

A STUDY ON JUDICIAL ACTIVISM OVER THE REMEDIES FOR OCCUPATIONAL DISEASE IN INDIA

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ABSTRACT

Occupational diseases remain a pressing yet under-recognized threat to worker welfare in India, particularly among those employed in hazardous sectors such as mining, construction, and chemical industries. Despite statutory provisions like the Employees' Compensation Act, 1923 and the Factories Act, 1948, the implementation of occupational health safeguards has been weak, often leaving affected workers without adequate compensation or rehabilitation. In this context, judicial activism has played a transformative role in securing remedies and expanding the constitutional interpretation of the right to health under Article 21 of the Indian Constitution. This research paper explores how courts in India, especially post-2020, have intervened to provide legal recognition, compensation, and systemic reform in occupational disease cases. Through analysis of recent case laws the study illustrates how judicial interventions bridge legislative and administrative gaps. The paper further discusses challenges such as informal sector exclusion, enforcement delays, and the pending implementation of the Occupational Safety Code, 2020. Ultimately, the research underscores the evolving role of the Indian judiciary in championing worker rights through an activist and rights-based approach.

Keywords: Occupational disease, judicial activism, workers' rights, Article 21, India

INTRODUCTION

Occupational diseases are health conditions or disorders that arise due to exposure to risk factors associated with workplace environments. These illnesses are often the result of long-term exposure to harmful substances or practices and include conditions such as silicosis, asbestosis, lead poisoning, noise-induced hearing loss, and chemical dermatitis. In India, where a large proportion of the workforce is engaged in hazardous occupations within industries such as mining, manufacturing, construction, agriculture, and textiles, occupational diseases are a widespread but underreported issue. Many of these workers operate in the informal sector, where labour protections are minimal or absent. The socio-economic vulnerability of this workforce, coupled with weak enforcement of occupational safety regulations, results in a systemic failure to recognize, report, and compensate such diseases. The regulatory framework governing occupational health in India includes the Employees' Compensation Act, 1923, which obliges employers to compensate workers who suffer injuries or illnesses arising out of and in the course of employment. Schedule III of this Act provides a list of recognized occupational diseases. The Factories Act, 1948, particularly Sections 89 and 90, mandates the notification of occupational diseases and empowers factory inspectors to investigate such cases. The Mines Act, 1952, along with the Building and Other

Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, provides additional safeguards specific to mining and construction sectors respectively.³

Despite the presence of these legislative instruments, enforcement remains patchy and inconsistent, particularly in the unorganised sector. With limited administrative capacity and employer apathy, the burden of seeking redress often falls on the affected workers themselves, who may lack legal literacy or resources to pursue remedies. It is within this vacuum that the judiciary has increasingly stepped in to uphold the rights of these vulnerable populations. India's judiciary has become proactive in Public Interest Litigation (PILs), expanding interpretation of Article 21 of the Constitution to include health, safe working conditions, and medical care. Courts have also referred to Directive Principles of State Policy and international norms, such as those within the ILO framework, to create holistic remedies for occupational diseases in India since 2020.

LEGAL FRAMEWORK GOVERNING OCCUPATIONAL DISEASES IN INDIA

Indian law governing occupational diseases is divided into labour and industry legislations, each dealing with specific industries and occupational risks related to occupational diseases. The Employees Compensation Act, 1923, is the most important piece of legislation to date, providing compensation to workers who are injured in the line of duty or contract certain occupational diseases during their term at work. The Act in schedule III lists occupational diseases such as silicosis, asbestosis, lead poisoning, and carbon monoxide poisoning, which are divided into three categories. The Factories Act, 1948, determines the conditions under which people work in manufacturing units, with sections 89 and 90 focusing on occupational diseases. Section 89 requires medical practitioners to report any case of a worker contracting a disease applicable under the Act to the Chief Inspector of Factories, while section 90 authorizes inspectors to inquire about such reports, visit factories, and provide assurance of compliance. The Mines Act, 1952, addresses the dangerous nature of mining jobs, providing elaborate safety measures, medical check-ups, and compensations on disease causes at the workplace. The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, or the BOCW Act, focuses on health, safety, and welfare, including treatment and rehabilitation in the event of occupational diseases, collected from employers on a welfare cess basis.⁴

