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QUEST FOR A MODEL OF CORPORATE CRIMINAL RESPONSIBILITY FOR MINES SAFETY IN PAKISTAN

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ABSTRACT

The study focuses on the concept of mines safety crimes and elaborates the business criminal liability within the domain of criminology. The businesses are responsible for such careless behaviour while workers are equally liable for their reckless conduct for not taking health and safety measures to avoid accidents. The court documents, reports of casualties and workers ignorance and lack of awareness are major causes of fatalities and accidents inthe workplace.The theme of the study was with the major belief that workers are reckless, incompetent and inherently careless, failing which often results in injury and death. There was considerable discussion regarding it and it was supported by court manuscripts, government officials and fatality reports.Through the traditional approach, employers were described as morally good, reputable whereby workers were labeled careless, discourteous. The study arose questions as to why there is always a need to regulate corporations when the workers are at fault and why awareness campaigns are only directed towards the habits of workers rather than changing the corporate policies and regulations.

The shift of blame on workers conceals various causes of safety crimes like little incentives for companies to address the lapses in safetyand to prevent such factors that create unnecessary risks and harm for workers. As Tombs and Whyte note, "[i]f focus on the aftermath of an incident was not to be upon workers but shifted to employers…such attention may logically lead to either cost implications, to redress the lack of investment in plant or people, or have legal ramifications". The mines companies required assurance about safety regulators and criminal accountability for homicide and will be vigilant about working conditions lapses to avoid safety accidents/crimes. The deterrence base implementation mechanism is lacking on state behalf and a barrier to tackle safety crimes against corporate executives. Civil liability is

only available punishments that are insufficient to address the safety accidents/crimes with high fatality mines industries.

The dominance of the careless worker narrative also encourages and emphasizes the neoliberal notion of minimal state intervention in the private realm. Employers are not held responsible for their mistakes whiles the blame on the workers for causinginjuries made it difficult for the state to do extensive regulation. This idea further attracts state limited regulation make the worker careless and corporation as inherently good. In addition, the question is why there need for extensive state regulations for unintentional crimes for the good corporation and with careless workers. In, neoliberal economies, corporations are lionized and deemed inherently good which makes it difficult to characterize corporation and their executives as potential criminals. With the abundance of discourse and knowledge claims that glorify companies, conceptualize workers as careless and treat safety crimes as accidents, it would be easy to conclude that the Alberta government consciously manipulates the law as part of its ideological commitment to neoliberal political and economic reasoning.

Key Words: Safety crimes, corporate criminal liability, health and safety, employer.

INTRODUCTION

The brieffacts on occupational deaths show that most fatalities and injuries occur during work of which the majority of injuries are never treated through the formal criminal justice system. According to the Health and Safety Executive (HSE) evidence,the majority of injuries are the result of management's failure to meet the criminal law[1](Orland, 1980). They are numerous legislations in various jurisdictions that outweigh the crimes of conventional violence which are important to be included in the act. The narrow approach of criminologists is the other reason, who pay little regard to different aspects of crime and so that is why safety crimes are not regarded as proper crimes.

Criminal liability in business has continued to be interpreted in the narrow sense and so this paper aims to examine how safety crimes remain excluded from the realm of criminal law definitions. This work shows the persistent inability to address violence as an issue of the workplace and extract lessons for developing states like Pakistan. The sets of arguments given are purely academic with no criminological inclination. The reference provided give the lessons deducted from developed states which are recommendatory for Pakistan. The entire theme of this work circulates the notion that how different approaches to safety crimes fail to recognize safety violence[2](Alberta Federation of Labour, 2010).

SAFETY CRIMES/VIOLENCE LAPSING AND REDEFINING

Although there are various scholarly, theoretical and political differences to safety crimes considered, still they share characteristics like; primacy to intention and focus on the individual. The intention is of particular legal importance as it differentiates between a conventional crime and a corporate offence[3](Almond,2013). The motive of most of the Acts is to recognize intentional murder as indirect damages on

part of absentee killers like the deaths that occur due to employers inability to invest in safe methods and the illegal discharge of toxic substances into the environment. The intentional killings contrast with the indirect injuries of moral culpability. Locating these different types of offenders on moral hierarchy collapses the hierarchy of culpability around which the criminal law operates[4](Farmer, 1997).

