is a multi-tiered value chain with auto brands at the top of the supply chain. Worker safety and other working conditions deteriorate as one goes down the supply chain. Most auto brands haven't mapped their supply chain beyond the first tier and have minimum visibility of working conditions in the MSMEs/ industries constituting their deeper supply chains.

Auto brands' guidelines and

policies like the Supplier Code of Conduct are rarely applied to workers in the supply chain and contractual workers. Only a limited number of safety inspections and audits are conducted by the brands or by the government.

8. Are safety norms in the main plants and supply chains different? Can the norms in supply chains be tightened to prevent industrial mishaps?



Shailja Tiwari (Systemic Change Executive, SII):

Safety norms aren't the same for the brands' own

factories and the factories in the supply chain. For example, in our latest SafetyNiti report, we have reported how a majority of the top 10 auto brands still do not have a contractually binding Supplier Code of Conduct for their suppliers. Additionally, none of the brands appears to have an SOP or a comprehensive Occupational Safety & Health (OSH) implementation plan for their deeper supply chain.

Auto brands should take the lead in tightening the norms for improving safety measures and post-injury care for workers in their deeper supply chain. They have the best know-how, access to, and leverage over their own supply chains. Auto brands should map their deeper

supply chains, make their safety policies and human rights policies contractually binding on their deeper supply chain, and monitor, audit, and report OSH parameters for their deeper supply chain to prevent industrial mishaps.

9. The auto industry contributes seven percent to India's GDP and makes up half of manufacturing activity. It is structurally important for the economy. But at the same time it is exploitative and dangerous for workers. How does one reconcile the two?

Sandeep: In India, with poor working conditions in these factories, improving safety can be, we believe, profitable. They are not thinking harder about the cost of these accidents to businesses - both MSMEs in the supply chain and the brands - in lost time and production, quality, payments for losses, medical expenses, and repair and replacement of damaged machinery and equipment and indeed bribes. Obviously, these also have a negative impact on other workers.

Without improving working conditions, including occupational health and safety, we don't see India replacing China under the China Plus One movement. Many of our businesses are thinking short-term jugaad, and cutting corners. At this rate, it will be difficult for the industry to continue to grow

at the pace at which it intends, to achieve its 2030 Agenda for Sustainable Development, contribute to the 'Sabka Saath, Sabka Vikas' strategy and play a vital role in making India a \$5 trillion economy.

Look at the improvement in Bangladesh's garment industry's professionalism, after the Rana Plaza incident, which changed the way 2,000+ factories worked for the better. That has been good for these businesses and the country. Can't we do the same in our auto sector?

Sadly, this may happen more due to increasing pressure with new legislations like the European Commission's corporate sustainability due diligence directive (which will be applicable very soon) and Japan's thrust on human rights due diligence, requiring auditing and strengthening human rights in supply chains.

10. Can you talk a little bit about the Covid-19 relief that SII engaged in? Has auto industry employment picked up after the pandemic disruption?



Amitesh Singh (Centre Coordinator - Worker Assistance Center, SII):

During the pandemic, we supplied 80 large oxygen tanks to ESIC Hospitals in Bihar,

Karnataka, and Delhi catering to more than five lakh workers. We also distributed 450,000+ adult ration units, and 25,000+ masks, and helped 250+ workers get back home. We also helped 1,000+ workers get back into the job market by providing free vaccination in the Manesar community centre since many factories had made it mandatory for employment.

More strategically, we reported on the impact of the lockdown on workers' jobs and wages and worked with ESIC to push for the Atal Bimit Vyakti Kalyan Yojana scheme (unemployment benefit) for wage loss compensation during the pandemic. SII contributed significantly to increasing disbursements from Rs 56 crores to Rs 80 crores since October 2021. We also helped 1,500+ workers apply to access this scheme.

Auto sector employment has reached pre-pandemic levels in most hubs. Immediately after the lockdowns were lifted, we observed that there was a shortage of workers, because they had gone back to their villages, the factory owners had even paid for the journey of the workers from their villages.

11. One of your reports states that the severity of injuries in factory accidents in Maharashtra is worse than in Haryana. Any reason why this may be?

Masab: We started working in

Maharashtra's auto sector hub of Pune in August 2022 and found more severe cases of crushed injuries compared to Haryana where we have been working for the last six years. In two months, we found more than 80 percent cases of lost fingers/ hands in Pune, while our Haryana figure indicates 67 percent finger/ hand loss injuries. It would be necessary to conduct a thorough analysis to understand the specific reasons behind this, and this will take some time. However, we have found better ESIC compliance in Maharashtra. We are hopeful of doing a comprehensive analysis and understanding the cause before we publish CRUSHED 2023 later this year.

12. What happens to workers who lose a body part? Can they work again, where do they go?



Manjeet Malik (Centre Coordinator - Worker Assistance Center, SII): Many workers who lose a

body part return to their villages or settle for lower-paying jobs like security guards which do not require the use of the lost limbs. Some injured workers do continue operating the same machine but at a lower wage. There are instances where workers have met with accidents multiple times on one machine, yet they operate the same

machine.

Unemployment combined with the mental and physical trauma of the injury, high costs of residing in cities for treatment while many are not paid their salaries and a bureaucratic post-accident compensation process with ESIC, if they are ESIC-registered at all, pushes the vulnerable workers and their families further into despair.

Some employers promise the injured worker a permanent job, to keep them quiet until the heat of the issues subsides but end up breaking the promise. In CRUSHED⁵, we have reported on multiple instances of workers who struggled with a powerful employer, often an unprofessional contractor (*thekedaar*), and bureaucracy, all of whom often do not empathise with and/or support the worker when needed.

