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A REVIEW OF FACTORY ACT 2004

• **Jacob Osariemen Abusomwan** [PhD, BL] <abusomwanventures1@gmail.com> <<https://orcid.org/0009-0003-0359-2902>>

Abstract

Nigeria is a populous country with a large workforce, in every workplace there are factors that must be considered in a bid to facilitate the safety, health, welfare of workers and conditions that guarantee a good working environment. The relationship between an employer and an employee entails a reciprocal set of responsibilities and obligations. While employees are present to provide their services, employers also have certain obligations towards their employees. Unfortunately, these duties are occasionally disregarded, necessitating legislative measures to ensure their enforcement. One of the legislations enacted to safeguard persons so employed is the Factories Act, 2004. The Factories Act imposes several obligations on employers/occupiers of factories for the health, safety and welfare of workers employed in the factory. This paper seeks to critically appraise the provisions of the Factories Act 2004 which entails the definition of a factory, the registration of factories, the enforcement personnel, and the general and special provisions regarding the health, safety and welfare of employees in a factory. Adopting the doctrinal method of research is to identify the inadequacies and challenges of the Act such as the lack of adequate expertise to carry out proper enforcement of the provisions of the Act, wide discretion placed in the hands of the personnel such as the Minister of Labour, the Directors and inspectors of factories which may lead to abuse of power or arbitrariness and non-deterrent fines and punishment provided by the Act, hence it recommended the need for urgent review or amendment of the Factories Act.

Keywords: Appraisal, Safeguarding, Inadequacies, Challenges and Amendment

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1. Introduction

The S. 17 (3) (a) of the Constitution of the Federal Republic of Nigeria 1999, as amended, provide that every Nigerian has the fundamental right to gainful employment, which allows

them to provide for their own needs and well-being. An employer therefore should rather see the engagement of an employee from a mutual benefit perspective to ensure a healthy employer/employee relationship at the workplace. Additionally, according to Section 17 (3) (b), it is mandated that the working conditions provided to employees should be fair, considerate, and respectful. These conditions should prioritize the health, safety, and overall well-being of all individuals in employment. It is crucial to ensure that employees are not subjected to unjust or inhumane working environments. Safeguarding their welfare should be a paramount concern. Employers have the responsibility to ensure that machinery and equipment used in the workplace are safe and free from any risks that could potentially harm the health of employees.¹ This requirement has become an obligation on employers or occupiers so as not to make them liable in cases of breach.

In fairness, the desire to regulate the activities of employees and employers in factories around the country as well as in a bid to safeguard the welfare and health of workmen, the legislative arm of the Federal government of Nigeria enacted laws aimed at ensuring the protection of the rights of workers starting with section 17 (3) (b) (c) of the 1999 Constitution which stipulates that an employer is expected to provide an environment that is safe for work, equipment and procedure that is devoid of risk to the employees' wellbeing. One of these laws is the Factories Act 2004.² The legislation is the primary aim for the protection of the safety, health and welfare of workers in any factory.

The specific objectives of the Act are stated in its preamble as follows;

- i. 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.
- ii. To make adequate provisions regarding the safety of workers to which the Act applies and impose penalties for any breach of its provisions.

The paper is poised at reviewing the Factories Act 2004 to ascertain the efficacy of the provisions put in place to ensure the safety, health and welfare of workers in the factory, the obligations of the employers towards the employees and the duties expected of the employees as well as the penal nature, and concomitant inadequacies and challenges.

¹ C P Adaeze, 'Safety, Health and Welfare of Nigerian Workers as Entrenched under the Factories Act of 2004' <www.files.eric.ed.gov> last accessed on 25 July 2023.

² Cap F1, Law of Federation of Nigeria, 2004.

2. Theoretical Background

Some of the dominant authorities on labour regime in Nigeria include E E Uvieghara on Labour Law in Nigeria, (2001); A Emiola, Nigerian Labour Law, 2000 and recently Nwauzi and Otuturu, 'Employer's Liability for Employee's Safety at Work under the Factories Act.; I E Chinonyerem, 'The Factories Act: Its Constitutional Relevance as an Occupational Health and Safety Regulation in the 21st Century and the Challenges of the Covid-19 Pandemic

Significantly, the problem associated with factory safety and protection is ordinarily captured under labour law regime. There are abundant literature focused on labour issues in Nigeria, but the essence of the present investigation is to review the Nigerian Factory Act 2004.

Associated with the above, is the issue of compensation for injuries in work places. There are also abundant scientific papers covering this regime of labour law.

According to the Act, the term "Factory" is defined as premises where one or more individuals are employed in any process, either directly or indirectly, for the following purposes:

- a. The making of any article or part of any article or
- b. The altering, repairing, ornamenting, furnishing, cleaning or washing or the breaking up or demolition of any article, or
- c. The adapting for sale of any article being premises in which or within the close or cartilage or precincts of which the work is carried on by way of trade or for gain and over which the employer of the person or persons employed there has a right of access or control.³

The definition contains a number of important features that must be considered in determining whether any premises qualify as a factory or not. Firstly, the premises may be a fixed site or in the open air, in other words, premises shall not be excluded from the definition of a factory by reason only that they are open-air premises. Thus the premises need not have any boundary wall or fence. An incomplete building may become a factory if one or more persons are employed there in a process within the statutory definition of a factory.⁴

Furthermore, the number of persons employed on the premises may be only one person or more persons. It is clear from the statutory provisions that what is important is not the number

