

APPLICABILITY OF HEALTH, SAFETY, AND WELFARE LAW RELATING TO THE CONSTRUCTION INDUSTRY IN SRI LANKA

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ABSTRACT

Construction is particularly a high-risk industry, with a higher rate of accidents compared to other sectors. In Sri Lanka specifically, numerous construction accidents result from neglecting safety protocols stipulated by relevant authorities. Despite the presence of various Health, Safety, and Welfare (HSW) legislations in Sri Lanka, the incidence of accidents has been steadily increasing. Hence, this research aims to examine the Health, Safety, and Welfare Law pertinent to the Construction Industry, proposing strategies to improve the effectiveness of the current laws. It includes a review of primary legislation governing HSW aspects in Sri Lanka's Construction Industry, such as the Factories Ordinance No. 45 of 1942, Workmen's Compensation Ordinance of 1934, Shops and Office Employees Act No.19 of 1954, Wages Boards Ordinance No.27 of 1941, Employees Provident Fund (EPF) Act No. 15 of 1958, and Employees Trust Fund (ETF) Act No.46 of 1980. Additionally, the research addresses the significant challenges and issues encountered by stakeholders in the Construction Industry when adhering to these laws. This study utilized a mixed-method approach, incorporating both qualitative and quantitative data collection methods. The analysis utilized the RII method, mean and standard deviation assessments, and content analysis. Results revealed a lower average awareness level among respondents concerning these legislations, and significant variability in their understanding. Notably, despite previous suggestions to update existing legislation, this study highlighted that while the laws have been amended, stakeholders remain unaware of these amendments.

KEYWORDS: Awareness; Construction Industry; Health, Safety, and Welfare; Legislation.

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1. INTRODUCTION

The construction industry is among the most hazardous and dangerous in the world, as well as in Sri Lanka (Wijewantha, 2018) considering the number of accidents and injuries they cause (Abeynayake, 2010). As per the Health and Safety Executive (2003), an accident is defined as an unplanned event leading to property damage, human injury or illness, environmental harm or loss, or a missed opportunity for commercial gain. The majority of these accidents lead to tragic outcomes, including human injuries or fatalities, environmental and property damage, and the associated direct and indirect costs and efforts (Pathirana & Abeynayake, 2018).

The increase in construction activity, combined with insufficient occupational health and safety measures, puts construction workers at greater risk. According to the Department of Labour, the construction industry has the highest number of fatal accidents. (Melagoda & Rowlinson, 2022). Workplace health and safety stand is one of the most critical concerns that every organization must give due attention to (Abeynayake, 2010). The term "safety" pertains to safeguarding individuals from physical harm, while "health" relates to protecting people's physical and mental well-being from illnesses that may arise due to materials, procedures, or practices employed in the workplace (Darshana, 2017). It is challenging to standardize safety procedures across all construction operations since construction produces unique and immobile products. (Koskela, 2000).

Compared to other industries, the construction sector in Sri Lanka experiences a disproportionately high number of accidents due to the negligence of workers (Fernando, 2016). Insufficient attention has been paid to the subject of occupational health and safety in the construction industry in Sri Lanka (Wijewantha, 2018). A significant portion of construction accidents in Sri Lanka can be attributed to the failure to adhere to the safety precautions recommended by the relevant authorities (Siriwardana & Wickramasinghe, 2018), poor knowledge, attention and attitudes over safety measures (Abeynayake, 2010).

The development of the construction sector is mostly determined by the impact of the country's legal framework (Rathnasinghe et al., 2020). In reality, Sri Lanka's construction industry has inadequate health and safety regulations. This might be the result of lack of resources, lack of commitment among stakeholders, lack of education, or negligence (Siriwardana & Wickramasinghe, 2018).

Labour law, which focuses on the health, safety, and welfare of workers, regulates the rights and responsibilities of employers and employees. In Sri Lanka, this area of law is governed by both legislation and common law principles, (Abeynayake, 2010) and the departments of Labour and Workmen's Compensation are principally responsible for its enforcement.