The OHSE crimes failed to impose the same degree of punishment as other offences and were considered as regulatory rather than criminal. Few workers were prosecuted for manslaughter as a result of their work actions. The end of the twentieth century and the start of the twenty-first century witnessed an urge for legal reforms against manslaughter in the corporate arena. OHS legislation is more regulatory than criminal concerning safety and is traced from Factories Act, 1802 and then Consolidated Factories Act, 1961[5](Wells, 1993). To exemplify the UK Model, they introduced legislation in 2007 and 2008 to punish corporate killing. 1974 legislation covers mostly imprisonment and unlimited fines. The purpose is to prosecute and accountable the senior managers of huge corporations for safety crimes[6](Slapper and Tombs,1999). The 2008 Act is used for terrible injuries to address risky mining and workers Occupation Health and Safety (OHS). OHS laws have a different approach to workers death. The 2007 Act was mostly used to punish organizations while the 2008 Act familiarized protective sentences for deterrence. The purpose is to deter the individual through liability and stigma for corporations connected with crime which is distinct from regulatory penalties[7](Tombs and Whyte, 2007).

BUSINESS CRIMES AND CRIMINOLOGY

The perceived lack of violence associated with corporate crime is the reason why social and economic costs of corporate crime do not come within the scope of criminal law[8](Reiman, 2004). The corporate offender is deemed different from a normal criminal offender because they are part of the socially dominant class and their offences are rooted in legitimate activities. This does not mesh well with criminology and an attempt of merging corporate offenders into criminal law was made in Edward Sutherland and Paul Tappan 1940 debate[9](Clough, 2007). Sutherland often referred to as a pioneer of business crimes studies, “challenged the stereotypical view of the criminal” by arguing that the crimes of the powerful are as serious as those of traditional street crimes. Business crimes are merely technical offences, committed, at worst, by the ethically questionable rather than the intentionally malicious[10](Flakstad, 2009). Deducing from this debate criminologists argue that definitions of corporate crime largely reflect the ideological foundations of capitalism, for example, corporations generate massive capital accumulation morally and financially for the state and are least interested to criminalize their questionable and illegal acts[11](Barnetson and Foster, 2012).The corporation is accountable for such homicide, manslaughter and other corporate crimes. It is difficult to identify in larger corporations for prosecution the real culprit

of corporate killings. There is a need for a specific amendment to recognize corporate manslaughter as a crime[12](“The Corporate Manslaughter and Corporate Homicide Act, 2007”).

The repercussions of corporate crimes are more severe than violent street crimes. Enron 2001[13](Rapport,2002)scandal is the obvious example of it, in which the company executives fraudulently reported annual profits for the years in an attempt to conceal massive debts[14](Bittle and Snider,2011). These fraudulent acts resulted in the loss of billions of investors’ dollars and ultimately forced the company into bankruptcy. Stunningly, the total financial loss of all robberies, burglaries, larcenies, and motor vehicle thefts in the US, roughly $17.2 billion, was less than one-third of the total economic loss caused by Enron’s senior executives alone[15](Robinson, 2015). Social costs, a corporate crime has caused more deaths than all the mass murderers in a decade, like for example Canadians are killed by unsafe working conditions and dangerous products[16](Michalowski, 2009). Environmental corporate crimes like the dumping of waste material into rivers, releasing toxic pollutants into the air, selling poisonous pesticides also come under the fold of social costs[17](Griffin, 2007). Those unfortunate enough to reside or work near such disasters – rarely are these individuals who reap the great financial rewards from private enterprise – often suffer permanent injuries and illnesses[18](International Labour Organization, 2013).