³ S. 87 (1) Cap F1, Law of Federation of Nigeria, 2004

⁴ *Ibid*

of persons employed on the premises but the nature of employment and the purpose of the work or process being carried out on the premises. Thus premises may constitute a factory within this definition even though only one person is employed.⁵ According to the Act, an apprentice is considered employed. Additionally, a person who is below the age of eighteen (18) and works in a factory, whether for wages or not, in tasks such as collecting, carrying, or delivering goods/messages, or running errands, is also deemed to be employed in the factory under the Act.⁶ In addition, premises used for engineering workshops in colleges and universities, are not premises within the Factories Act. Premises owned by the Federal, State or Local government will not be deemed not to be a factory for the reason of not carrying on work by way of trade or for the purpose of gain.⁷

The Minister of Labour has the authority, in special circumstances and if deemed expedient, to exempt any premises or specific sections of a premise that qualify as a factory as defined, from the application of some or all of the provisions of the Act, through an Order.⁸ Section 87 of the Act further explains that the expression 'Factory' means and includes any of the following premises in which ten or more persons are employed:

- i. Yards or dry docks involved in the construction, reconstruction, repair, refitting, finishing, or breaking up of ships or vessels.
- ii. Premises where bottle washing, refilling, or packaging is carried out as an incidental part of the factory's operations.
- iii. Premises engaged in the construction, reconstruction, or repair of locomotives, vehicles, or other transport-related equipment, either for industrial or commercial purposes.
- iv. Premises where printing by letterpress, photography, bookbinding, or similar processes are conducted as a trade or for profit, or as an incidental part of other business activities.
- v. Premises where mechanical power is used in connection with the manufacturing or repair of metal or wooden articles, as an incidental part of a profit-oriented business.
- vi. Premises where articles are made or prepared as incidental to building operations, excluding premises where active construction operations are taking place.

⁵ L O Nwauzi and G G Otuturu, 'Employer's Liability for Employee's Safety at Work under the Factories Act' <www.researchgate.net/> last accessed on 26 July 2023

⁶ *Ibid*

⁷ *Ibid*

⁸ *Ibid*

vii. Premises where individuals are employed specifically for the generation and trade of electricity as a business activity.

viii. Premises where mechanical power is utilized for water supply purposes, in connection with the employment of such individuals.

ix. Laundries operated as ancillary to another business or as incidental to the operations of a public institution.

It must be noted that since these premises are factories all the provisions of the Act apply to them in the same way and to the extent as they apply to premises which fall within the general definition of the factory.⁹ Some vital words or phrase in the definition of factory are neither defined nor explained and this has been a constant source of controversy or cause of loss of claims under an equivalent Act of England.¹⁰

No doubt it is difficult from the above provisions as stated above to know what kind of work is regarded as manual labour and which is not. Since most occupations are composed of both elements of varying degrees. In the case of *Joyce v Boots Cash Chemists (Southon) Ltd*,¹¹ the plaintiff was a porter at the defendant's chemist shop. Five other persons were employed there, but the plaintiff was the only one whose work could be described as manual labour. The court stated that the test to be applied when the premise is being used for mixed labour was whether the employment of persons in manual labour was the substantial purpose for which the premises were used. Since the porter's work was incidental to the main purpose of the premises, the shop was held not to be a factory. Furthermore, in the case of *Pullen v. Prison Commissioner*,¹² an ex-prisoner brought an action against the prison commissioners alleging that the tuberculosis he had contracted was as a result of the dust to which he had been exposed while working in a prison workshop. It was held that the prison workshop was not a factory within the meaning of the Act since there was no master-servant relationship or employment for wages in the prisoner's case. In *Powley v. Siddeley Engines Ltd*,¹³ the plaintiff was injured when he slipped on the icy steps of the approach to the aircraft company's administrative block. The court held that as the activities carried on in the administrative block included "processes" incidental to the making of aircraft engines, the block and its approach were part of the factory.

⁹ EE Uvieghara, *Labour Law in Nigeria*, Ikeja, Malthouse press Ltd, 2001, 183

¹⁰ A Emiola, *Nigerian Labour Law*, Ogbomoso, Emiola Publishers Ltd, 3rd ed, 2000, 185

¹¹ (1950) 2 All ER 719

¹² (1957) 1 WLR 116

¹³ (1965) All ER, 612

3. Research Methodology

The research methods include analysis of regulatory legal acts, Qualitative Document Analysis (QDA) and content analysis and Judicial Authorities. These research methods make it possible to ensure systematic and reliable recording of certain elements of the content of documents and qualitatively process the data obtained. This allows us to establish not only the characteristics of legal instruments and documentary sources, but also the features of the entire process: social orientations and the efficacy of legislations inclusive of the Factories Act 2004.

4. Examination of Research Data¹⁴

4.1 Components of the Act

The Factories Act is divided into 5 schedules, 11 parts and 89 sections, each part providing and imposing particular obligations on the occupiers and employers in a factory.