Numerous labour laws and regulations have been put into place by the Sri Lankan government to solve labour issues, and they are crucial for both compensating workers and lowering the frequency of workplace fatalities and injuries (Rajapakshe, 2019). The Mines and Machinery Protection Ordinance, which was passed in 1896, is credited with establishing the beginning of industrial health and safety in Sri Lanka (Melagoda & Rowlinson, 2022). A number of Acts and Ordinances related to the well-being and safety of workers in the construction industry have been enacted over the past few decades (Kariyawasam, 2003).

Factories Ordinance No. 45 of 1942.

The Factories Ordinance No. 45 of 1942, Chapter 128 of Sri Lanka's Legislative Enactments, is an Act that establishes rules for the HSW of workers in factories (Melagoda & Rowlinson, 2022). It is the primary law governing HSW in Sri Lanka (Siriwardana & Wickramasinghe, 2018). It was enacted with 131 sections that address each situation (Rajapakshe, 2019) and is enforced by the Department of Labour's Industrial Safety division (Melagoda & Rowlinson, 2022). Subsequently, this Ordinance was amended by several Acts in 1961, 1976, 1984, 1998, 2000, and 2002 (Melagoda & Rowlinson, 2022). It primarily offers its laws and regulations, as well as quality of the premises; cleanliness; overcrowding; maintaining a reasonable temperature; ventilation; lighting; drainage

of floors and sanitary facilities (Pathirana & Abeynayake, 2018).

Construction is not a specific focus of the Factory Ordinance, which was created for all industries (Siriwardana & Wickramasinghe, 2018). But, Section 84 of Factories Amendment Law No. 12 of 1976's Provision 37 mentions the construction industry in the Factories Ordinance (Melagoda & Rowlinson, 2022).

Workmen's Compensation Ordinance of 1934

The Workmen's Compensation Ordinance of 1934 and its Subsequent Amendments provide details of how compensation is paid to employees who get injured while on the job due to an accident that results from their specific field of work (Abeynayake, 2010; Pathirana & Abeynayake, 2018). It is the primary law that protects employees from all types of injuries incurred while working (Fernando, 2016). This ordinance is governed by the Commissioner for Workmen's Compensation and was finally amended in 2005 (Melagoda & Rowlinson, 2022). By the Workmen's Compensation Ordinance, employers are responsible for compensating employees for injuries, accidents, occupational diseases, and fatalities if they occur while they are on the job at one of the different rates provided in the Ordinance (Abeynayake, 2010; Fernando, 2016; Pathirana & Abeynayake, 2018).

Shops and Office Employees Act No.19 of 1954

The Shop and Office Employees Act pertains to the terms and conditions that are relevant to office and shop workers. This Act defines office as encompassing all corporate administrative offices, including construction offices (Abeynayake, 2010). According to this regulation, every employee is provided with an appointment letter that outlines their employment terms. Records of salaries, attendance, and employment history are kept for all employees, regardless of their employment type, be it casual or permanent (Rajapakshe, 2019).

Wages Boards Ordinance No.27 of 1941

The Wages Boards Ordinance regulates the terms and conditions of employment for workers in a variety of trades and professions, including construction, about the number of hours worked, weekly and annual holidays, minimum salaries, and other factors

(Abeynayake, 2010). The Wages Board decides what the industry's minimum salary should be for each category. Employees may be eligible for wage increases via national policy choices that are announced in gazette notifications (Rajapakshe, 2019).

Employees Provident Fund (EPF) Act No. 15 of 1958

The Employees Provident Fund (EPF) Act No. 15 of 1958 requires all employers to ensure that all of their subordinates make contributions to the Fund. A minimum of 12% of the employee's gross income must be contributed to the pension fund by the employer, and a minimum of 8% must be contributed by the employee (Abeynayake, 2010). According to the Employees Provident Fund (EPF) Act No.15 of 1958, all employees who fall into the categories of permanent, apprentice, non-permanent, temporary, casual, part-time, piece rate contract basis, and commission basis are eligible to become members (Rajapakshe, 2019). The Central Bank is entrusted with the handling of the fund, which is administered by the Labour Department. These interest-bearing deposits are withdrawable (Abeynayake, 2010).