SAFETY CRIMES: AN EVOLVING CONCEPT

The language of accidents is “neutral (and) ‘anaesthetizing’”, implying “connotations of the unforeseeable, unknowable and unpreventable.” The language of accident implies the absence of intentionality and moral culpability concerning an incident. The definition makes accident synonymous with non-violence and obscures safety crimes with indirect forms of violence or injuries that occurred omission or manipulation of the working environment. Safety crimes are chalked up as accidents, moderating their seriousness and resulting disorder to require the same effort for their redressal as traditional crimes of violence[19](Flakstad, 2009). There are several reasons for which safety crimes are seen as accidents. The dominant position of corporations and working class less importance [20](Tadros, 2005) businesses significance and lack of moral responsibility by the safety crimes add fuel to the fire[21](Bittle and Snider, 2011). Facts like strict liability, corporate veil and identification parade all aid this by diminishing the guilt and responsibility of offenders. Workers willingness to risks employment and its reflections in common law defences associate with neo-liberal based regulation treat victims responsible for their loss[22](Gray, 2009).

Responsibility and the traditional approach had helped to construct safety crimes as accidents. The examination of Factory Acts in the UK shows that safety crimes are not regarded as crimes but rather rationalized as part of normal and acceptable business behaviour. Consequently, traditional crimes are infrequently stigmatized and are “freely resorted to” by

offenders, such as inherently reputable businesses[23](Ferguson, 2012). The inclusion of strict liability in Factory Acts formalizes safety crimes in law. Strict liability removes mens rea and eliminates the need to establish moral culpability and the conventionalization helps inform accident discourse[24](Michalowski, 2009). Safety crimes lack stigmatization and punishment and are treated as normal and acceptable side-effects (i.e. accidents) of business. This work will explore the reproduction of conventionalization through the state's response to fatalities in extracting industries[25](Health and Safety Executive). Under existing OHS regulations, workers are predominantly responsible for the safety and rectifying and removing any harm that pose threat to them. It proves that the negligence of employers is always ignored and workers are blamed for failing to avoid injury and ensuring safety at the workplace[26](Flakstad, 2009).

BUSINESS SAFETY CRIMES

Safety crimes are the product of "deliberate decision making or culpable negligence (of) a legitimate formal organization", and differ from corporate crimes. For example, they are violations of employers, in the Westray mine disaster case 1992, 26 workers were killed in an explosion due to safety breaches of the company[27](Young, 2010). The investigation revealed that company managers repeatedly ignored provincial inspectors' warnings concerning OHS violations. The case is not unusual concerning safety crime but tragic: like mineworkers' death, business negligence and OHS transgressions[28](Bittle and Snider, 2011). The state response is significant through a legal mechanism like proper understanding, conceptualization and definition of safety crimes[29](Bittle and Snider, 2006).

The structural weaknesses of corporations with inefficient OHS along with definitions are the causes of safety crimes. It is defined as "illegal acts or omissions, punishable by the state under administrative, civil or criminal law which are the result of deliberate decision making or culpable negligence within a legitimate formal organization".[30](Fisse, 1990) The business structure and goals are the main factors for corporate offending. This definition is inclusive of a range of offences by referring to crimes as "illegal acts" and avoids the ideological distinction between corporate crimes[31](Simpson, 2002).

REGULATORY APPROACH FOR SAFETY CRIMES (Main)

The industrial revolution saw the rapid development of production and massive population shifts from rural to urban due to which the quality of life dropped significantly[32](Tombs, et all, 2007). Poorly designed workplaces and a lack of congenial atmosphere threatened the health and safety of workers. With the advent of time safety regulations of workers started from England[33](Tucker, 2003). The majority of the youth used to live far from their families for bread earning. Children were forced to work continuously for 15 hours in unventilated and squalid factories. This adversely affected their entire families as many workers emerged from the industrial revolution, broken and diseased [34](Snider, 2000). It eventually intensified class difference and in some cities workers

refused to work until employers addressed safety concerns.[35](Bittle, S. and Snider, 2006) Workers living in dilapidated conditions sought monetary restitution from courts but it was largely unsuccessful as the courts relied on contractual obligations and their monetary compensations claims were unfounded[36](Bittle, 2013). Litigation failed to address workers issues like contributory negligence and workers involvement for causing[37](Cairney, 2010). Similarly "voluntary assumption of risk", stated worker awareness about probable hazards and the risk cannot be allocated or assumed for compensation from their employer through court. It also shaped the final defence, the "fellow-worker doctrine", stipulating that workers also assumed risks caused by negligent co-workers[38](Antrobus, 2013). These defences fueled the courts' perspective that it was "unjust and improper" for workers to seek restitution for risks that they voluntarily assumed and for which they were appropriately compensated in their wages[39](Barnestson, 2013).