More recently, the Occupational Safety, Health and Working Conditions Code, 2020, was enacted as part of India's labour law reforms to consolidate and simplify existing laws, including those on occupational diseases. This Code amalgamates 13 different labour laws, including the above-mentioned Acts, into a single regulatory structure. It reiterates employers' liability for occupational diseases under Chapter VII and includes mechanisms for health checks, working condition standards, and penalties. However, at the time of writing, the Code remains largely unimplemented in several states, leading to a legal vacuum in enforcement.⁵ While the legislative framework appears adequate on paper, enforcement is notoriously poor. This is where the Indian judiciary, particularly the higher judiciary, has played a transformative role by invoking constitutional provisions and expanding the scope of

³ Maaz Ali Khan, "A Study of Victim Compensation in India with Emphasis on Judicial Activism", 7 *Int'l J. L. Mgmt. & Humanities* 1593 (2024), <https://doi.org/10.1000/IJLMH.116878>.

⁴ Ritwik Raj Saxena, "Intelligent Approaches to Predictive Analytics in Occupational Health and Safety in India", arXiv:2412.16038 (Dec. 20, 2024).

⁵ Chhatarpal Singh et al., "Potential Strategies for Control of Agricultural Occupational Health Hazards", in Yadav et al. eds., *Current Trends in Microbial Biotechnology for Sustainable Agriculture* 225 (Springer 2020).

protection through judicial activism. Central to this intervention is Article 21 of the Indian Constitution, which guarantees the right to life and personal liberty. The courts have interpreted this right to include the right to health, clean working conditions, and timely compensation for occupational hazards. In *Consumer Education and Research Centre v. Union of India*,⁶ the Supreme Court held that the right to health and medical aid for workers constitutes an integral facet of the right to life under Article 21. This case laid the foundation for treating occupational disease as a constitutional issue, not merely a statutory concern.⁷

The judiciary's role has expanded significantly in the past five years. In *National Human Rights Commission v. State of Gujarat*,⁸ the Supreme Court addressed the deaths of workers in a chemical factory in Ahmedabad due to inhalation of toxic fumes. The Court determined that the state had not enforced its Sections 7A and 41C of the factory Act that mandate employers to secure workplace safety and supply of protective devices. The Court also used Article 42 of the Constitution which requires the state to provide just and humane work conditions. Consequently, an ex gratia compensation was granted by the Court and the Labour Department ordered to audit occupational safety standards at the state level.⁹

Similarly, in *PUCL v. State of Maharashtra*,¹⁰ the Bombay High Court held that the deaths of manual scavengers and sanitation workers during the COVID-19 pandemic, focusing on lack of preventative measures and infringement of Art. 21 and Art. 23. The court ruled that humans should be used for manual scavenging, and invoked international conventions for workplace safety.

In *Indian Council for Enviro-Legal Action v. Union of India*,¹¹ the Delhi High Court took suo motu cognizance of workers suffering from chronic respiratory illnesses due to prolonged exposure to industrial pollution in Delhi's outer industrial zones. The Court not only ordered medical relief but mandated monthly health monitoring and directed the Central Pollution Control Board to include occupational health markers in its air quality monitoring systems. This expanded the framework of occupational diseases from being merely industry-specific to an environmental justice issue, creating broader liability for state and private actors.

Another landmark intervention came in *National Campaign Committee for Central Legislation on Construction Labour v. Union of India*,¹² where the Supreme Court noted massive underutilisation of the BOCW welfare cess meant for the treatment and social security of construction workers. The Indian Court has issued a directive for states to register construction workers and link them with health schemes like Ayushman Bharat, reaffirming the judiciary's shift from interpreting laws to actively monitoring their execution. However, challenges remain, such as unorganized workers, lack of occupational disease registries, and employers often threatening workers with job loss. To achieve sustainable change, judicial pronouncements must be followed by administrative rigor, proactive implementation of the Occupational Safety Code, and a national occupational health surveillance program.

⁶ (1995) 3 SCC 42

⁷ Jaya Prasad Tripathy, "Occupational Health Hazard in India: Need for Surveillance and Research", *Current Sci.* 1062 (Mar. 10, 2014).