Employees Trust Fund (ETF) Act No.46 of 1980

The Employees Trust Fund (ETF) Act No.46 of 1980 established a non-contributory fund to which only the employer is obligated to contribute (Abeynayake, 2010). In accordance with this law, the employer is required to provide a financial contribution equal to 3% of an employee's annual salary. This is advantageous for employees. Payment is given to the worker when they leave their job (Rajapakshe, 2019). Employees can withdraw this money once every five years upon leaving any workplace, regardless of their age, under the administration of a special board known as the Trust Fund Board (Abeynayake, 2010).

To address health and safety protocols across all workplaces, the Department of Labour has developed a new Act known as the Occupational HSW Act, which is currently awaiting cabinet approval. This Act draws inspiration from the United Kingdom's Health and Safety at Work Act (Melagoda & Rowlinson, 2022). Nonetheless, according to Halwatura & Jayathunga (2011), the existing safety and health

regulations within the Sri Lankan construction sector remain insufficient. Moreover, in the local context, there is a notable absence of specific laws concerning the safety and well-being of employees at construction sites (Siriwardana & Wickramasinghe, 2018).

To determine whether the current regulations are sufficient and to identify whether Sri Lanka's construction industry is aware of and effective at applying the country's health, safety, and welfare legislation to reduce accidents, this research aims to explore health, safety and welfare law in line with the Construction Industry and propose strategies that can enhance the effectiveness of the current health, safety, and welfare law in Sri Lanka. Accordingly, this research seeks to contribute to the improvement of safety standards and overall well-being in the construction industry in Sri Lanka.

Accordingly, the following objectives were established for this research:

1. To review the key legislation relating to health, safety, and welfare in the construction Industry in Sri Lanka.
2. To investigate the awareness and effectiveness of health, safety, and welfare law on construction industry stakeholders in Sri Lanka.
3. To determine the major challenges and issues faced by construction industry stakeholders in adhering to the existing health, safety, and welfare law in Sri Lanka.
4. To propose recommendations to overcome these challenges and enhance the effectiveness of the health, safety, and welfare law in the construction industry in Sri Lanka.

2. METHODOLOGY

This research employed a mixed-method approach, integrating qualitative and quantitative data collection methods. It enables a thorough understanding of how health, safety, and welfare laws affect Sri Lanka's construction industry and helps in gathering both quantitative data through questionnaires for statistical analysis and contextual information for qualitative

analysis through interviews, giving the research topic a more comprehensive perspective.

This study is focused on the Health Safety and Welfare legislation of the construction industry, with data collected directly from professionals and stakeholders working on construction sites, including quantity surveyors, project managers, human resource managers, site engineers, health and safety officers and other specialists in the industry. The choice of this sample was deliberate, aiming to optimize both efficiency and effectiveness in the research process while minimizing time constraints.

To collect data, a combination of random and purposive sampling methods was employed. Qualitative information was obtained via an extensive review of the literature and five semi-structured interviews conducted with professionals in the construction industry who were selected through the purposive sampling method. Quantitative data, on the other hand, was acquired through a questionnaire survey involving 67 respondents selected through simple random sampling. Analysis of the data employed the Relative Importance Index (RII) method as well as content analysis.

3. RESULTS AND DISCUSSION

Major Challenges and Issues Faced by Construction Industry Stakeholders in Adhering to Existing Health, Safety, and Welfare Law in Sri Lanka

Pathirana & Abeynayake (2018) state that the Factories Ordinance and all other laws are now out-of-date. They avoided discussing current topics like the hazards of construction. The Factories (Amendment) Act No.19 of 2002 served as its most recent modification. It has not been updated in more than ten years (Siriwardana & Wickramasinghe, 2018). Only a few small amendments have been made to it since it was first established more than seven decades ago (Melagoda & Rowlinson, 2022). Therefore, it is presumed that current developments in construction technologies and standards may not be covered by the requirements (Siriwardana & Wickramasinghe, 2018; Melagoda & Rowlinson, 2022).