REGULATIONS FOR SAFETY CRIMES

Regulation refers to governmental intervention into citizens' actions and businesses supported by threats of sanctions[40](Archibald et all, 2004). Similarly regulation can include fines and prison sentences but many of these offences are substantially restrictive within the context of safety crimes, for instance, that "regulation often imposes no restrictions, but enables, facilitates, or adjusts activities"[41](Herring, 2008). This is part of a broader regulatory model of enforcement called compliance which aims not at "punishment per se, but rather to produce business behaviour that adheres to rules or standards." Compliance could be produced by persuasion and education along with punitive sanctions. The following sections will provide a detailed historical evolution of OHS regulation, including compliance-based regulation[42](Asher, 2003).

SAFETY OFFENCE AND ADMINISTRATIVE REGULATIONS

OHS regulation emerged in the 19th century in the shape of English Factory Acts that separated class of offences from criminal law, introducing strict liability[43](Bittle and Snider, 2011). Before the 1844 Act, OHS crimes were dealt with the same prevalent criminal law and courts mostly resisted punishing the highly respectable dominant class of the society[44](Barneston and Foster, 2012). Such situations were prevalent in the pre-partition era and the offences were dealt with under Penal Code, 1860 or Mines Act, 1923. Strict liability enabled courts to persecute offenders without taking mens rea into the account[45](Sentencing Guidelines Council, 2010). Stringent punishments were abandoned and OHS crimes were made the subject of administrative law which was enforced by inspectors and governments through criminal law[46](Reiman, 2004). Strict liability also ensured that OHS crimes no longer faced the moral condemnation of 'real' crimes. It is noted that "if you make the route to establishing liability easier, then it is the instinct of the court to interpret a lower degree of seriousness"[47](Asher, 2003). Canada came up with safety regulations in the shape of the "Ontario Factory Act" that established regulations concerning the minimum age of employment, lunch breaks,

adequate ventilation and sanitation, and creating a small inspectorate to ensure compliance[48](Tucker, 2003). Initially few industries were covered under this act and it transformed health and safety from private matters to public concern[49](Simpson, 2002). The inspectors authorized to work under the act relied much on companies to conduct responsible and moral decision making. Moreover, they argued that their role was just to educate and consult companies on OHS matters by assuming the role of factory policies[50](Bakan, 2004).

BUSINESSES CRIMINAL REGULATIONS

Most western states have attempted to adapt to criminal law to address the serious and extensive injuries caused by corporations[51](International Labor Organization, 2013). Historically, the difficulty has been in applying the laws designed, implementation and culpability of the individual to that of complex organizations[52](Bittle, 2013). Reasons that account in applying criminal liability are the privilege of limited liability and the principle of corporate personhood. Limited liability was introduced in English in joint-stock 1844 that shields shareholders from the personal responsibility for any actions of the corporation by limiting their liability to their investment in the enterprise[53](Glasbeek, 2002). It is effective in generating substantial investment but unfortunately provides little financial incentives to ensure that the managers involved behave legally and decently as they benefit from profit generated by the company but do not share the accountability[54](Machin and Mayar, 2012). Similarly, the challenge of corporate personhood identified corporations as distinct persons enshrined with several rights and privileges which made them invisible friends to shareholders and managers, accepting all personal and financial responsibility for actions committed on its behalf[55](Glasbeek, 2002).These two challenges acted as a legal shroud that protects corporate executives and shareholders from the crimes arising out of corporate actions.[56](“Canadian Center for Occupational Health and Safety, 2010”) The corporate veil lies at the heart of corporate and safety crime and makes corporations criminogenic so safety takes a back seat to actions that generate profit for the company[57](Michalowski, 2009).