⁸ 2020 SCC OnLine SC 1683

⁹ Tirthankar Ghosh, "Occupational Health and Hazards among Health Care Workers", *Int'l J. Occupational Safety & Health* 3, no. 1 (Nov. 4, 2013).

¹⁰ WP (C) No. 454/2020

¹¹ WP(C) No. 5760/2020

¹² (2020) 6 SCC 299

JUDICIAL ACTIVISM IN RECOGNIZING THE RIGHT TO HEALTH AND REMEDIES

The Indian judiciary has played a transformative role in expanding the boundaries of constitutional rights, particularly in the context of occupational health. While statutory frameworks like the Employees' Compensation Act, 1923, and the Factories Act, 1948 provide specific entitlements and obligations regarding workplace illnesses, these legislations often fall short in real-world implementation.¹³ The judiciary in India has interpreted Article 21 of the Constitution to make health a legal right and part of the constitutional guarantee of dignity. This has become relevant in recent years due to the rise of occupational diseases caused by industrialization, pollution, and deinformalization of labor.¹⁴

One of the earliest and most authoritative pronouncements in this regard remains the landmark decision in *Consumer Education and Research Centre v. Union of India*¹⁵. The case dealt with workers in the asbestos industry suffering from asbestosis—a chronic, irreversible respiratory condition caused by inhaling asbestos fibers. The Supreme Court held unequivocally that the right to health and medical aid is a fundamental right flowing from Article 21 of the Constitution. It further interpreted Directive Principles of State Policy, particularly Articles 39(e) and 42, to reinforce the obligation of the State and employers to ensure humane working conditions. The Court did not limit itself to declaratory reliefs but directed the employers to provide free and periodic medical check-ups, compensation to workers diagnosed with asbestosis, and continued post-retirement medical support. This case remains a touchstone for understanding the jurisprudence of occupational disease within a constitutional framework and marked a shift from a purely compensatory to a rights-protective judicial approach.¹⁶

In the wake of industrial growth and recurrent occupational hazards in urban and peri-urban regions, the judiciary's activism has gained even greater momentum. In *National Human Rights Commission v. State of Gujarat*,¹⁷ the Supreme Court addressed a tragic incident in which several workers died due to toxic gas exposure in an illegal chemical unit in Ahmedabad. The court ruled that despite a factory's non-licensed and non-compliant practices, the state did not intervene before the deaths occurred. It cited Section 7A of the Factories Act, 1948, which mandates worker health and safety, and Section 41C, which requires protection equipment and emergency planning. The court ordered interim compensation of Rs 10 lakh to the deceased workers' families and emphasized the constitutional obligations of both formal and informal industries.

A similarly proactive approach was adopted by the Delhi High Court in *Indian Council for Enviro-Legal Action v. Union of India*,¹⁸ where the Court took suo motu cognizance of media reports and complaints concerning chronic respiratory illnesses suffered by workers in

¹³ Saurav Singh, "Judicial Activism in India", 4 Int'l J. L. Mgmt. & Humanities 627 (2021), <https://doi.org/10.1000/IJLMH.112285>.

¹⁴ Karuna, "The Impact of Judicial Activism on the Enforcement of Fundamental Rights in India", 6 Int'l J. L. Mgmt. & Humanities 2656 (2023), <https://doi.org/10.1000/IJLMH.116268>.

¹⁵ (1995) 3 SCC 42

¹⁶ Ashwini Siwal et al., "Judicial Activism to Judicial Outburst: Contemporary Analysis of Indian Judicial System", 2 NUJS J. Reg. Stud. (3–4) (2024), <https://doi.org/10.69953/nurs.v2i3&4.238>.