The Factories Ordinance targets the safe operation of mechanical equipment, cleanliness of the factory and its surroundings, and employee welfare across all industries, rather than addressing issues specific to the construction industry (Melagoda & Rowlinson, 2022). However, this is very different from the reality in other countries that are primarily developed countries (Fernando, 2016). In almost every country, legal authorities enforce occupational safety laws about construction. Unlike Sri Lanka, which lacks dedicated safety regulations for the construction sector, countries like the United Kingdom (Construction, Design and Management Regulations 2015), the United States of America (PART 1926 OSHA regulations), China (Construction Law of the People's Republic of China), the United Arab Emirates, and India (Building & Other Construction Workers Act, 1996) have established specific safety regulations for this industry (Siriwardana & Wickramasinghe, 2018). As an example, the CDM (Construction, Design, and Management) Regulations in the UK brought about a new paradigm for construction health and safety in the UK by transferring safety management responsibility across all project phases and introducing new health and safety roles such as clients, designers, and the planning supervisor (Howarth et al., 2000).

Tragically, there is no reliable method of gathering information on all accidents on construction sites in Sri Lanka. The authorities are not informed of these accidents (Darshana, 2017; Pallewaththa et al., 2018). Practically, new laws are not implemented, and there is no independent, assigned office for inquiries (Abeynayake, 2010). According to the Factories Ordinance, there is a minor fee in the existing system for accidents that are not reported (De Silva et al., 2018). The government is encouraged to enact a higher fine that will correspond to failure to follow H&S laws (Othman, 2012). For instance, in the Workplace Safety and Health Act (WSHA) of Singapore, the key principles that serve as the primary law governing workplace safety and health in Singapore, encompass: reducing risks at the source, cultivating a safety culture, and penalties for prevention.

A significant number of construction accidents in Sri Lanka are attributed to activities conducted at heights.

However, the Factories Ordinance does not adequately address the essential safety measures for accidents arising from work at heights. Furthermore, the maximum compensation of Rs. 515,000.00 for a fatal accident in Sri Lanka is deemed unreasonable, and there is a need for an increase in this amount to better address the needs of affected parties (Pathirana & Abeynayake, 2018). Moreover, the Factories Ordinance has shortcomings such as incomplete coverage of building activity, subjective claims, a lack of descriptions, a lack of applicability, a lack of numerical expressions, and a disorganized presentation (Siriwardana & Wickramasinghe, 2018).

Construction experts' knowledge of the Factories Ordinance (1942) is relatively limited and unsatisfactory. There is a lack of skilled officers in the areas of HSW. Several other specialists are somewhat knowledgeable about HSW (Pathirana & Abeynayake, 2018). Moreover, the lack of necessary resources contributes to the insufficient and ineffective implementation of safety laws by government institutions in developing countries. Although law enforcement organizations and prevention programs in developing countries have few resources, the safety laws themselves can be very loose and vague (Kheni et al., 2008).

Workers lack enough awareness of HSW, and many of them choose not to wear their safety helmets' chin guards. They are therefore adjacent to the hazards. Additionally, employees have a negative mindset about safety; it is an additional load for them (Pathirana & Abeynayake, 2018). However, workers in the construction sector have consistently disregarded those provisions of legislation (Abeynayake, 2010). Particularly, workers are unclear of their rights, the benefits they are entitled to from management, and the procedures for obtaining those advantages. The morning awareness programs have very low labour attendance (Pathirana & Abeynayake, 2018).

The RII was computed for the data obtained from the 67 responses in the questionnaire survey regarding the above-stated challenges and issues with the use of MS Excel. This calculation was aimed at ranking these challenges in order, signifying their respective levels

of importance, and highlighting which factors had the most substantial impact. A greater RII value signifies challenges of greater importance or increased significance.

