

OCCUPATIONAL SAFETY AND HEALTH PROTECTION
OF THE NATIONAL LABOUR FORCE

THE CONSTITUTIONAL AND LEGAL PERSPECTIVE

BY

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(i) - Introduction: Scope and Content

When I received the invitation from the Minister to deliver a lecture on the Constitutional and Legal Perspective of Occupational Safety and Health Protection of the National Labour Force I decided to seize the opportunity because I felt that there was a need for awareness of the subject matter of this paper and more specifically a need to commence work urgently on a comprehensive review of the Nigerian Law for the purpose of meeting the challenges that we are bound to face in the coming millennium in this most important area of our national industrial development.

There is clearly a need for the law to deal with problems arising from the concern for the health, safety and welfare of citizens in general and those who work in factories or are engaged in industrial activities in particular. It would be a mistake to consider that this area of the law has come into being only as a result of statutes enacted by the legislature or other law making bodies. The truth of the matter is that in Nigeria as in other Commonwealth jurisdictions the rules of law which regulates industrial activities and seek to ensure the health, safety and welfare of citizens in general were developed from judge - made law which lawyers call the common law. It is true of course that the common law has been greatly supplemented by legislation in this country and in other common law jurisdictions such as United Kingdom, the United States of America, India etc. Although the central object of all these statutory provisions is to make the work place of industrial activity including the operation of plants and machinery and other processes of production meet certain minimum requirements for the health, safety and welfare of workmen. There is a necessity that these provisions are adapted in the light of current scientific knowledge, international practice and international norms.

Furthermore there is also a need to examine legislation other than the Factories Act for as I will show later, there is need for consolidation and bringing together all statutory provisions scattered in various parts of our statute books.

(ii) - The Guiding Principles

What I can describe as the seed of the law for the regulation of industrial activities and processes is to be found in the common law relating to Negligence. The rules of law relating to Negligence have been developed over the years and it is the central principle laid down by the common law on this subject which has developed into the various statutory provisions that we found in our statute book today. The most lucid statement of the rule of law on the subject would be found in the judgment of LORD ATKIN in the House of Lords in the case of *Donoghue v. Stevenson* (1932) AC 562 at p. 580. I may mention that LORD ATKIN is one of the most distinguished exponents of the common law in the United Kingdom. He declared as follows:

"The liability for negligence, whether you style it such or treat it as in other systems as a species of 'culpa', is no doubt based upon a general public sentiment of moral wrongdoing for which the offender must pay. But acts or omissions which any moral code would censure cannot in a practical world be treated so as to give a right to every person injured by them to demand relief. In this way rules of law arise which limited the range of complainants and the extent of their remedy. The rule that you are to love your neighbour becomes in law, you must not injure your neighbour; and the lawyer's question, Who is my neighbour? receives a restricted reply. You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who, then, in law is my neighbour? The answer seems to be - persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question."

It is the principle thus stated by the distinguished jurist which has over the years informed the development of the common law of Negligence in Anglo-American Jurisprudence which we have adopted as the basis of our law in Nigeria. It is also this principle that has informed the protection of our workers in our Statute Books.

(iii) - Important Constitutional and Statutory Provisions

Under the present Constitution of the Federal Republic of Nigeria, we have a list of matters placed in the Concurrent Legislative List contained in Part II of the Second Schedule to the Constitution. These are matters with respect to which both the National Assembly of the Federation as well as the House of Assembly of each State are empowered to make laws. The relevant portion of Item 17 of the Concurrent List reads as follows:

"(a) the health, safety and welfare of persons employed to work in factories, offices or other premises or in inter-state transportation and commerce including the training, supervision and qualification of such persons."

It is only the Federal Government that has enacted a Factories Act 1987 No. 16 which is still in force till today. The Factories Act: The long title of the enactment reads as follows:

"An act to provide for the registration, etc. of factories; to provide for factory workers and a wider spectrum of workers and other professionals exposed to occupational hazards, but for whom no adequate provisions had been formerly made; to make adequate provisions regarding the safety of workers to which the Act applies and to impose penalties for any breach of its provisions."

That long title accurately describes the objective of the enactment. It imposes a number of requirements designed to cater for the safety and welfare of all persons who operate in any factory. What exactly is a factory. This is to be found in section 87(1).