13. The list of ESIC-empowered hospitals is extensive, and yet injured workers are often taken to non-ESIC private hospitals. What can be done to rectify this?

Datla Hari Varma (Associate, ESIC Initiatives, HR, & Accounting, SII): One of the major reasons for injured workers being taken to non-ESIC private hospitals is when the ESIC premium deducted from workers' compensation is not deposited with ESIC, and therefore the workers are

not even registered with ESIC. Possibly because of this, the injured workers are first taken to a private hospital, while ESIC paperwork is "completed" and then taken to ESIC hospitals often after one to three days of injury. To prevent this, better compliance with ESIC laws which state that workers are registered with ESIC immediately on joining, and premiums are deposited on time. Responsibility for this should lie with the auto sector brands and the government.

Also, currently, the admission process in ESIC hospitals is complicated with documentation from the employer required to injured workers for employment injuries. This can be simplified by the hospitals starting treatment first and collecting documents from the employer later.

14. India is looking to expand manufacturing and heavy industry. What kind of safeguards can be put in place to ensure worker safety?

Sandeep: We have been making several recommendations to the industry and the government.

For auto sector brands, we have been making our Top five policy and Top five operational recommendations to the auto sector brands that cover better OSH policies and implementation for their supply chain, e.g. do their boards even discuss working conditions in

their supply chains? Do they monitor them and act when needed or have they just passed their cheaper and/or dirtier work to suppliers and abrogated their social responsibility that they claim?

The central and state governments need to implement laws better. For example, they need honest accident reporting and inspections, support MSMEs in improving their safety measures, and increase transparency on exemptions from factory- inspections. For workers, they should introduce practical policies and mechanisms for safety training, make OSH rules & information accessible to workers, and set up a confidential helpline for workers. They can also partner with OEMs/Brands to improve safety in ancillaries in the deeper supply chains.

Chitra: The labour department should create a working committee to work towards

minimising accidents in industries to improve the condition of workers, strengthening institutional partnerships and actions to prevent accidents in supply chain's MSME factories and meeting the international commitments of SDG 8 (specifically indicator 8.8), ILO labour standards, and the UN Human Rights Convention. The government should extend the requirement of Business Responsibility and Sustainability Reporting (BRSR) to large unlisted MNCs and ensure the adoption of BRSR Lite for MSMEs and supply chain companies.

15. What would you like our readers to do to help this cause of Indian workers?

Sandeep: I would urge all readers to write to their car or two-wheelers' brands and ask them about the actions they are taking to improve the working conditions of their Tier 1,2,3 suppliers and prove it. They can also write to the state or central

government, and even to their friends in the media. We would be grateful if they copied us at team@safeinindia.org.

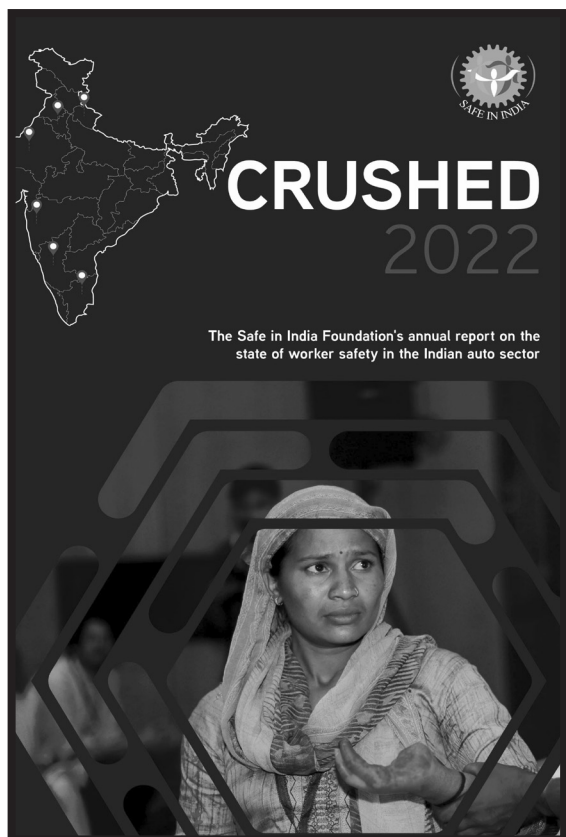
I would also request them to register on our website www.safeinindia.org so we can update them regularly and to send us any thoughts and suggestions at the same email team@safeinindia.org

Endnotes

1. The series of reports can be accessed here <https://bit.ly/44ufi5b>
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4. *Supra* Note 1
5. *Supra* Note 2

GANG OF SHRAMIKPUR: REAL LIFE EPISODES

A Novel Way to Unravel an Ongoing Tragedy



Season 1, Episode 1: What happened to Vijay?

S1E1 opens at Raju chai ki tapri with a hale and hearty Raju speaking into the camera, “This is the story of my friend Vijay. He used to live in Shramikpur in a small rented accommodation with his wife and child. He was different, the most lyrical and soulful person in our gang of friends.” The next scene takes a dark turn. Some friends arrive at the tea stall and deliver bad news to

Raju. Vijay has had an accident. His hand was crushed under a power press machine and he is in hospital. There is confusion about whether the accident occurred in the factory where Vijay is employed or outside it.

This is the opening scene of ‘Gang of Shramikpur’¹, available on YouTube . This well-produced web series by Safe in India (SII) falls under the category of ‘edutainment’. Its purpose is to spread awareness about workplace safety by telling

the fictionalised story of ‘Vijay & friends’ in the social media friendly format of episodes and seasons. And judging by viewer comments, the series has made an impact. Uploaded on December 2022, the first four episodes of Season1 have got 10,000 views.