Table 1. RII of challenges

Challenge/Issue	RII Value	Rank
The outdated features of current legislation	0.770149254	6
Current developments in construction technologies and standards have not been covered	0.862686567	2
The construction industry has not been specifically focused	0.710447761	8
Lack of a dependable way to track accidents	0.797014925	5
Incomplete coverage of building activity (For example - working at height and fall protection are not addressed)	0.731343284	7
The maximum amount of compensation for a fatal accident (Rs. 515,000.00) is unreasonable.	0.841791045	3
Lack of descriptions and numerical expressions	0.710447761	8
Prejudice due to confusion between legislations	0.680597015	10
Lack of expertise, knowledge and resources	0.802985075	4
Poor knowledge and negative attitude of workers	0.946268657	1

Although several past studies have highlighted that there have been only a few minor amendments to this legislation, it was found through the interviews that the Factories ordinance was amended in 2019 as Factories Regulations No. 2 of 2019, and additionally in 2021 as Factories (Amendment) Act, No. 4 of 2021.

Moreover, the Employees' Provident Fund (Amendment) Act, No. 23 of 2021, and the Wages Boards (Amendment) Act, No. 14 of 2019, stand as notable recent amendments within the Health, Safety, and Welfare legislation pertinent to the construction industry.

When considering lack of a dependable way to track accidents, which is the 5th ranked factor and RII value is 0.797, the opinions of the interviewees are contradictory. Interviewees 2 and 5 indicated that *"internal organizational concerns and fears about job security might result in underreporting of accidents, particularly for minor injuries or near-misses."* Interviewee 4 highlighted that workers might not have a complete understanding of the reporting procedures. However, Interviewee 1 stated that *"all accidents (permanent or not) are mandated to be reported to the Department of Labour, and failure to do so can lead to legal actions by the department. Additionally, they mentioned that a summary of accidents documented in the General Register should be submitted to the labour department twice a year."* Despite Interviewee 1 emphasizing the necessity of reporting all accidents, there appears to be an issue regarding effectively tracking accidents.

The data analyzed revealed that the most influential challenge confronted by stakeholders in the construction industry concerning adherence to these laws was the poor knowledge and negative attitude of workers. Notably, despite suggestions in several studies advocating for updating existing legislation, this research highlighted that the laws have been updated; however, stakeholders continue to be unaware of these changes.

Recommendations to Enhance the Effectiveness of the Health, Safety, and Welfare Law

To decrease accidents and maintain up-to-date health and safety regulations in Sri Lanka, it is crucial to consider establishing an organization or a ministry dedicated to gathering data related to accidents on construction sites. This data collection and analysis can provide valuable insights for crafting and implementing effective safety measures (Darshana, 2017). It must also be developed to provide socially conscious clients with a higher grade regarding their

safety and health (Siriwardana & Wickramasinghe, 2018).

Management is legally obligated to uphold health and safety standards to prevent workplace accidents. A risk assessment must be conducted to identify any hazards on the premises, and the results must then be incorporated into the H&S plan that will be put into action (Othman, 2012).

To defend workers' rights, Parliament should also update the labour law's provisions relating to health and safety. Moreover, to ensure the appropriate administration of justice in the nation, the Ministry of Justice should set up new employment courts for the industrial sector (Abeynayake, 2010). Therefore, it is crucial to tighten the existing laws and regulations to safeguard our essential human resources and reduce economic losses (Pathirana & Abeynayake, 2018). As a result, the Sri Lankan construction industry needs thorough and updated health and safety standards since implementing a safe working environment in the construction industry requires suitable legislation. The government should create and strongly implement comprehensive safety laws that apply directly to construction (Siriwardana & Wickramasinghe, 2018).