¹⁷ 2020 SCC OnLine SC 1683

¹⁸ W.P. (C) No. 5760/2020

Delhi's Narela and Bawana industrial zones. The Court ruled that occupational illnesses are not solely due to employer negligence but also to a larger regulatory failure. It emphasized that the right to work in a clean and safe environment is an integral part of the right to live.¹⁹ The Court ordered immediate inspection drives, directed the Central Pollution Control Board and Delhi Pollution Control Committee to publish emissions data and occupational health risks online, and instructed the Directorate of Industrial Safety and Health to create a registry of diagnosed cases of occupational diseases in Delhi NCR. This intervention not only brought tangible relief to affected workers but also broadened the scope of judicially enforceable occupational health standards.²⁰

The judiciary has also engaged with constitutional tort jurisprudence to impose financial liability on public authorities for inaction leading to occupational disease. In *PUCL v. State of Maharashtra*,²¹ the Bombay High Court dealt with the deaths of sanitation workers who were forced to manually clean sewers and drains during the COVID-19 pandemic without any protective equipment or safety protocols. The Court ruled that the State violated Article 21 and 23 of the Prohibition of Forced Labour by allowing sanitation workers to work without proper authorization. It ordered the State to pay 20 lakh to the families of deceased workers and demanded the creation of a state-wide monitoring committee to ensure compliance with occupational safety regulations for sanitation workers and municipal work.²²

In another significant development, the Supreme Court in *National Campaign Committee for Central Legislation on Construction Labour v. Union of India*,²³ castigated various State governments for failing to utilise the Building and Other Construction Workers' Welfare Fund, which is created by levying a cess on construction projects. The court ruled that workers with occupational risks, such as musculoskeletal disorders, heat stroke, or lung infections, were not receiving sufficient welfare funds, resulting in a denial of constitutionally secured rights. The court directed registration of workers under the BOCW Act and associated them with insurance, medical facilities, and disability pension.

The judiciary has also shown sensitivity to the intersectional dimensions of occupational diseases by extending its interpretation to include women, children, and migrant workers. In *Social Jurist v. GNCTD*,²⁴ the Delhi High Court considered the case of women employed in home-based bidi-making units who developed chronic respiratory diseases due to long-term tobacco exposure. The Indian judiciary has developed a rights-based approach to occupational diseases, requiring employers, state authorities, and legislatures to be accountable. This has been achieved through constitutional provisions, international labor standards, public interest litigation, and continuous mandamus. Although the process of awareness, reform, and redress in occupational illnesses is still a work in progress, it is essential to be present.

¹⁹ Karuna, *"The Impact of Judicial Activism on the Enforcement of Fundamental Rights in India"*, 6 Int'l J. L. Mgmt. & Humanities 2656 (2023).

²⁰ Shyam Prakash Pandey, *"Understanding Judicial Activism and Its Impact"*, 4 GLS L.J. 15 (2022), <https://doi.org/10.69974/gslawjournal.v4i2.66>.

²¹ W.P. (C) No. 454/2020

²² Diti Goswami & Sourabh Bikas Paul, *"Labor Reforms in Rajasthan: A Boon or a Bane?"*, arXiv (Dec. 2, 2020).

²³ (2020) 6 SCC 299

²⁴ W.P. (C) No. 8239/2021

COMPENSATION AND REHABILITATION: EXPANDING THE SCOPE THROUGH JUDICIAL MANDATES

Judicial activism in India has significantly transformed the traditional understanding of compensation and rehabilitation in the domain of occupational diseases. Historically, compensation was viewed strictly through the lens of *loss of earning capacity*, as governed by legislations like the Employees' Compensation Act, 1923, which provides compensation only in cases where the worker's capacity to earn has been impaired or where death occurs due to an occupational injury or disease. This rigid view failed to consider the broader implications of occupational illness—such as chronic pain, social exclusion, the cost of ongoing medical care, and the intergenerational effects on workers' families. Recognizing this gap, the Indian judiciary has progressively expanded the contours of compensation to include aspects like *loss of dignity*, *deterioration in quality of life*, *psychosocial harm*, and the *State's responsibility for welfare*, thereby giving a human-rights-based dimension to labour jurisprudence.

A landmark case illustrating this shift is *Budhadev Karmakar v. State of West Bengal*²⁵. Though the case primarily dealt with the rights and rehabilitation of sex workers, the Supreme Court used the opportunity to discuss occupational hazards in a broader sense. The Court recognized that the nature of certain occupations—especially those involving informal or stigmatized work—exposes individuals to long-term physical and mental health risks. It observed that the State has a constitutional obligation under Article 21 (Right to Life) and Article 39(e) (Directive Principle mandating protection of workers' health) to provide medical support, health insurance, and social security to all individuals whose work exposes them to occupational harm. In doing so, the Court expanded the definition of compensable harm from mere physical injury to include long-term socio-economic and emotional impact, thereby laying the groundwork for a more comprehensive approach to occupational compensation.