4.2 Registration of Factories

Part one of the Factories Act¹⁵ make provisions for the registration of factories. Factories in existence before the Factories Act must be registered within one month of the commencement of the Act and for new factories, they must be registered six months before the commencement of actual construction of a building intended to be used as a factory else be guilty of an offence. Such registration is to be carried out with the Director of Factories and a certificate issued or grounds for refusal states where such application for registration is refused.¹⁶

The Minister is to appoint a board to be called the “Factories Appeal Board” consisting of a Chairman who shall be a legal practitioner of not less than 11 years post-call and not less than four members to hear appeals from the provisions of this part in matters between occupiers of factories and director factories in cases where a party is dissatisfied with the decision made by the Director. A notice of appeal in writing is to be submitted to the Chairman of the board and the Director of Factories within 30 days of the decision intended to be appealed against. The director shall be a party and both parties have a right to brief a legal practitioner. Upon the receipt of the notice of appeal from an aggrieved party, the Chairman of the board shall

¹⁴ The Factory Act 2004

¹⁵ Factories Act 2004.

¹⁶ *Ibid*, ss. 1-6

determine a place and time to hear the appeal and the decision of the board in respect of the appeal shall be final.¹⁷

4.3 Health (General Provisions)

Part two of the Act¹⁸ deals with provisions that protect the basic health of the employees in factories so as to safeguard them against harm and injuries in the workplace. It contains sections 7-13, with provisions such as cleanliness, overcrowding, ventilation, drainage of floors and adequate sanitary convenience. Section 7 provides for adequate cleaning of factories to remove any accumulated dirt, arising from drainage, nuisance or sanitary convenience. This includes the floor of every workroom, floor, passage, staircase, benches etc. Section 8 has a provision that allows a factory to employ only the number of employees according to the space available in the factory. The Act includes provisions that prohibit overcrowding in factories. This measure is implemented to mitigate the risks and potential injuries to the health of individuals employed in such establishments. It should be noted that the Director of Factories can exempt a certain class of Factories from the provisions of sections 7 and 8 and a certificate of such exemption issued.

It also provides for suitable provisions to ensure efficient circulation of fresh air in each workroom, suitable lighting either natural or artificial in every workroom or passage of the factory and cleaning of same.¹⁹ It requires an inspector to make a report in writing in case of a default to the local government council and where no step is taken to abate such default, the inspector shall take the necessary step to abate the default and the owner or occupier of the premises shall bear the cost.²⁰

4.4 Safety (General Provisions)

Part three of the Act consists of most sections which are sections 14-39. These sections lay down the general condition for the safety of workers.²¹ For instance, sections 14, 15 and 17 of the Act impose a very important duty on employers and occupiers of factories to fence prime movers, transmission machinery and dangerous parts of machinery except for the safety of the person employed to operate the machine is guaranteed by virtue of the construction of the

¹⁷ *Ibid*

¹⁸ *Ibid*

¹⁹ Section 10-12 Factory Act

²⁰ *Ibid*, at S. 13

²¹ L O Nwauzi and G G Otuturu, *Supra*

machine or where such machine is secured by means of a fixed guard which in the opinion of the Director of Factories satisfactory protects the operator or other persons from coming in contact with that part.²²

It has been established that a component of a machine is considered dangerous if it can be reasonably anticipated to cause injury to anyone acting in a manner that a typical human being would be expected to act in the given circumstances that are reasonably foreseeable.²³ Also once it is proven by evidence that a part of a machine is dangerous, unfenced and a worker has been injured by the lack of fencing, foreseeability is no longer relevant and so the fact that the accident occurred in an entirely unexpected way will not absolve the occupier.²⁴

Section 19 sets out the standard of fencing required by the Act as fencing must be of “substantial construction” and constantly maintained while such dangerous part is in motion (continuing state of motion) except where exposure is necessary for the purpose of lubrication or examination. By section 18(2) such examination is to be carried out by a male person adequately trained, employed by the occupier and not less than 18 years of age. The person is to be informed of the likely dangers during the examination and another person is stationed in case of emergency.²⁵ The duty to fence is an absolute one and an employer or occupier cannot plead that he had done all that was reasonably practicable to avert disaster. It must be complied with as the obvious reason for the provision is not to protect any part of the machine but to protect workers or anyone operating the machine from looming danger. Section 20 imposes a duty on manufacturers, vendors and hirers of machines to fence any machine intended to be regulated by mechanical power. All projecting setscrew, and bolts on any shaft wheel or friction bearing must be safeguarded/fenced at all times. The section imposes a criminal liability in case of defiance.²⁶ All vessels, fixed vessels, pits, or structures that contain dangerous or poisonous liquids must be adequately covered or securely fenced. Practical measures should be taken to ensure that no person can fall into such areas. Additionally, it is required by sections 21 and 22 of the Act that a warning sign in English or an applicable Nigerian language specified by the Inspector of the Factory be prominently displayed as directed. The purpose of these measures is to prevent accidents and protect individuals from potential hazards.

²² *Ibid*

²³ *Close v Steel Company of Wales Ltd (1962) AC E.R 434.*

²⁴ *Millard v Serk Tubes Ltd (1969) 1 All E. R 598.*

²⁵ L O Nwauzi and G G Otuturu, *supra*

²⁶ *Ibid*

Section 23 imposes a general duty on employers or occupiers of factories to train and supervise inexperienced workers as such persons are not to be put in employment relating to any machinery liable to cause harm without being informed of the likely harm, adequately trained and under the supervision of experienced personnel with a thorough knowledge of the machinery process.²⁷In *Federal Super Phosphate Fertilizer & co v. Otaru*²⁸, a worker employed in an industrial process received training on processing sulphuric acid for a duration of two months and six weeks, he was injured in the process when a fellow worker loosened the sulphuricline, it was held that the training was inadequate and the employers were held liable. Section 27 of the Act requires every occupier of the factory to maintain a register containing the particulars set out in schedules with respect to ropes, chains and all lifting equipment.