Raju intones into the camera: An injury suffered while on the way to or from the factory, or out on factory work, is considered as a workplace injury. His sidekick Johnny adds balefully, “Brother,

we will have to address power press accidents which injure thousands of our comrades every year.”

Workers lose fingers, hands and other body parts working in automobile manufacturing. Safe in India’s Crushed 2022 – its annual report on the state of Auto-worker safety – notes that “Thousands of workers continue to lose their fingers every year in the Indian auto sector”. These injuries are called “crush injuries” because bits of limbs get crushed under power press machines or hacked off by the serrated edges of heavy equipment. Since 2014, Safe in India has found and assisted more than 5,000 injured workers, mainly in Haryana, and recently in Maharashtra, with the organisation positing that these numbers represent just a fraction of total injuries. Power press machines account for half of these accidents.

Safe in India’s work with factory workers also debunks a misinformation spread that auto companies in cahoots with the government claim a majority of injuries are from road accidents outside the factory premises. Only 7 percent of workers assisted by SII were injured in road accidents, the organisation stated in Crushed 2022. It also published a blog post about this on its website².

Episode 2: Who will help Vijay?

Two friends gather at the tea tapri and discuss how to extend financial help to Vijay. He has lost two fingers. Rekha states that she is willing to give a small amount from her salary to Vijay every month. Raju – the dynamic and well-informed chai walla – counter, “Wonderful thought, but Vijay will get pension. Whoever contributes to ESI [Employees’ State Insurance] gets lifelong pension if they suffer a workplace injury.”

Crushed 2022 found that only 60-70 percent of injured auto sector workers receive their ESIC (Employees’ State Insurance Corporation) e-Pehchaan card only after an accident, even though employers collect contribution amounts regularly. The ESIC e-Pehchaan (identity) card enables workers and their eligible dependents to access primary, secondary, and tertiary health services and compensation in case of sickness, injuries, unemployment, childbirth and death. However, a large majority of injured workers had not received their ESIC e-Pehchaan card on the day of joining their jobs, as the ESIC regulations require. Clearly, they were not benefitting from ESIC services that they were eligible for.

In SII’s discussions, it found that the Employees’ State Insurance Corporation (ESIC) was aware

of and indeed concerned about this issue and terms it as “Post Accident Registration”, though it does not appear to collect centralised information on this non-compliance. SII has, therefore, for more than two years, been seeking punitive actions against such defaulting factories from ESIC (current penalties are small and ineffective) and has recently been advised that policy changes will be initiated to address this.

Episode 3: Does Vijay pay ESI?

An injured Vijay arrives at the gang’s hangout with his hand bandaged. A distressed Rekha asks him if he is contributing to ESI? Vijay is not sure. Raju the chai walla and his sidekick Chingam (chewing gum) explain that ESI is a government scheme for workers that insures them against workplace injury, gives pensions, and unemployment benefits.

A majority of injured workers are first taken to private hospitals and only later to ESIC hospitals in both Haryana and Maharashtra. Safe in India’s work with injured factory hands has revealed many instances where ESIC premium deducted from workers’ compensation is not deposited with ESIC. Thus, such workers are not even registered with ESIC. Possibly as a result of this, more than half of injured workers are first taken to a private hospital, while ESIC paperwork is “completed” and

then taken to ESIC hospitals often after one to three days of injury.

The need for work place insurance is highlighted by the correlation between the severity of the injury and loss of wages. SII’s findings indicate that the worse the injury, the greater the loss of wages to the worker. The loss of an average of 1.5 fingers per worker meant a wage of above ₹ 20,000, while the loss of 2.58 fingers reduced that monthly wage to below ₹ 8,000 for an eight-hour shift in Haryana.

Workers earning less than ₹ 8,000 for an 8-hour workday lost an average of 2.58 fingers in Haryana, 4.5 fingers in Pune; much worse than an average of 1.55 fingers lost in Haryana and 2 fingers lost in Pune by those earning more than ₹ 15,000 p.m It may be due to helpers being asked to operate machines, as is often seen, without adequate training and/or experience. In Gurugram, around six percent of the injured workers and 13 percent in Faridabad may be paid less than the minimum wages for skilled work.

The Indian auto sector is systemically important to the economy. The major auto sector hubs are spread across Haryana, Karnataka, Maharashtra, Tamil Nadu, Uttarakhand and Gujarat. It contributes 7.1 percent to the gross domestic product, with the figure expected to increase to 12 percent by 2026. The auto sector

makes up almost half of Indian manufacturing and is one of the most employment intensive sectors. It employs more than 37 million workers, of which 8-10 million are employed directly. Employment in the sector is projected to increase to 100 million by 2026. India is the largest 2-wheeler and 3-wheeler producer, the second largest heavy bus producer, fifth largest heavy truck producer, fourth largest car producer and ninth largest light commercial vehicle producer in the world. The heavy volume means that production schedules are tight, resulting in numerous worker crush injuries, which are not issues of concern either for the auto companies or the government.

Episode 4: Who misled Vijay?

Vijay and friends are sitting at



the chai shop when a sinister man dressed in white walks into the scene. Gabbar Singh, who is revealed to be a factory owner, says that ESI is only meant for workers who toil in large factories. Raju says that this is not true, and that any establishment with 10 or more workers comes under the provision of ESI. The provision of 10 includes management and workers. Raju is dismissed arrogantly by Mr. factory owner Gabbar, who claims that only workers with a salary of under ₹ 10,000 per month are eligible for ESI. Raju again corrects him saying that the limit is ₹ 21,000, to which Vijay replies this is correct and that his salary is over ₹ 10,000.