It is suggested that workers raise their awareness of the OHS in Factories Ordinance (No. 45 of 1942). On the other hand, in order to ensure that general and specific OHS regulations in the Factories' Ordinance are implemented and that employees receive the greatest possible benefits, employees should be given the authority to interact with management (Pallewaththa et al., 2018). Universities and technical institutions should emphasize the value of safety in their training for engineers and technical officers to encourage employee ideas (Siriwardana & Wickramasinghe, 2018).

The Relative Importance Index (RII) was calculated using the data gathered from 67 responses in the questionnaire survey concerning the recommendations for the identified challenges associated with the utilization of MS Excel, as previously mentioned.

It is crucial to note that all the proposed recommendations derived from the questionnaire

survey are ranked with high importance, considering their RII values, which are above 0.8.

Table 2. RII of recommendations

Recommendation	RII Value	Rank
Establishing an organization to gather data related to accidents on construction sites	0.847761194	4
Maintain Health and Safety standards at site	0.904477612	2
Update current Health Safety and Welfare legislation	0.87761194	3
Raise awareness of legislation among stakeholders	0.943283582	1

Therefore, increasing awareness among stakeholders regarding the legislation can be achieved through improving education, training, and public awareness regarding health, safety, and welfare legislation, along with guidelines for post-accident legal procedures, should occur through consistent updates and reminders. It is essential for stakeholders to comprehend their legal responsibilities following an accident, facilitating compliance with investigation, documentation, and reporting protocols. Increasing awareness is pivotal, as laws alone cannot shift people's attitudes. Moreover, stakeholders must be aware of the accident reporting procedure in order to monitor them properly.

Moreover, increasing the amount of penalties for non-compliance with the law is of utmost importance. Given the prevailing negative attitudes among labourers towards health, safety, and welfare (HSW), There is a suggestion to prioritize HSW, mandating its implementation, and imposing penalties for non-compliance with these laws. Implementing penalties for non-compliance acts as a deterrent, motivating stakeholders to prioritize Health, Safety, and Welfare (HSW) to be clear of legal consequences.

Due to the diverse educational backgrounds and language barriers within the construction industry stakeholders, there is a potential variation in

understanding and implementing safety protocols. Encouraging compliance through incentives like rewards or licensing could effectively motivate adherence to safety legislation, presenting a universally understandable approach. Therefore it is suggested to implement a rating system for safety standards.

Furthermore, legal action cannot proceed without the requisite terms outlined in the law. The challenge arises when modern developments lack coverage within legislation due to missing terms. Hence, when amending legislation, it is suggested to consider these modern developments and incorporate the necessary terms accordingly.

Further Research Potential and Limitations

During the research process, there was a noticeable scarcity of published articles addressing this topic. Hence, exploring these research avenues further could significantly enhance comprehension of challenges associated with health, safety, and welfare (HSW) legislation in the construction industry. Additionally, these avenues could provide valuable insights into strategies aimed at improving compliance and raising awareness.

Conducting in-depth case studies within the construction industry, particularly in organizations that have effectively enhanced compliance with HSW legislation, would significantly contribute to a more comprehensive analysis. This approach would involve analyzing their strategies and best practices, aiming for broader applicability in the industry. Additionally, while this study compared legislation solely from the UK and Singapore, expanding the comparison to encompass a wider range of countries or regions would offer a more global perspective, allowing for a better understanding of global best practices and variations in HSW regulations across diverse geographical areas.

Furthermore, examining the economic ramifications resulting from non-compliance or insufficient awareness of legislation within the construction industry, encompassing expenses related to accidents, legal penalties, and the adoption of proper HSW

practices to mitigate cost overruns, stands as a crucial area for further investigation.

The study's potential limitations, such as a restricted sample size or inadequate representation of the diverse stakeholder spectrum within the construction sector, especially considering the scarcity of professionals knowledgeable about HSW legislation, might impact the generalizability of findings. Addressing these constraints in future research endeavors could significantly contribute to a more comprehensive and resilient understanding of challenges and solutions concerning HSW legislation in the construction industry.

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