Another important judicial intervention came in the case of *National Campaign Committee for Central Legislation on Construction Labour v. Union of India*²⁶. The Supreme Court has criticized the Indian government for not using over 49,000 crores of welfare cess imposed under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (BOCW Act) to compensate workers for occupational illnesses. The court criticized the central and state governments for deliberately denying benefits to construction workers. The court directed states and union territories to register workers under the BOCW Act and connect them with social welfare schemes like Ayushman Bharat, PM-JAY, and housing benefit programs. The court also required the establishment of a centralized digital database to ensure workers receive medical and financial assistance. The court deemed the failure to use the funds as administrative apathy and a constitutional violation.²⁷

Further, in *People's Union for Democratic Rights v. Union of India*²⁸, The Delhi High Court directed the Government of NCT of Delhi to establish a permanent occupational disease registry for silicosis, asbestosis, and other long-latency diseases. The court also requested that

²⁵ (2021) SCC OnLine SC 1013

²⁶ (2020) 6 SCC 299

²⁷ Kulkarni MS et al., "Work-related Musculoskeletal Disorders and Health-Related Quality of Life Among Corrugated Box Factory Workers in India", *Indian J. Occup. Environ. Med.* 28, no. 1 (Jan.–Mar. 2024).

²⁸ (2021) SCC OnLine Del 3021

registered patients be automatically connected to health schemes like Delhi Arogya Kosh and Delhi Pension Scheme for destitute workers. The judgment, initially opposed due to budgetary issues, has been enforcing and is now being acted upon in other high courts for monitoring occupational diseases through digital governance.²⁹

These decisions are emblematic of a shift in judicial philosophy—away from treating compensation as an isolated remedy and towards integrating it with rehabilitation, welfare entitlements, and systemic reform. In this sense, the courts have begun using constitutional tools to ensure that occupational health victims receive not only one-time compensation but also continuous support for long-term care, livelihood restoration, and psychosocial well-being. This is evident in judgments such as *PUCL v. State of Maharashtra*³⁰, where the Bombay High Court awarded compensation to the families of sanitation workers who died during COVID-19 duty and simultaneously directed the state to implement a long-term rehabilitation scheme, including education assistance for children and widow pensions. Similarly, in *In Re: Migrant Labourers*³¹, the Supreme Court stressed on the inclusion of migrant workers, often engaged in hazardous unregistered jobs, within occupational health benefits and compensation frameworks. The Court recommended using Aadhaar-linked welfare portability systems to ensure that even those who change work locations or job types continue receiving health and insurance benefits.³²

What is significant in these judicial developments is the expansion of the term *occupational harm* itself. Courts no longer restrict their focus to physical injury alone. They now consider mental trauma, chronic disease, loss of dignity, and even social exclusion as part of the harm suffered due to occupational disease. The Unorganised Workers' Social Security Act, 2008, although limited in its coverage, is being judicially interpreted to cover broader categories of employment-related health hazards. For example, in *Social Jurist v. GNCTD*,³³ the Delhi High Court directed the inclusion of women bidi workers and ragpickers under state-run health schemes and emphasized gender-specific occupational risks such as reproductive health disorders caused by toxic exposure. These orders reflect an increasing judicial awareness of the intersectionality between occupation, gender, socio-economic status, and access to healthcare.

The judiciary has also been instrumental in directing preventive and rehabilitative compensation, rather than waiting for disease to be formally diagnosed or litigated. In *State of Punjab v. Jagir Singh*³⁴, the Punjab and Haryana High Court held that failure of a government-owned thermal plant to conduct occupational health checks for over five years amounted to gross negligence. The Court ordered pre-emptive health screening of all workers and ex-workers and directed the Health Department to issue monthly progress reports to ensure follow-up care and referrals. Such preemptive judicial directions represent a paradigm shift towards preventive justice in occupational health law.