The Act places certain obligations that require employers to ensure the provision of safe means of access and a safe place of employment. All forms of passages must be soundly constructed, properly maintained and kept safe at all times. The same provision applies to where a person has to be or work and reasonable steps taken to remove any explosives or inflammable substance.²⁹ Sections 31-34 require every steam boiler, steam receiver, container safety valve, pressure gauge and air receiver to be of good construction and proper maintenance. The Act impose a two fold duty for the prevention of fire and means of escape in case of fire. Firstly there must be correctly installed and maintained effective means of detecting fire as well as suitable and approved means for extinguishing same.³⁰There must be persons employed in the factory to enable them to operate available and a provision for an adequate means of escape in case of fire for persons in the factory taking into consideration the specific circumstances of each case. Sections 37-39 empower any factory inspector to issue an improvement notice if he is satisfied that any machinery used in the factory or any process is likely to cause bodily harm. He is also to issue a prohibition notice where a process exists in the factory that cannot be carried on without undue risk to the safety and health of persons employed in the factory. Any grievance from such notice can be appealed against the Minister of Labour and from the decision of the Minister to the Federal High Court.

4.5 Welfare (General Provisions)

²⁷ *Ibid*

²⁸ (1986) 1 NLTR 132

²⁹ Ss. 28-30, Factory Act, 2004

³⁰ *Ibid*, Ss. 33- 36

Part four of the Act³¹ consists of sections 40-44, these sections require every factory to have an adequate supply of drinking water which is to be different from washing water and placed in different locations in the factory, such drinking water is to be kept in a clean vessel. The provisions of this part include a suitable washing facility in a clean and orderly condition and accommodation for clothing not worn during working hours. It provides for the availability of a first aid box to be maintained for the employee in a factory, and in cases where there are more than 150 individuals, an additional first aid box should be provided for every additional 150 persons. The first aid box is to be maintained under the supervision of a person who shall be available at all working hours. Notwithstanding, where an ambulance is provided to ensure immediate treatment of injuries, a letter of exemption is to be given by the Director of Factories to that effect.³²

4.6 Health, Safety and Welfare (Special Provisions and Regulations)

Part Five of the Act³³ consists of sections 45-50 which include provisions for implementing practical measures aimed at ensuring the health, safety and welfare of individuals employed in a factory. Section 45 provides for the removal of dust or fumes likely to be injurious or offensive and with practical measures taken to prevent employees from inhaling same in a workroom, especially during working sessions and hours. It further makes provisions against taking of meal or food in a room where any poisonous or injurious substance is used so as to give rise to any dust or fume and where substances are being used in a room, workers in such rooms should be given adequate protective clothing and appliances, these may include gloves, footwear, goggles and head covers. All these are necessary for use in strenuous work activities and protection from any dangerous effects such as electric flashes from welding.³⁴

Section 49 empowers the Minister of Labour to make regulations for the health, welfare and safety of persons employed in a factory. Such special regulations may involve machines, plants or equipment and may apply to some classes of Factories while some might be exempted partially or absolutely. Such regulations may involve prohibiting/modifying employment of all class of persons or limiting the hours of employment depending on the nature of the work. The regulation may also include modifying or extending the provisions of parts 2, 3, 4 or 5 of the Act as it relates to the safety, health and welfare of the workers.³⁵

³¹ Factories Act 2004

³² *Ibid*, at Ss. 43, 44

³³ *Ibid*

³⁴ *Ibid*, at Ss. 46-48

³⁵ *Ibid*

Section 50 empowers the inspectors to take samples of substances used in the factory from occupiers or managers for analysis where such sample is suspected to go against the provisions of the Act or cause injury/harm. Such samples are to be divided into three parts; one part is kept with the occupier or manager, the other to the analyst and the third part for future reference. While such analysis is to be carried out in a government chemist, the analyst in question can be called as a witness, and a certificate of the analysis issued by him can be used as a piece of evidence in any proceedings to that effect, meanwhile, the result is not to be disclosed except as necessary for the prosecution of an offence else a person making such disclosure shall be guilty of an offence under the Act.

4.7 Notification and Investigation of Accidents and Industrial Diseases

Part six of the Act³⁶ provides for documentation of every danger and harm experienced by workers in a factory and every injury that occurs that leads to death or disablement from work. This is to keep a track record of such occurrences in a factory alongside the particulars of the victims accompanied by the cause of death or disablement. It impose a duty on the occupier of a factory to report to the inspector of a district any accident in a factory in such district that causes death or disablement of any worker as soon as comes aware of the incident. Failure to do so as prescribed in the Act the occupier shall be guilty of an offence and on conviction be liable to a fine not exceeding the sum of One Thousand Naira. Within the provisions of these sections, the minister can institute an inquiry into any frequent or large-scale dangerous occurrence like special cases of fire, collapse or explosion whether it results in death/disablement or not. This also includes the power of the Minister to make inquiries into such matters to prevent future occurrences.³⁷ For the purpose of this part, section 53(2) has defined occupational disease as such diseases or illnesses declared as such by the minister by notice in the Gazette or such which in his opinion can be contracted by an employee by reason of his nature of employment in a factory.