Gabbar asks him to show his ESI e-pehchaan identity card. Vijay stammers, “What is e-pehchaan?” and the scene

fades to black.

Almost all of injured workers in Haryana continue to be the most marginalised and vulnerable. Maharashtra appears to be similar.

Recent data from Haryana (Apr 21 – Aug 22) shows that a vast majority (1178, or around 91 percent) of the 1295 injured workers continue to be migrants, mostly from Bihar, Odisha, or Uttar Pradesh, with little education and very low wages. The majority (881, around 68 percent in this period) continues to be non-permanent employees, with often unclear employer-employee relationships, which makes legal protection inaccessible to many of them.

The young, future workforce of the nation (those under 30 years old) continue to suffer most (751, around 58 percent) of these injuries. 65 percent injured auto sector workers earn wages of ₹ 10,000 or less for an eight-hour shift and most of them work overtime, for which many of them do not get paid double the hourly rate as they should according to The Indian Factories Act 1948. Almost none of these workers was part of any labour unions – same as reported in the past reports. Unions in Haryana do not appear to cover the auto sector supply chain well enough.

Episode 5: Does Vijay have an e-Pehchaan card?

Gabbar Singh points at Vijay and says derisively, “You think he will have an e-Pehchaan card? Don’t indulge in empty talk.” Raju asks Vijay if he has an “SI card”, to which the reply is in the affirmative. Raju says that is the e-Pehchaan card. Vijay, who was earlier morose, cheers up while Gabbar Singh looks deflated. Suddenly Gabbar spots an error in Vijay’s card. The ESI card number is the one assigned to Vijay at the time of his first employment, whereas he has changed factories many times since. Gabbar implies that not changing the ESI number means that compensation cannot be claimed. Raju and his sidekick Chandu clarify that this is not necessary.

There is significant false reporting of shift-duration in the “accident reports” submitted to ESIC indicating potential legal violations. Of 80 reports scrutinised by SII, 31 (around 39 percent) mention a shift duration

of eight to nine hours, whereas these injured workers say their shift lasts 12 hours. Only four (5 percent) reports say the duration was 11/12 hours.

It is reasonable to assume that these long working hours become contributory factors to fatigue-caused accidents. 12 percent of these injured workers said they were on overtime after working a 12-hour shift when they were injured. Any solution, therefore, must address this issue.

Episode 6: Vijay is hopeful

A worried looking Vijay is sitting at the chai shop with Javed. He doesn’t have money for household expenses or for his family since he is not earning. Javed and Raju tell him the ESI covers not just medical expenses, but also provides a dole. Vijay needs to submit his medical paperwork and documents certifying his unemployment status because

of injury. ESIC can provide upto 90 percent of the worker’s wages during this period.

A majority of injured workers were first taken to private hospitals and only later to ESIC hospitals in both Haryana and Maharashtra, although the latter state appears to be better of the two in this regard. SII’s engagement with workers has led to the unearthing of many instances where the ESIC premium deducted from workers’ compensation is not deposited with the insurance company. Such workers are therefore not even registered with ESIC. Possibly as a result of this, more than half of injured workers are first taken to a private hospital, while the paperwork is “completed” and then taken to ESIC hospitals, often after three days of the accident.

Episode 7: Was Vijay’s accident report submitted?

Chingam is at the chai shop being complimented by Raju for his prompt action in taking Vijay to the hospital. But when he is queried about whether he submitted the accident report to the ESIC he falters, because he didn’t. How can compensation be claimed without an accident report being filed? Vijay arrives at the chai tapri and says that he submitted the report and got a photocopy.



SII has found and assisted nearly 4,000 auto sector workers over the past six years in Gurugram and Faridabad in Haryana, and recently also in Pune, Maharashtra. In FY 22-23, SII expects to find 70-80 injured workers from the auto sector every month just in Haryana, i.e. close to 1,000 per annum and another 250 in Maharashtra in its first six months of operations. In addition to this, SII now has initial data on injured workers working in automobile ancillaries in Karnataka, Rajasthan, Tamil Nadu, and Uttarakhand. As mentioned earlier, the above numbers are a small, yet statistically significant, subset of the universe of such accidents in Haryana and nationally. Given that Haryana officially reports only around 2.5 percent of the

accidents nationally, the actual number is likely to be several thousands more on an annual basis.

Episode 8: The return of our hero Vijay

A happy looking Vijay is sipping chai with his friends at the tea shop. He has submitted all the documents, but will he get the pension plan that he is eligible for under ESI? Find out in Season 2.

Maruti Suzuki, Hero, and Honda's supply chain continue to be the top three contributors to industrial accidents in Haryana. Even individually, each of these three OEMs are the largest sources of these crush injuries, as per data between 2017 and 2022. In Pune,

Maharashtra; Tata and Mahindra are the top two OEMs. All the injured workers SII has met in Pune reported that their factories supplied to Tata, Mahindra or a combination of both. In Chennai, Tamil Nadu TVS, Ashok Leyland and Tata are the top three OEMs. 77 percent of the injured workers found in Chennai, Tamil Nadu were employed by suppliers either of these three or a combination of them.

Endnotes

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GLOBAL WORK-LIFE BALANCE

Occupational Safety and Health Practices Around the World

Anshi Beohar*

“Capitalism puts things (capital) higher than life (labor). Power follows from possession, not from activity”, wrote Erich Seligmann Fromm, a psychologist and social philosopher of the twentieth century in his book, *On Disobedience and Other Essays*.