Criminal law struggled to identify the guilty mind of corporations and historically the mens rea of a corporation was traced to the directing minds in a process known as identification doctrine[58](Gray, 2009). Safety crimes are distinct from criminal laws and there have been attempts to adapt criminal laws to safety crimes. The identification doctrine proved futile in tracing mens rea because the persons in authority are often not present at the time of the offence and the actual criminals like executives often escape punishments because the doctrine downplays the seriousness of corporate crimes[59](Bittle, 2013). The issues in the identification doctrine have been addressed by the “Corporate Manslaughter and Corporate Homicide Act 2017” of the UK[60](Bittle and Snider,2011). Under these laws, mens rea is established through an aggregate of senior individuals and the management systems and practices they

employ across the organization[61](Crown Prosecution Services, 2011). Consequently, corporations are found guilty as a result of deaths from corporations' negligent management[62](Antrobus, 2013). A geological surveying corporation was found guilty of employee's death as the employees working in the corporation were routinely subjected to dangerous situations[63](Bittle, 2012). These acts are still problematic as these acts are still bound by the corporate veil which shields investors and senior executives from accountability and allows the prosecution of corporations[64](Crown Prosecution Services,2011). Stringent enforcement of laws have the potential of deterring the reckless and criminal behaviour of companies and the consistent applying of fines and imprisonments would send a message to boardrooms to stay vigilant to workers' rights[65](Wells, 2001).

SELF-REGULATION MODEL IN DEVELOPED STATES

Safety regulation has changed with the advent of Factories Acts and general tendency in law to moderate the seriousness of safety crimes by responding to them as non-criminal "accidents.The workers sharing responsibility is a form of responsibilization whereby workers mostly avoid injury and death. Proponents of shared responsibility focus on safety by including all parties but in reality, workers mostly lack power and capacity like employers to make workplaces safer[66](Gray, 2009). It is evident from training programs where the competency of workers is put in first place for avoiding safety hazards while scrutiny on employer's actions goes unnoticed[67](Pearce and Snider, 2012). Governments focused steadily on businesses when the neoliberal approach started to dominate. It adopts the belief that markets and businesses run smoothly so states promoted businesses by restructuring the existing setup in a way to support the pro-business outcomes[68](Barnetson and Foster, 2012). This restructuring witnessed renewed self-regulation of OHS with minimum state intervention. In reality, self-regulation allows the best possible regulation of OHS but critics often argue that it has weakened ERS through a reduction in workplace investigations[69](Gray, 2009). Greater emphasis on workers ensuring their safety is another consequence as in the case of IRS, workers actively participate in maintaining workplace safety. Through the "Joint health and safety committees" (JHSC) the non-binding recommendations are made to the employer regarding workplace safety[70](Dutcher, 2005). Workers are expected to play a vital role by asking questions and making complaints but since many JHSCs are poorly organized workers concerns were not addressed and most workers have little influence over safety due to the non-binding recommendations[71](Barnetson, 2013).

Under the prevalent OHS regulation State and Businesses share a cooperative regulatory role under which the state work with the business but sees external responsibility system (ERS) – safety laws and regulations enforced by the state – limited in favour of a corporation's internal responsibility systems (IRS), which combines a company's safety policies with worker participation in OHS decisions[72] (Fudge and Cossman, 2002). Under

prevailing situations, the actions of employers are partially regulated by industry and the state educates industry officials, employers, on safe work practices[73](Flakstad, 2009). As per critics, the state's role was ineffective in handling economic instability like the inability to address rising inflation, oil prices, unemployment, and foreign competition within the US, UK, and Canada during the economic crisis of the early to mid-1970s[74](Barnetson and Foster, 2012). Consequently, the legislators came up by restricting financial and social safety nets for individuals and re-focusing their energies on trade liberalization, "anti-inflationary monetary policies" and reducing government expenditure and debt[75](Ferguson, 2012).