4.8 Special Applications, Extensions and Miscellaneous Provisions

Part Seven of the Act³⁸ consists of sections 54-57 which deal with issues that might not necessarily affect the welfare, health and safety of the employees in a factory like the subsequent parts but its provisions are centred on issues that affect the physical aspect of a factory which indirectly affects the workers one way or the other. It provides that where a part

³⁶ Factories Act 2004

³⁷ *Ibid*, at P. Ss. 51, 52

³⁸ *Ibid*

of the building is let out by an owner to be used for a factory, the provisions of the Act as to cleanliness and lightening, which includes prime movers, transmission machinery, and safe means of access and place of employment e t c shall apply. The Inspector is empowered to issue notices as to dangerous or unsafe conditions and practices.³⁹ The owner of the building shall be liable where there are contraventions as regards sanitary convenience, lifts and hoists, prevention of fire and safety provisions. The responsibility for maintaining cleanliness in sanitary conveniences within a factory is specifically imposed on the owner of the building when it is utilized in common by multiple tenants, and his obligation to a contravention of part 2 of this act is limited to the extent of his control over such activities. An occupier of the part used for the factory shall be liable for any contravention of part 3 relating to any machine or planned owned or secured by him.⁴⁰

In the context of this Act, lifting equipment, ropes, and tackles that are attached to the outside of a building are considered to be treated as if they are within the building. Where any reference is made to registers regarding matters where the owner of the building is held liable for contravention, such references to register shall imply to be registered held by him as if the owner were the occupier of the factory.⁴¹ Section 55 provides that parts 3, 4,5,6,9 and 10 of the Act shall apply to every dock, wharves and quay, including regulations, orders, notice, general registers and prohibition of deduction from wages, subject to modifications by the minister. These parts mentioned also apply to the processes of loading and cooling off of ships in any docks and every machine used in the process except that the machine is the property of the owner of the ship.

The provisions of part 3 of the Act also apply to premises where steam boilers, receivers and containers are used. Section 57 empowers the Minister to extend the application of the provisions of the Act to places other than a factory such as warehouses, premises in which a hoist or lift is used, any work carried out in a harbour or wet dick, or in cleaning oil fuel tanks including building operations and works of engineering construction performed as part of a trade or business for the purpose of any industrial or commercial undertaking.

4.9 General Registers

³⁹ *Ibid*, s. 54

⁴⁰ *Ibid*

⁴¹ *Ibid*

Section 58 of the Act⁴² requires a general register of the factory to be kept available for inspection and preserved (for a period of 7 years or less) in the factory in a prescribed form alongside other particulars such as a certificate of registration of the factory, any certificate issued by the minister regarding any provision of the Act, particulars of whitewashing/painting or vanishing of the factory and every particular of accidents and occupational diseases which notice has been sent to an inspector. These particulars shall be sent to the inspector as he may require from time to time and as necessary to carry out his duties under the Act.⁴³ Section 60 requires an abstract of the Act, notices of the address of the direction and the nearest inspector, and copies of regulations made under part 5 of the Act to be posted in a prominent place in the factory with all such documents recorded in English language and such Nigerian Languages as an inspector may direct.⁴⁴ It impose a duty on a person employed in a factory not to wilfully cause harm to himself or any other person employed in the factory and shall interfere with/ misuse machines or appliances used for securing the health, safety and welfare but shall use such machines or appliances for the means of securing the health safety and welfare of himself and that of persons employed in the factory.⁴⁵ Section 62 prohibits the occupier of the factory from allowing any person to make deductions from the wages of any employee to carry out any act or obligations imposed on the occupier by the Act. Not only is he prohibited from making such deductions, but he is also prevented from receiving the same.

4.10 Administration

Part nine of the Act⁴⁶ in respect of administration consists of sections 62-68. Section 62 requires that the Minister submits a report of his activities under the Act to the president within 30 days of the end of each financial year. Section 63 and its subsections address the appointment of inspectors/directors and some duties imposed on them under the Act. The section provides for the appointment of a director and inspector which shall be published in a gazette and these officials are issued a certificate by the Minister to be produced to an occupier where they carry out any inspection. The Act imposes a duty of neutrality on persons to be appointed as an inspector and to refuse same where he has a direct interest in the factory, for instance, he might be an occupier or carry on a business in/with the factory. Where one

⁴² Factories Act 2004

⁴³ *Ibid*

⁴⁴ *Ibid*

⁴⁵ *Ibid*, at Ss.61-62

⁴⁶ Factories Act 2004

has been so appointed he has a duty of non-disclosure of information regarding any manufacturing, commercial or working process that he obtained during his course of duty except for the prosecution of an offence, on the coroner's request or for the purpose of investigating a report on occupational disease.⁴⁷ Where an inspector gets a notice of complaint of contravention to the provisions of the Act, he is then saddled with a duty of confidentiality not to disclose the source of such complaint. There is a criminal liability attached to the contravention of this part of the Act as a person in deviance will be found guilty of an offence.⁴⁸

Section 65 outlines the functions and duties of an inspector which are as follows:

- (a) To enter, inspect or examine a factory or a building whose part is used as a factory at any time where he has a reasonable cause to believe that highly inflammable/explosive materials are stored.
- (b) During such inspection, he is to go with a police officer to arrest any serious obstruction in the execution of his duty.
- (c) The request for registers, certificates, notices and documents kept are required by the Act.
- (d) The inspector also has the power to carry out necessary, analysis and photographs of the factory with or without the consent of the occupier although the occupier and his agents are to provide any necessary means required of them to enable such entry, examination or analysis.⁴⁹

Where a person wilfully obstructs an inspector from carrying out his duties and powers under this Act, the person and the director shall be guilty of an offence. Except for the certificate of registration of the factory, a director can either vary or revoked certificates or notices given by him either for a limited period or permanently. Meanwhile, section 66 allows an inspector (whether a legal practitioner or not) to institute prosecute, conduct or defend a charge or other proceedings against him (in Magistrate Court) in his duty under the Act and can be called as a witness in the same proceeding. Section 67 requires the Minister to lay before the president every regulation made under the Act as soon as it is made which he may either reject or approve. Where a regulation is approved by the president it comes into force 30 days after the

⁴⁷ *Ibid*, at S.63(4)

⁴⁸ *Ibid*, s.64(7)

⁴⁹ *Ibid*, s.65(2)

approval or on an agreed date.⁵⁰ The director of Factories is required to publish any certificate of approval, revocation or exemption of any factory in a Gazette.