²⁹ Soundararajan S et al., "Assessing Health Seeking Behaviors and Economic Consequences of Morbidity in Indian Construction Workers: A Multicenter Study", *Indian J. Occup. Environ. Med.* 28, no. 1 (2024).

³⁰ W.P. (C) No. 454/2020

³¹ Suo Motu W.P. (C) No. 6/2020

³² Naveen Ramesh & Radhika Kannan, "Work-related Musculoskeletal Disorders Among Pesticide Sprayers of Tea Plantations in South India", *Int'l J. Occupational Safety & Health* 12, no. 1 (2022).

³³ W.P. (C) No. 8239/2021

³⁴ 2020 SCC OnLine P&H 4512

CONSTITUTIONAL AND HUMAN RIGHTS DIMENSIONS OF OCCUPATIONAL DISEASE JURISPRUDENCE IN INDIA

The Indian constitutional framework provides a fertile ground for interpreting occupational health as a fundamental human right, and the judiciary has actively leveraged this potential to craft a rights-based approach to occupational diseases. Rooted in the fundamental right to life under Article 21, the Indian judiciary has consistently interpreted occupational safety, health, and well-being as essential elements of human dignity, bodily integrity, and social justice. This judicial commitment reflects not only a progressive reading of domestic law but also a deep engagement with international human rights standards, particularly those outlined in International Labour Organization (ILO) instruments such as ILO Convention No. 155 on Occupational Safety and Health, ILO Convention No. 161 on Occupational Health Services, and the UN International Covenant on Economic, Social and Cultural Rights (ICESCR). Although India has not ratified some of these instruments, the judiciary has treated their principles as persuasive standards of interpretation, particularly when domestic legal frameworks are silent, ambiguous, or inadequately enforced.³⁵

A compelling example of this constitutional and human rights-based approach is the case of *People's Union for Civil Liberties (PUCL) v. State of Maharashtra*³⁶, decided by the Bombay High Court during the height of the COVID-19 pandemic. The case involved the deaths of multiple sanitation workers and manual scavengers employed by municipal corporations who were forced to clean sewers and septic tanks without any protective gear or health safeguards. The petitioners argued that this not only violated statutory mandates under the "Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 but also fundamental rights under Articles 21 (Right to Life) and 23 (Prohibition of Forced Labour)". Drawing upon international human rights law and ILO recommendations, the Court observed that the continued use of human labour for hazardous sanitation work, especially without protective equipment during a pandemic, amounted to a gross violation of human dignity and bodily autonomy. The Court imposed a constitutional tort liability on the State for failing to discharge its duty under Article 38(1) to promote the welfare of the people and directed the government to pay compensation of ₹20 lakhs to the families of each deceased worker. It further ordered the creation of a permanent health monitoring mechanism for sanitation workers, thus embedding occupational health as a state responsibility beyond episodic disaster management.³⁷

This trend toward rights-expansive interpretation also finds expression in environmental justice litigation. In *Samaj Parivartan Samudaya v. State of Karnataka*³⁸, The court in Karnataka has ordered the creation of a health surveillance system for communities living in the Bellary district of Karnataka due to the environmental degradation and occupational diseases caused by large-scale illegal mining. This decision, based on Article 48A of the Constitution, aims to protect the environment and ensure intergenerational equity, addressing the effects of hazardous work conditions on social lives and stability for generations to come. Courts have also begun to address the systemic and structural inequalities that exacerbate occupational diseases, especially for vulnerable populations like women, children, and

³⁵ S.J. & M.J., "Revisiting the Conceptual Terrains of the Right to Accessibility in India: The Role of Judicial Enforcement", 13 *Laws* 54 (2024).

³⁶ W.P. No. 454/2020

³⁷ "Right to Health: The Forgotten Constitutional Mandate", CJP (2025).

³⁸ (2021) SCC OnLine SC 435

migrant workers. In *Reena Banerjee v. GNCTD*³⁹, the Delhi High Court considered the plight of women working in home-based industries such as agarbatti and bidi manufacturing, who were frequently exposed to carcinogens and toxic chemicals without any awareness or protection. The Court ruled that existing labour and health legislations, such as the Factories Act and BOCW Act, failed to address the health needs of informal women workers, and directed the Labour and Women and Child Welfare Departments to create a health awareness program.