The Global Rights Index by the International Trade Union Confederation (ITUC) has documented that in 97 out of the 148 countries assessed, workers were denied access to justice and in 50 countries, workers were exposed to violent attacks in relation to their work or at the workplace. This points to the fact that legislative reforms are the need of the hour¹, especially since free speech, freedom of assembly and workplace democracy are under attack.

“The condition of the working class today is bleak, as the neo-liberal economics reinforces the view that the primary responsibility of the capitalist class is to maximise the shareholder value.”

In ideal conditions, an employer is responsible for the welfare of the workers, and is also required to provide a safe work environment. National and supranational laws have provisions to ensure that worker safety and health is maintained. However, the condition of the working class today is bleak, as the neo-liberal economics reinforces the view that the primary responsibility of the capitalist class is to maximise the shareholder value.

Industrial workers risk physical as well as psychological ill health. Some general safety health practices are followed by most employers. The most significant of these is to identify potential hazards and the likelihood of their occurrence, and based on that assessment, implement risk management and mitigation measures. Additionally, training and provision of safety gear as well as health and wellness programmes for workers add another layer of protection. In case of accidents, transparent reporting, investigation and accountability, followed by assistance to the injured, pecuniary or otherwise, is the norm in most countries.

The International Labour Organization (ILO) has set labour standards for its 187 member

states. It has provided the legal framework for workplace health and safety, with the intention of protecting workers. In the profit-centric approach of capitalism, today, ensuring the health and safety of industrial workers is not merely a moral obligation but a legal mandate for employers. The Constitution of the ILO sets forth the principle that workers must be protected from sickness, diseases and injuries arising from their employment. Despite this, recent ILO estimates indicate that 2.78 million work-related deaths take place every year².

International Labour Organization

In 1981, the ILO held its Convention 155 on Occupational Safety and Health. C155 is a comprehensive agreement on protecting the health and safety of industrial workers. The convention urges member states to take measures to prevent industrial accidents and occupational disease, including the provision of adequate inspection and enforcement mechanisms. It also requires governments to ensure that workers have access to information and training on health and safety. C 155 also emphasised the need for employers to be proactive in identifying and addressing

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risks, establishment of health and safety committees and the provision of information and training. In 2002, a protocol was issued that called for the establishment and the periodic review of procedures for recording occupational mishaps, and the publication of relevant statistics.

Aside from this, ILO has created several conventions for specific protections. The Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 provides that, as far as possible, the working environment shall be kept free from hazards due to air pollution, noise or vibration. Similarly, the Asbestos Convention, 1986, Chemicals Convention, 1990, Safety and Health in Mines Convention, 1995 and Safety and Health in Agriculture Convention, 2001 were meant to protect workers in their specific domains. Additionally, Radiation Protection Convention, 1960 and Occupational Cancer Convention, 1974, have a specific purpose of providing protective measures against radiation and occupational cancers, respectively. Member states are obliged to protect workers from unnecessary radiation and periodically determine carcinogenic substances and regulate or prohibit exposure to such agents. The Promotional Framework for Occupational Safety and Health Convention, 2006 focuses on establishing and implementing coherent national policies on occupational safety and health

through dialogue between government, workers' and employers' organisations³.

However, these conventions are not legally binding on member countries unless they are ratified by national legislatures and enacted as law. Most countries have Constitutional provisions for labour rights that create detailed health and safety norms for workers. Some countries also direct individual sectors and organisations to create their own health and safety protocols. A brief summary of the OSH policies of various countries is as follows:

The United Kingdom

In 1802, the Health and Morals of Apprentices Act was passed⁴. While the terms are unacceptable by today's standards, it was then a step in the right direction. This law was the first of its kind in the world, and it set a precedent. Presently, the Health and Safety at Work Act, 1974⁵ places specific responsibilities on employers to evaluate, avoid and reduce workplace risks. While no mandatory medical surveillance is required in the UK, the law allows employers to record work-related accidents, occupational diseases, etc. and conduct surveillance based on risk assessment or medical records.

European Union

The European Union (EU) has established extensive OSH regulations to protect industrial workers. The European Agency

for Safety and Health at Work, the EU-OSHA⁶ has been tasked with activities ranging from campaigns and surveys to awareness initiatives. The purpose is to promote a culture of risk prevention and improve the work environment across the European Union. In 2019, EU-OSHA marked 25 years of effort at making the EU a safer zone for workers.

Interestingly, EU-OSHA also includes workers in the micro, small and medium-sized enterprises (MSME) within its ambit, unlike the labour laws of several other nations. The EU's framework directive on health and safety at work sets out the general principles for workplace health and safety, and individual member states are responsible for implementing these principles through their own laws. Employers are required to identify and assess workplace hazards, implement measures to mitigate them, and provide training and education to workers on health and safety matters. Employers are also required to provide appropriate personal protective equipment (PPE) to workers who are exposed to workplace hazards. The EU also provides funding and support for research and development of occupational safety. This research helps to identify emerging hazards and develop new technologies and practices to mitigate them.

France

France has a long history of protecting the health and safety

of its workers. In 1841, the French government passed a law requiring all factories to provide safe and healthy working conditions for their employees⁷. The Code du Travail provides for the safety of the physical and psychological health of workers. French law mandates disclosure of information outlining the specific risks associated with industrial jobs and the measures that will be taken to protect employees. The employers are obliged to provide a *document unique d'évaluation des risques professionnels* (DUERP), in writing that mentions all the workplace hazards and is updated regularly as well as conduct regular health surveillance of employees, in addition to offering appropriate training to deal with them⁸.