4.11 Offences, Penalties and General Legal Proceedings.

This part ten of the Act⁵¹ consists of sections 69-82 and section 69 provides that a contravention occurs when a person goes against the provisions of the Act. Contravention can be committed by a corporate entity, firm, cooperative society and some other associations or an individual, in such a case, every director, secretary, manager, partner, or member of the corporate entity, firm or cooperative shall be guilty of an offence except where he proves that the offence took place without his knowledge, consent, connivance or neglect.⁵² Section 70 provides the penalties for offences for which no penalty was expressly provided. While section 71 finds the occupier or owner liable where his contravention of the Act leads to the death or injury of another person except where such contravention was not direct or the act leading to the contravention has already been heard and dismissed before the death or injury.

Section 72 of the Act provides against forgery of certificates, false entries or declarations, these acts include signing or making use of such falsified documents, entries and certificates. The provision of section 72 extends to the impersonation of an inspector or impersonating a named person on such certificate or using it as applying to someone to whom the certificate does not apply. There are factors that qualify these acts as an offence under the Act which are “knowledge and willfulness” of the person carrying out the act. It suffices then to say that where once in ignorant of an existing falsification or have reasonable ground to believe the contents of a certificate or document, he cannot be said to have contravened the provisions of 72 of the Act. Although one has to be diligent and careful while dealing with documents that can be easily altered by another person.

By provision of section 73 where an occupier or owner would ordinarily be liable for an act and the same act is carried out by another person entirely either an agent, worker, servant or any other person, such person shall be made liable for the act. Under the Act an occupier or owner can exempt himself from liability where he is charged under the Act, if he gives notice

⁵⁰ *Ibid*, s. 67(2)

⁵¹ Factory Act, *supra*

⁵² *Ibid*, at S. 69 (5)

in writing three days before the date of hearing stating that he has diligently executed the provisions of the Act and that he neither connived nor consent to the act of the actual offender.⁵³

The actual offender is given a right to cross-examine the owner/occupier or any other person who is been called upon to give evidence against him and also to call evidence to rebut the case against him. The section does not only give such liberty to the occupier/owner, an inspector can on his own proceed against an actual offender on the satisfaction of the above provisions. In cases where a person is substituted for the occupier or owner in a proceeding, any notices, summonses or orders that were initially served in relation to the occupier or owner will then be served on the substituted person in relation to their role in the proceeding.

The owner or hirer of a machine used in the factory by a worker in his payroll is liable for any offence in relation to a person in the use of the machine as if he were the individual in charge of the factory.⁵⁴ Sections 77 and 78 provide for proceedings and fines relating to offences in this Act to be instituted in magistrate courts. A party can state that a factory is a factory within the meaning of the Act and state the name occupier of such factory and the burden of proof is on the person who seeks to prove otherwise. An offence committed as a result of failure to carry out an examination, enter a report or do anything within a framework is deemed to be continued until such examination or act is carried out.

If a person is discovered within a factory premises during working hours or while a machine is in operation, except during designated meal intervals, that person is considered to be employed within the factory. Entries made in registers as required by the Act or any regulation made under the Act are admissible as evidence. Where an entry so required is not made, the non-adherence to such required is also admissible as evidence that the particular provision has not been carried out.⁵⁵ Section 79 requires the service of any document, order or summon on an individual or a firm by delivering it to him or by leaving it at or sending it by post to his place of residence/business or the office of the firm. In the case of service on an occupier or owner (such occupier or owner might be a company or a cooperative society), service is sufficient when served on a person not less than sixteen years of age in the factory. Addressing such documents to “the occupier” is sufficient where the occupier’s details are not

⁵³ *Ibid*, at S..74

⁵⁴ *Ibid* , s. 76

⁵⁵ *Ibid*, s. 78

available". This provision also applies to any documentation required to be served on anyone by the act although with necessary modifications.⁵⁶

Section 80 provides for application to the Federal High Court for modification of agreement between the occupier and the owner of a building which is let out as a factory if such agreements prevent them from complying with the provisions of the Act.⁵⁷The judge after the hearing may either modify or set aside the agreement as may be equitable to both parties and the circumstances. Where there's a need for structural or other alterations to allow for compliance with the Act in a factory which is part/whole of a building, an application is made to the Federal High Court in Chambers to determine the expenses of such alterations between the occupier and the owner. After hearing the parties and calling the witnesses, the judge may make such orders as equitable in the circumstances having regard to the terms of an agreement between both parties or calls on the owner/occupier to determine the lease.⁵⁸