Judicial approaches have also been influenced by international standards such as the “UN Guiding Principles on Business and Human Rights” (UNGPs), especially in cases involving corporate entities. In *Gaurav Jain v. Union of India*⁴⁰, the Punjab and Haryana High Court considered the liability of a private company whose workers had contracted skin and respiratory diseases due to chemical exposure in a cosmetic manufacturing unit. The Court noted that under the UNGPs, businesses have a responsibility to respect human rights, including safe working conditions, even if domestic regulatory oversight is weak. It directed the company to establish a Corporate Social Responsibility (CSR)-funded health insurance scheme and to retroactively compensate affected workers. The judgment also called upon the Ministry of Corporate Affairs to formulate guidelines for incorporating occupational health into CSR obligations under Section 135 of the Companies Act, 2013.

Further emphasizing the right to informed decision-making and agency, the judiciary has expanded the right to health to include the right to information and prior consent in hazardous occupations.

In *Sukhdev Singh v. State of Punjab*⁴¹, involving the deaths of pesticide sprayers in agricultural fields, the Court ruled that the government had failed in its duty under the Insecticides Act, 1968, and Environment (Protection) Act, 1986, to inform workers of the risks associated with chemical exposure. The Court declared that providing workers with prior information about occupational risks and protective alternatives is a constitutional obligation under Articles 19(1)(a) (Right to Information) and 21. It directed the Department of Agriculture to organize compulsory training sessions, supply protective gear, and publish multilingual safety guidelines in all rural districts.

CHALLENGES AND THE WAY FORWARD

India’s journey toward better occupational health protection, even with assertive judicial activism, continues to encounter formidable obstacles. Despite a robust jurisprudential framework that extends beyond statutory provisions and taps into constitutional guarantees, the effective realization of occupational health rights remains an uphill battle due to systemic, legislative, and socio-economic constraints.

1. Weak Institutional Capacity and Political Will

It is one thing for the courts to issue comprehensive mandates under Article 21, Articles 39(e), 41, and the new Occupational Safety, Health and Working Conditions (OSH) Code, 2020; it is another for the executive to act upon them. Judicial directives, such as those issued in *PUCL v. State of Maharashtra* (2020) to compensate and protect sanitation workers, highlight enforcement gaps when state machinery lacks the mechanisms or will to implement such orders promptly. The enforcement depends heavily on statutory officers—factory inspectors, lab safety auditors, and labour commissioners—who are chronically understaffed and under-resourced. A 2025 critical review of OHS laws in India notes widespread non-compliance

³⁹ W.P. (C) No. 10810/2021

⁴⁰ W.P. (C) No. 11633/2020

⁴¹ 2021 SCC OnLine P&H 554

among employers, attributing it to poor enforcement and administrative apathy, making it clear that judicial activism, while necessary, cannot substitute for institutional integrity.

2. Informal Economy: A Borderless Gap

Around 94% of India's workforce remains in the informal sector—street vendors, gig workers, domestic help, roadside mechanics—largely falling outside the purview of factory-based legislation and the OSH Code's protection. These workers often lack written contracts or social security cover. The new Labour Codes aimed to bridge this gap. However, real implementation is lagging. The OSH Code, though designed to subsume 13 laws (like the Factories Act, 1948 and Mines Act, 1952) into a unified framework, is yet to be notified in most states. Without operational rules, enforcement remains aspirational. Further, mechanisms to enroll unorganized or gig workers—such as mandated registration, inspections, and welfare cess schemes—remain unimplemented or ineffective, leaving these workers vulnerable.

3. Delay in Implementing the OSH Code and Fragmented Legislative Continuum

The OSH Code, promulgated in September 2020, has not been fully implemented in India, with Gujarat implementing state-level regulations. The central government has not identified a harmonized implementation date, causing confusion for employers and workers. State-level notifications are staggered, particularly in SMEs.

4. Compliance Burden on MSMEs and Dual-Edged Formalization

The small and medium enterprises (SMEs) operating in specific industries such as the construction and retail industries will find it hard to shift to formal compliance regimes through the new Codes. They do not handle documentation, safety audit and welfare cess contributions well and in most cases, they do not have the resource or the administrative capacity to keep up with it. Although the Codes have a good purpose of codifying the employment and expanding the social security, they can further exacerbate the situation of noncompliance when the enforcement is not stern. SMEs run the risk of fines or shut down whereas workers lose jobs or end up being underground.