Denmark

The *Arbejdstilsynet*, the Danish Working Environment Authority

(WEA), works for a healthy and safe working environment through inspections, legislation and awareness⁹. Denmark has created detailed regulations for electing health and safety representative and forming health and safety /committees within companies to ensure internal monitoring. The *Arbejdstilsynet* also coordinates with foreign employers and employees about the regulations for working in Denmark. The Danish WEA contributes to drafting and reforming health and safety regulations in order to make them more understandable and targeted. The Danish Working Environment Research Fund, *Arbejds miljø forskningsfonden*, has prioritised preventing work accidents, creating psychologically secure working environments, addressing musculoskeletal disorders and

OSH instruments.

Norway

Norway is a member state of the European Economic Area (EEA) and EEA members generally follow the norms established by the EU¹⁰. The Norwegian Working Environment Act is intended to ensure secure conditions of employment, a safe working environment and a meaningful work situation for all employees. The law governing health and safety of industrial workers in Norway is among the most stringent in the world. It imposes responsibilities on employers, including the need to carry out risk assessments, provide information and training to workers, and have an effective system in place for dealing with health and safety issues. They are supposed to take all reasonable steps to protect their workers from injury and disease and



protect workers from physical and psychological health risks¹¹.

Switzerland

Switzerland is a European Free Trade Association (EFTA) member state and although it follows the standards established by the EU¹², it has its own set of laws to deal with OSH. Swiss Labour Law covers work hours, health protection, workplace building standards and the protection of personal integrity. The prevention of occupational accidents and disease is covered by the Accident Insurance Law¹³. The Federal Coordination Commission for Occupational Safety (FCOS) is the central coordinating office for safety and health at work. FCOS coordinates preventive measures, and their decisions are binding.

The United States

The United States has a comprehensive legal framework to protect the health and safety of industrial workers. The Occupational Safety and Health Administration (OSHA) is the federal agency responsible for enforcing workplace safety and health regulations¹⁴. OSHA sets and enforces standards, provides training and education, and conducts inspections under the Occupational Safety and Health Act, 1970. OSHA's regulations cover a wide range of workplace hazards, including physical, chemical, and biological hazards.

OSHA's enforcement ensures that employers comply with

laws that protect workers from workplace hazards. OSHA conducts inspections of workplaces to ensure that employers are complying with the law. Employees can approach OSHA and file complaints flagging violation of OSHA regulations by their employer. The complaints are investigated and appropriate action is taken.

The 1970 Act also established the National Institute for Occupational Safety and Health (NIOSH), a research agency focused on studying labour safety and health, and empowering employers and workers to create safe and healthy workplaces. The NIOSH is a part of the Centers for Disease Control and Prevention (CDC), in the US Department of Health and Human Services.

Japan

In 1972, the Japanese Industrial Safety and Health Act (JISHA) was created to ensure occupational safety and health. Since the inception of the Act, workplace deaths in Japan have been reducing steadily¹⁵. Japan is one of the most stringent and meticulous nations in the world, when it comes to the health and safety of industrial workers. It endeavours to create not just a safe but a comfortable workplace for employees. The Act prescribes that the Minister of Health, Labour and Welfare should formulate an OSH Program in consultation with the Labour Policy Council and

the 13th Occupational Safety & Health Program ran between 2018 and 2022 that aimed to reduce fatalities by at least 15 percent and casualties by 5 percent.¹⁶

In 2008, JISHA established the International Affairs Center for promoting international activities around industrial safety and health, organising exchange programmes with overseas OSH organisations, encouraging technical cooperation to assist developing countries and providing consultation services for Japanese companies¹⁷.

The Research Institute of Industrial Safety was founded in 1942 at Tokyo by the then Japanese Ministry of Welfare, and the Division of Occupational Safety and Health under the Labour Ministry formed the Silicosis Laboratory in 1949. The institutes were amalgamated in 2006 into the National Institute of Occupational Safety and Health, Japan (JNIOH)¹⁸. JNIOH is the premier research institute for occupational safety and health in Japan and contributes to the protection of workers' safety. Its work has contributed to the reduction of the risk of industrial accidents and diseases and created a safer work environment.

New Zealand

The Health and Safety at Work Act, 2015 sets out the main principles for protecting workers' health and safety. It emphasises the shared responsibility

between employers, workers and the government to maintain a healthy and safe work environment. There are a number of specific regulations covering particular risks and hazards in the workplace.

The New Zealand Ministry of Business, Innovation and Employment is responsible for workplace health and safety strategy, policy and legislation. In 2013, an independent taskforce on workplace health and safety reported that New Zealand's work health and safety system was failing. The country thereafter underwent significant reforms, leading to the formation of the 2015 Act and *Mahi Haumarua Aotearoa*, or WorkSafe, the primary workplace health and safety regulator¹⁹.

Conclusion

The health and safety of workers is crucial to ensure their well-being and productivity. A common misconception is that since occupational safety only affects workers, the employer only needs to find a replacement. However, occupational injury or disease does not necessarily lead to the termination of employment. In fact, aside from compensation, the employers also face loss of skilled staff, absenteeism and early retirements. Where critical cases or a large number of workers are involved, the employers are confronted with lost work days, interrupted production and occasional

criminal charges.

It is in the best interests of both employers and workers to establish a safe work environment. Through proper compliances, implementation of the laws and the appropriate risk management and mitigation measures, accidents could be prevented and the workplace could be made safer and healthier.