"factory" means any premises in which or within which, or within the close or curtilage or precincts of which one person is, or more persons are, employed in any process for or incidental to any of the following purposes, namely:-

- (a) the making of any article or part of any article; or
- (b) the altering, preparing ornamenting, finishing, cleaning, or washing, or

breaking-up or demolition of any article;
or

(c) the adapting for sale of any article,

being premises in which, or within the close or curtilage or precincts of which, the work is carried on by way of trade or for purposes of gain and to or over which the employer of the person or persons employed therein has the right of access or control; and the expression "factory" also includes the following premises in which ten or more persons are employed, that is to say -

(i)

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(ix)"

The section then goes on to empower the Minister to exempt certain premises and it then specifically excludes specific premises including mines from the definition of factory.

A few years ago a case arose in which there was an explosion on an offshore rig. Whilst regulations made under the Petroleum Act clearly control almost all operations in the Oil Industry under the auspices of the Directorate of Petroleum Resources (DPR) the definition of Factory appears wide enough to cover oil rigs and other types of installations in the oil industry. None of the Oil Industry operators seem to be aware of the fact that many of their

installations may actually require registration under the Factories Act. In the building Industry it would appear that it is only in Lagos State that there are Local Government bye-laws that touch on the safety of workmen in this area.

It is clear therefore that one has to cater for the needs of a worker whether that worker is found in an office, a building site, a mine or an oil rig.

(iv) - Comprehensive Legislation

Our Factories Act although updated in 1987 is largely modelled on the old colonial statute of the same name. The United Kingdom government had set up a committee in May 1970 under the Chairmanship of LORD ROBENS a former Trade Union Leader to review the provision made for the safety and health of persons in employment

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"... consider the changes needed and any further steps required to safeguard members of the public from hazards ... and to make recommendations."

In the same year as the Flixborough Disaster (1974) the Health and Safety at Work Act (HASAWA) was passed. This enactment has since been amended, updated and probably provides one of the more comprehensive safety codes for the protection of workers in a common law jurisdiction. English Law has kept pure with the changing industrial, social and political landscape of the 20th century. It will thus be useful to briefly highlight some of the features of their enactment to illustrate a possible way ahead for us. the main features of HASAWA are -

- (1) It seeks to secure not only the health, safety and welfare of all persons at work but other persons who may be at risk as a result of activities at work.
- (2) Employers have to not only provide and maintain plants and systems that are as far as reasonably practicable safe, they have to ensure they have safe methods of handling, storing and transporting materials and also provide adequate induction, training and supervision in those methods.
- (3) Employers have to keep revised a written safety policy statement showing the arrangement and organization of their safety procedures. These rules and procedures must of course be brought to the notice of all employees.
- (4) Employees are also required by law to cooperate in meeting statutory requirements and must not interfere with or misuse materials provided to secure health safety and welfare.

- (5) Employees have safety representatives often from the Unions who are aware of the legal requirements of HASAWA and who help to coordinate cooperation between employer and employees, assess the effectiveness of measures taken and bring to the employer's notice unsafe conditions or practices.
- (6) The Commission set up by HASWA is empowered to make health and safety regulations or codes of practice for most industries. Failure to observe any provision or code of practice may render an employer liable to prosecution.
- (7) Wide ranging powers are given to inspectors to ensure compliance with the Act.

Improving and updating regulations is one thing but the time has come when the Ministry has to go further and promote for our own Health and Safety at Work Act. It is hoped that the Ministry in formulating a bill for this purpose will arrange for the active cooperation and participation of the appropriate stage of the relevant committees of the Senate and House of Representatives. This is absolutely necessary having regard to the realities of our constitutional frameworks in Nigeria. In addition it is expedient for the Ministry to have consultations with Labour Organisations and Employers of Labour for the purpose of ascertaining and selecting leaders of thought within these associations for their input into the legislation.

(v) - Enforcement of Regulations

The problem that I see is whether the Federal Government has sufficient qualified personnel for the inspection of our factories for the purpose of ensuring that the provisions of the law are effectively and adequately observed by factory operators. I have my doubts in this regard. This is buttressed by the fact that in researching this area of the law, almost all the cases are English Cases. There have been very few prosecutions under our law. I would caution that such default on the part of Government should not be allowed to be left unattended to. The result of such lack of attention is that we may wake up one day faced with the calamity of witnessing some accident somewhere in Nigeria resulting in serious injuries or even death to persons working in factories. What has so far prevented such calamities from occurrence must be accounted for by the fact that the major operators in our various industries are fully conscious of their liability under the law where injury or death has been caused by their failure to observe the standards required of them under the Factories Act. It has been suggested elsewhere (see Ogunniyi's work on Nigerian Labour and Employment Law in Perspective 1991) that there is a need for compulsory insurance of all persons in insurable employment - distinct from the obligation arising under the Workmen's Compensation Decree 1987. I support this call. It is hoped that with the steps being taken by your Ministry you will be able to usher our people into a modern era in the work place.