4. 12 General

Part eleven is the last of the Act⁵⁹ and is made up of sections 82 to 89. These are the concluding sections of the legislation and they buttress on the application of the provisions of the Act. Sections 82 to 85 state that except where expressly provide or where a contrary intention appears, the Act is an addition and not a substitution for any Act or law. The Act shall apply to all factories as defined by the Act including all federal and state government-owned factories. Although the President may by an order during any public emergency exempt a factory or a class of factories from the provisions of the Act for a particular period.⁶⁰

Section 86 provides that all factories registered, any registers kept, and document reference, appointment/notice/order/certificate/approval given under the repealed Factories Act are sufficient and subsisting under the Act. This also extends to any proceedings for an offence for which a penalty is provided under the repealed Act to be continued under the Act. Section 87 gives several definitions of a factory and what may be referred to as a factory based on the activities carried out on the premises, the short title "Factories Act" is provided for in section 89, while section 88 contains the interpretation section of the Act⁶¹

⁵⁶ *Ibid*, s. 79

⁵⁷ *Ibid*, s.80 (1)

⁵⁸ *Ibid*, s. 80(2)

⁵⁹ (n 2)

⁶⁰ *Ibid*, s. 85

⁶¹ *Ibid*

5. Inadequacies and Challenges of the Factories Act 2004

According to I E Chinonyerem⁶² the inadequacies and challenges of the factories act 2004 include the following:

5.1 Lack of Expertise and Standard Regulation

Section 3 of the Act provides for the registration of new factories where the minister is satisfied that such premises are suitable for the said purposes. It is worrisome to note that the Act does not make the registration of new factories subject to adherence to certain general guidelines or industry-specific regulations. It can be right to state that the requirements for the registration of a new factory lie in the hands of the Minister of Labour and Productivity who may exercise his discretion whenever he deems fit.

5.2 Non-Deterrent Fines and Punishment

The occupation of a factory without approval is punishable by a fine of N2000 or 12 months imprisonment or both. False entries, false declarations and forgery are subject to a fine of N2000. Other crimes not expressly provided in the Act are punishable by a fine of N500. The fine for the obstruction of an inspector attracted a fine sum of N1,000. Where accidents occur and are not reported a fine of N1000 is payable. These fines are too paltry and have no real deterrent effect in the 21st century. These fines can be easily paid over and over again as such defeating their purpose in the first place.

5.3 Lack of Expertise

The appointment of members of the Factories Appeal Board is on the basis of the Minister's discretion. Such an appointment is not specified to be an expert in any of the fields incidental to the issues of occupational health and safety. It is unclear what vital input members of an Appeal Board with no special expertise would have to offer when matters come before them. This provision appears to be a tool for the political class to compensate their loyalists. Furthermore, it is unclear how this board without the membership of a trade union will serve the interest of workers and not the Minister who is their "employer."

⁶² I E Chinonyerem, 'The Factories Act: Its Constitutional Relevance as an Occupational Health and Safety Regulation in the 21st Century and the Challenges of the Covid-19 Pandemic' <www.papers.ssrn.com> last accessed on the 26 March 2023

5.4 Skilled Manpower

Under the Act, inexperienced workers are allowed to work under supervision. This provision may have been rationalized by the lack of adequate skilled manpower in the days following the colonial dispensation. Today this isn't the case as the number of skilled persons has grown considerably therefore, allowing inexperienced workers to work at factories, places other workers at great risk.

5.5 Environmental Protection

The exhaustion of dangerous fumes in factories appears to be without regard to the effect of such on the environment. The concern of the Factories Act seems to be with the factory workers hence it stipulates that the workers wear apparatus necessary to protect them from dangerous fumes. This is in disregard to the glaring fact that these workers still form part of a larger society that is affected by these fumes. These provisions run contrary to modern-day environmental standards. They pose risks to the environment and the people living in it. The exhaustion of fumes without any attempt to ensure their purification or reduction in toxic levels goes contrary to sustainable development goals.

5.6 Health and Safety Education

The Act in an attempt to protect the workers specifically states that protective clothing should be worn where the work area demands so. The mere protection of workers with clothes or apparatus without provisions for medical checks appears to be inadequate. The act also makes provision for first aid boxes without provision for medical personnel. One might wonder what the effectiveness of first aid boxes would be to factory workers who have no formal training on safety. It is therefore inadequate to ensure the provision of first aid boxes with no one with the required knowledge to handle emergencies considering the fact that some factories are in remote areas far from civilization.

5.7 Power of Inquiry/ Definition of Factory

Where there are large-scale deaths or accidents a Commission of Inquiry may inquire into such occurrences. It is troubling to note that the purpose of such inquiry is for the purposes of recommendation to ensure such actions would prevent any such accident in the future. The commission does not possess the authority to issue enforceable recommendations. It is also to be noted that the interpretation section of the Act excludes construction sites from the ambit of the concept of "factory" hence another leeway for the lack of accountability.

The strict definition of factory constructions sites in the interpretation section does not include works of engineering construction, meanwhile the engineering construction industry possesses the highest risk factor to the worker, yet this is removed from the purview of the Factory Act even though section 8 of the Act gives the minister the power to extend the application. Other inadequacies and challenges of the factories act, 2004 include ignorance and lack of proper supervision.⁶³One of the challenges is the lack of employee awareness of their rights and privileges. Most Workers are ignorant of the dictates stipulated in the Factories Act and are not Conversant with the provisions of the constitution of the Federal Republic of Nigeria, let alone the provisions of the Factories Act available for the safety, health and welfare of workers. This makes employers get away with certain actions that could have been compensated for if brought before a court of competent jurisdiction or had their rights enforced. The Factories Act of 2004 mandated all factories to provide reports of occupational accidents to the Federal Ministry of Labour and Productivity Inspectorate Division (FMLPID). Records provided to the ministry are not followed up for further analysis which can help to understand work processes in each firm, thereby making it easy for them to take requisite actions that will help forestall such.