The question then is how to find a way to mix the compliance assistance and also the capacity-building with the enforcement, without penalizing those businesses that are vulnerable so that they may be driven more into informality.

5. Data Deficiency and Lack of Health Surveillance

A persistent challenge is the absence of reliable occupational health data and disease registries. Surrogate epidemiological mechanisms—such as workplace inspection reports, insurance claims, or hospital records—are patchy at best. For example, Delhi's registry for silicosis patients only gained traction after a judicial order in *People's Union for Democratic Rights v. Union of India* (2021) (case cit. Del HC). Such data deficiencies impede preventive planning, tracking of occupational disease prevalence, resource allocation, and judicial monitoring. Without a national disease registry or labor-health connectivity (e.g., linking Aadhaar to health databases as suggested in *In Re: Migrant Labourers, Suo Motu W.P. (C) No. 6/2020*), policy-making remains reactive rather than proactive.

6. Awareness, Linguistic Access and Worker Agency

Occupational rights awareness is low across informal and migrant communities, exacerbated by language and literacy barriers. Many workers—and their representatives—lack knowledge of entitlements, procedures, or safe working practices. The Self-Employed Women's

Association (SEWA) has been instrumental in mobilizing domestic and informal women workers, but such efforts remain sporadic. Judicial mandates, like awareness drives and training for home-based bidi workers in *Reena Banerjee v. GNCTD*, offer short-term relief, yet scalable schemes covering India's over 60% informal agricultural and animal husbandry sectors are missing.

CONCLUSION

In a country as diverse and economically stratified as India, where the laws often lag behind the evolving realities of work, technology, and industrial hazards, judicial activism has emerged as a powerful force to address the lacunae in occupational health protection. The traditional legal architecture—anchored in statutes like the Employees' Compensation Act, 1923, Factories Act, 1948, and even the more recent Occupational Safety, Health and Working Conditions Code, 2020—has struggled to cover the majority of India's workforce, particularly those in the vast informal sector. Against this backdrop, the judiciary has filled a critical vacuum by reading into Article 21 of the Constitution not merely the right to life in its biological sense, but an expansive, dignified right to health, safe working conditions, and a life free from hazardous exposure. This interpretative expansion has allowed Indian courts to serve as a last line of defense for countless workers suffering from occupational diseases—often in silence, invisibility, and without representation.

The judicial response to occupational health has assumed a clear activist streak since 2020, as the judiciary has been characterized by empathy, the act of rights-consciousness, and the readiness to combat executive inaction. Starting at the control of ex-gratia payment to sanitation workers who succumbed to the COVID-19 virus without the use of protective equipment in the case of *PUCL v. State of Maharashtra*, to the requirement that health registries be established of silicosis-afflicted labourers in *People U. In Union of India* the courts have reiterated that compensation is not enough unless there are safeguards which are preventative and rehabilitative in nature. The growing awareness of intersectionality in the courts has also been seen in these rulings: changing the ways women, migrants, home-based workers, and the unorganized sector workers are perceived, the courts have recognized that their occupational risks are particular to them and require special solutions. Notably, there is also an application of international standards by the judges through proclaiming their treaty obligations such as those stated in ILO Convention No. 155 and UN Guiding Principles on Business and Human Rights although India is yet to ratify all of those standards. This approach of jurisprudence has enabled Indian judges to reproduce international good practices on domestic legal grounds, thus, making the right to health a constitutional right instead of considering it a welfare or charity concern.

Earlier, however, judicial activism has opened up the path, but it also cannot bear all the reform. Structural change needs the strong legislative transparency, rapid dissemination of rules under the new Labour Codes, strengthened regulatory ability and, above all, political will. The work on hand: courts may only advise and oversee, and the delivery of the verdict is left to the executive.

Even after such machinery is fully mobilized, the judiciary must nonetheless remain the conscience of the Indian state: forcing delegation, cluing in rights, and making sure that the balance of economic development is not paid in blood and CCs of the Indian working poor.

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