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COMMON CAUSE UPDATES

Illegal Mining in Odisha: The matter was listed several times in 2023, where interlocutory applications filed by interested parties were disposed of and directions issued on penalties to be paid. In two related writ petitions, the Apex Court had raised the mining limits as well as allowed parties to lessen their contribution towards Special Purpose Vehicle (SPV) formed.

On February 23, 2023 Common Cause filed an IA focussed on directing the Union of India and State of Odisha to impose limit on extraction of minerals and on constituting a committee of two or three independent experts to suggest and recommend such limit to be imposed on the extraction of iron ore in the State of Odisha and submit its report in a time-bound manner. The IA also asked for a status report with regard to amount of penalty deposited by the lessees till date (as well as the amount that is yet to be recovered) as directed in judgment dated 02.08.2017 as well as lease-wise details of the ore reserve, extraction permitted, current status of mining lease and also total iron ore reserves and total permitted extraction in the State.

Other than this, the IA seeks complete details of the work done for the benefits of tribal community in the affected

districts and other area development works. As it involves public money in such a large quantity, the Special Purpose Vehicle (SPV) must fall under the purview of the Comptroller and Auditor General of India and the audit accounts of the receipts and expenditure of the SPV must be provided to the Apex Court. The matter was taken up on February 27, 2023, where the Court directed the service of IA to the standing counsel for the Union of India. Subsequently the matter was listed on March 17 and April 6, 2023 when the Court heard the IAs filed by the parties. The matter was taken up several times during May 2023 till June 2023.

The Court directed that the applicant mining company be granted three months' time to sell the iron ore in question, else it will be open to the respondent – State to take over and sell the iron ore in question. The Court directed that the amount so realised from the sale shall mandatorily be credited to the SPV in terms of the Courts order dated August 2, 2017. In the meantime, the Court granted the State the liberty to simultaneously begin the process for conducting the auction of the Leasehold Area in accordance with law and also to proceed with the recovery of the amount

due from the applicant, which is said to be in the region of Rs. 600 crores plus interest.

On May 1, 2023 the Court noted that “from the perusal of the affidavit filed in response (Annexure A/1), it is clear that only a sum of Rs.305.32 Crores has been recovered in terms of compensation due from the defaulters. This is when total amount of compensation is reckoned as 3308.35 Crores. It is clear that the balance amount excluding interest shown due is Rs.3003.03 Crores. A supplementary affidavit to be filed by the Respondent-State indicating as to for what reason the entire amount has not been recovered and what steps have been taken for speedy recovery of the entire amount.” The matter is likely to be listed on July 10, 2023.

Miscellaneous Application (MA No 1756 of 2022 in WP(C) No 1374/2020) by the Union of India seeking modification of the Supreme Court order in the Common Cause Petition Challenging Re-appointment of the Director, ED: The Union of India (Respondent No.1) filed a Miscellaneous Application in the Common Cause petition, WP(C) 1374 of 2020, challenging the re-appointment of the ED Director, for modifying the judgment of the Supreme Court,

dated September 8, 2021. By way of the instant modification application, they have sought the deletion of the following from the judgment:

“We make it clear that no further extension shall be granted to the second respondent”

The Union of India has claimed that on the basis of the 5th proviso to Fundamental Rule 56(d) and Section 25(d) of the Central Vigilance Act, 2003 as well as various pending petitions challenging the extension of the incumbent ED Director’s tenure, the above statement must be deleted from the judgment of the petition challenging the re-appointment of the ED Director.

This application has been filed as a Miscellaneous Application, disguising the review petition. Several precedents have established that the Supreme Court disapproves the practice of filing such Miscellaneous Applications seeking “modification” or “recall” or “clarification” in an attempt to bypass Order XL of the Supreme Court Rules, 1966. In addition to this, the Supreme Court has also upheld that change in law or subsequent decisions by itself could not be grounds for review and such petitions shall be accordingly dismissed. The matter was taken up on January 30, 2023, when the SC gave the Centre three weeks to respond to the petition filed by Dr. Jaya Thakur questioning the third extension given to director of

the Enforcement Directorate (ED) Sanjay Kumar Mishra, while also indicating that it will not entertain any review of its September 2021 judgment that directed against further extension to Mishra based on the law being subsequently changed. “Subsequent legislative change cannot be a ground to review our earlier order (passed on September 8, 2021),” the bench of justices BR Gavai and Vikram Nath said.

The Solicitor General stated that the petitioner was extensively relying on the September 2021 judgment where the Centre moved an application seeking clarification/modification (MA) and requested for tagging these matters together.

The bench, refusing to entertain the MA said, “We will not entertain such an application. It amounts to review of our order.”

The Court ordered that WP 1106/2022, 456/2022, 204/2022 and MA be tagged together and posted the matter for hearing on February 27, 2023. The Court heard the counsels on March 21 and 23, 2023 and directed that it be listed at number 1 as part heard case on April 20, 2023. The Court concluded the hearing and on May 8, 2023 judgment was reserved.

Petition Challenging Constitutional Validity of

Sedition: Sedition, a colonial law, used to suppress dissent by the British in India, continues to be heavily abused by the

law enforcement authorities against citizens for exercising their freedom of speech and expression.

Common Cause filed a petition in 2021, challenging the constitutional validity of sedition under Section 124A of the Indian Penal Code, 1860, as being violative of Articles 14, 19(1)(a), and 21 of the Constitution of India.

In *Kedar Nath Singh v State of Bihar*, the constitutionality of this section was tested and upheld. The offence of sedition was presumed to be complete if the activities tended to create public disorder or disturbance of law and order or public peace.