6. Conclusion and Recommendations

The Factories Act 2004 is a comprehensive legislation that provides extensive protection for workers employed in factories, specifically addressing the occupational hazards they may encounter. It is primarily a penal statute in the sense that it prescribes criminal statutes for any breach or contravention of its provisions. It does not directly make an employer/occupier/owner of a factory liable in damages to a workman for any injury suffered as a result of breach or contravention by the employer/occupier/owner. In appropriate cases, however, an injured employee can rely on the provisions of the Factories Act 2004 in claims for damages for breach of statutory duty.⁶⁴

In such a case, the injured workman must first prove that the statute in question imposes a duty on the employer which is owed to him as a workman, that the employer is in breach of the statutory duty and that he suffered damages as a result of the breach of the duty.⁶⁵ There are cases where the duty imposed by the statute is one of strict liability, such as the “duty to fence dangerous parts of the machinery” under the Act the workman does not have to prove

⁶³ C P Adaeze, *supra*

⁶⁴ L O Nwauzi and G G Otuturu, *supra*

⁶⁵ *Ibid*

fault on the part of the employer/occupier/owner as the liability becomes strict.⁶⁶ There are defences however available to an employer or occupier where a suit lies against him in court such as statute bar, remoteness of damage, negligence on the part of the workman as well as such defence that the damage suffered and the workman is not, such that is foreseeable by a reasonable man.

The health, safety and well-being of workers in a workplace are common law duties imposed on an employer of labour to ensure that the employees are safe while carrying out their assignments. This is because; it is believed that the employees will be exposed to different kinds of risk at the workplace. As a result, it is crucial that offices, factories, and industries no longer serve as environments where employees or visitors are exposed to the risk of injury or death in order to meet productivity targets.⁶⁷ Adequate training is needed as a matter of urgency among workers, this is because most of the workforce especially the factory workers lack the basic knowledge and understanding of the types of machinery on the premises. Pasting just information on the various boards either in the factory or outside the factory containing information on the operating standard and procedures are not enough or sufficient, this is because some of these workers cannot read or write to the extent of understanding how industrial machines work.⁶⁸

There is a pressing need for an immediate review of the Factories Act 2004. In particular, the fines payable for breach or contravention of the provisions of the Act are outdated because of current economic realities. As a result, employers and occupiers of factories can conveniently afford to contravene the provisions of the Act and pay prescribed fines. These fines should be reviewed upward to deter employers and occupiers of factories from any deliberate breach or contravention of the Act.

There is also a need to review the provisions empowering inspectors of factories, who are not legal practitioners to prosecute, conduct or defend proceedings under the Act. Since proceedings under the Act are instituted in the regular courts only police prosecutors and legal officers should be allowed to prosecute, defend and conduct such proceedings. The Director of Factories should also be empowered to engage private legal practitioners to prosecute, conduct or defend any proceedings under the Act.

⁶⁶ *Ibid*

⁶⁷ M J Yohanna, 'An Examination of Health, Safety and Welfare at Work Places in Nigeria: A call for Urgent Attention' <www.simplylaw.com.ng> last accessed on 26 March 2023

⁶⁸ *Ibid*

The Factories Act 2004 suffers from a lack of adequate enforcement machinery. As a result of unemployment and severe economic hardship, most workers have to carry out dangerous processes without safe means and appliances just to earn a living. There is, therefore, a need for regular inspection of factories in this regard. This can easily be achieved through an appropriate Order made by the Minister of Labour and published in a Gazette, making appropriate local authorities responsible for enforcing the Act. The duty to provide and maintain safe means and appliances should be extended to operators of recreational and educational institutions where any equipment is installed for recreational purposes.

Provisions should be made for every employer or occupier of a factory to establish a safety committee comprising the employers and workers' representatives. The committee should be responsible for assisting in the development of safety rules and a safe system of work, periodic inspection of the workplace, plant, equipment/amenities and keeping adequate registers. The procedure(s) for employees to enforce their rights and privileges should not be overly technical, but rather flexible, allowing for the attainment of substantial justice.

Again, the Federal Ministry of Labour should rise to their day-to-day duty and responsibility for periodic inspection of work in sensitive environments and Factories in order to ensure strict compliance with the factory rules and conditions and also to ensure payment of appropriate compensation to the victims of occupational hazards. Adequate and constant medical screening should be done periodically to ascertain the mental state of the workers' health. This is because most of the environmental hazards in workplaces gradually affect the health being workers without them knowing. A special task force should be enacted to record, investigate, analyse, and interpret safety and health accident reports from firms, to ensure that victims of factory hazards receive appropriate compensation.

The Ministry of Labour should be prepared to carry out its duties without fear or favour in order to ensure that offenders are punished when an accident happens due to negligence or violation of the law by a firm, especially when it leads to injury or loss of life. Labour unions, human rights organizations and other non-governmental agencies should sensitize workers about their rights, privileges and protection as stipulated in the Act. The recommendations are by no means exhausted but if implemented would go a long way to improving factories' activities, offices, industrial health, safety, protection and well-being of persons employed in factories in Nigeria.



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