In its welcome order on May 11, 2022, the Supreme Court granted interim stay on the use of the provision by governments. It suspended pending criminal trials and court proceedings under Section 124A (sedition) and allowed the Union of India to reconsider the law of the colonial times.

The order stated that the Union of India had agreed with the prima facie opinion expressed by Supreme Court, that the rigors of Section 124A of IPC is not in tune with the current social milieu. Rather, the section was from a time when India was colonised. The Union of India, in its May 9, 2022 affidavit, had agreed to re-examine and re-consider the provision of section 124A of the Indian Penal Code before the Competent

Forum. The Court adjudicated that it would be appropriate not to continue the usage of the aforesaid provision of law by the government. In addition, it said that the persons accused in fresh cases were free to approach courts for relief, which were asked to examine these cases, considering the present order passed as well as the clear stand taken by the Union of India.

The matter was taken up on May 1, 2023 when the Attorney General for India, stated that, in pursuance of the order dated May 11, 2022, the Government has initiated the process of re-examining the provisions of Section 124A of the Indian Penal Code 1860 and the consultations are at a substantially advanced stage. In view of the above submission, on the request of the Attorney General, the Court directed that the proceedings be posted on 8 August 2023.

Contempt Petition against Lawyers Strike: The contempt petition filed by Common Cause

against the strike of lawyers in Delhi High Court and all district courts of Delhi on the issue of conflict over pecuniary jurisdiction was eventually taken up on November 2, 2022, where the Court asked for short notes on the proposed submissions and the propositions by the parties within four weeks. The matter was listed next on December 6, 2022, when on behalf of the petitioner, advocate Prashant Bhushan told the bench that the Bar Council of India (BCI) had not suspended those who went on strike. "We expect a serious response from you," the bench told advocate Ardhendumauli Kumar Prasad, who represented the BCI. Noting that suspension was not sufficient, the Supreme Court said major steps were needed against striking lawyers. "BCI is the apex body and should act like one. What are the preventive measures being taken? This can never acquire the proportions of adversarial litigation," a bench led by Dinesh Maheshwari said while

hearing the contempt petition. The matter was taken up on January 24, 2023 when the counsel appearing for the BCI prayed for further time yet again to complete all his instructions as also to advise appropriately. On April 17, 2023 the Chairman, BCI, informed the Court that further process was actively being taken up as regards the framing of Rules. He also indicated that in another matter involving similar issues, order has been reserved. On May 8, 2023, the Chairman BCI submitted that further steps have been taken for amending the Rules as submitted before the Court on the last few occasions and in that regard, meeting of the representatives of all the State Bar Councils has also taken place. The Court took note of the submission that pursuant to the decision taken in these meetings, the BCI is actively considering the necessary amendment to the Rules. The matter is likely to be listed on July 17, 2023.

FUNDAMENTAL RIGHTS AND DUTIES

Rights beget empowerment for citizens. They enable them to participate in public affairs and to lead a life of dignity. Rights are also the bedrock of the citizens' legitimate entitlements from the State, their freedom and personhood. Every great nation is defined by the rights of their citizens. In most modern liberal democracies, citizens are meant to be sovereign, equal before the law, and morally autonomous beings, free to pursue their enlightened self-interest.

However, it is equally true that citizenship comes not only with Fundamental Rights but also with Fundamental Duties. After all great power comes with great responsibility. Those who make demands on the system for their Fundamental Rights must give back to the system by fulfilling their responsibilities as citizens. These duties should not be taken lightly, for they are just as important to our national identity as our Fundamental Rights. The notion of Fundamental Duties does not run counter to our freedoms, but rather the two occur in harmony, for a country is run for its citizen and by its citizens, and as citizens we cannot simply take without giving back.

It is perhaps in this spirit that Article 51(a) of the Constitution of India enlists the Fundamental Duties that cast upon the citizens a moral obligation to:

1. To abide by the Constitution and respect its ideas and institutions, the National Flag and the National Anthem;
 2. To cherish and follow the noble ideals which inspired our national struggle for freedom;
 3. To uphold and protect the sovereignty, unity and integrity of India;
 4. To defend the country and render national service when called upon to do so;
 5. To promote harmony and spirit of common brotherhood among all the people of India, transcending religious, linguistic, regional or sectional diversities, to renounce practices derogatory to the dignity of women;
 6. To value and preserve the rich heritage of our composite culture;
 7. To protect and improve the natural environment including forests, lakes, river, and wildlife and to have compassion for living creatures;
 8. To develop the scientific temper, humanism and spirit of inquiry and reform;
 9. To safeguard public property and to abjure violence;
 10. To strive towards excellence in all spheres of individual and collective activities so that the nation constantly rises to higher levels of endeavor and achievement;
 11. To provide opportunities for education to his child or, as the case may be, ward between age of 6 and 14 years;
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Status of Policing in India Report 2023

Surveillance and the Question of Privacy



Jointly prepared by Common Cause and its academic partner, Centre for the Study of Developing Societies (CSDS), the Status of Policing in India Report 2023: Surveillance and the Question of Privacy, is a study of public perceptions and experiences regarding digital surveillance in India .

SPIR 2023 analyses data collected from face-to-face surveys conducted with about 10,000 individuals from Tier I, II and III cities of 12 Indian states and UTs to understand perceptions around digital surveillance. The study also involved a Focused Group Discussion (FGD) with domain experts, in-depth interviews with serving police officials, and an analysis of media coverage of surveillance-related issues.

Please email us at commoncauseindia@gmail.com if you want a soft copy of the report. It can also be downloaded from commoncause.in

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