CASE STUDY OF ALBERTA FOR NEOLIBERAL REGULATIONS

Neoliberalism has a dominant influence in western capitalist societies and the reasons that account for such a dominant role in Alberta are the size and dependence on the energy industry and political conservativism[76] (Leithneret all, 2007). For the past six decades, oil or other conventional energy resource had played a crucial role in making rich the Canadian provinces which made the politics of provinces steadily conservative as the Provincial governments haven't changed since 1971[77](White et all, 2009). The combination of political conservatism and economic dependence on oil and gas has turned Alberta into a "bastion of neoliberalism", influencing every level of government and regulation in the province[78](Bergman et all, 2007). Neoliberalism grew in Alberta and an OHS self-regulatory approach was adopted under which the industry-led regulation with government intervention is almost entirely limited to investigations of cases of serious injury and death in the workplace[79](Dutcher, 2005). "Partners in Injury Reduction" (PIR) program is a joint initiative between government and industry that regulates partial self-regulation. On the contrary, corporations' internal annual audits were conducted provincially with external inspection or industry groups and made Alberta OHS regulation closer to self-regulation. This sort of partial self-regulation has resulted in a 40 per cent drop in provincial spending on OHS in 1990, like industry-funded organization, Enform[80](Enform,2014). The number of OHS prosecutions has declined substantially due to partial self-regulation, due to neoliberalism on the OHS systems of Canadian provinces. In addition, Tucker stated successful prosecutions in Alberta began to drop off considerably over time[81](Tucker, 1984). Neoliberal thinking still engrained into OHS enforcement has resulted in increased reliance upon self-regulation which includes techniques like workplace awareness campaigns comprised of posters, media advertisements, videos etc. The internet campaign shows the carelessness of workers as the most significant threat to workplace safety[82](Health and Safety Executive, 2009).

SAFETY ACCIDENTS/CRIMES IN PAKISTAN

The reports regarding the mining sector in Pakistan are horrific that shows accidents at frequent intervals with Baluchistan at top of the list where around 80 peoples lose their lives per year. These risks in the mining sector could be mitigated through compliance to safety and health legislation along with proper monitoring and taking of precautionary measures. The miners working at the worksite must ensure their safety first by keeping themselves aware of the surrounding environment they work in. There are various facts responsible for this horrific situation which includes, under-reporting, remoteness of mines and unregistered workers. Further, it could be assumed that the number of non-fatal incidents could be significantly higher than fatalities, various sources portray the dilapidated situation of mines by showing that mines are located away from cities which makes it difficult for rescue teams to arrive in time at times of emergency and further the aggravating situation could be gauged from the fact an 80s ambulance is still in operation in Baluchistan that was gifted under ILO project[83](International Labour Organization, 2017).

BUSINESSES LACK CARE FOR WORKPLACE SAFETY

A colossal number of people die due to the inefficiency on part of government and employers to observe safety standards and in this regard, a press conference was held by various labour organizations at "National Trade Union Federation Pakistan" (NTUF). The horrific statistics of the mining sector has 13 miners and 2 rescue workers laid their lives in a blast that occurred at SajdaBaluchistan. Accidents in the mining sector are on the high rise as this year from May till now more than 70 workers have died in different industrial and workplace mishaps, the responsibility of which rests on the shoulders of government, owners, related departments and agencies and corrupt officials of Inspectorate of Mines, who issue licenses to kill workers after taking heavy bribes and there is none to hold them accountable. Baldia factory and Gandani shipyard breaking incidents costed the lives of 260 and 30 workers respectively. The miserable situation of workers speaks volumes as workplace mishaps occur daily which goes unreported because Mines are situated in far-flung areas and for this obvious reason NTUF and other labour organizations have been protesting over the dismal situation for a long[84](Ishtiaq, 2016).

Workplace safety in sectors like garments, textile and cotton fields is still a distant dream as the highest number of mishaps have been reported from these sectors. Further, nothing has been done yet for workers of the Agriculture and Fisheries sector who come in orbit of SIRA 2013[85](Staff Report, The Tribune, 2018). The workers of the industrial sector are exposed to unsafe fumigation, pesticides and fertilizers that often cause the death of workers and in most situations, the families of these workers do not get compensation[86]("National Trade Union Federation on Baldia Case"). It is need of an hour that workers of these sectors are given proper attention through proper training about safer use of machinery and that the Sindh health and safety law should be

passed with no private social auditing[87](Staff Report, The Nation, 2018).

MAJOR HAZARD CONTROL ON MINES SAFETY CRIMES

Mr Noor Zaman, Joint Secretary, "Ministry of Overseas Pakistani and Human Resources Development" (MoPHRD) sharing his real-life experience mentioned that he was once approached by a native villager whose lungs were deeply affected due to working on a crushing machine. He supported him in getting access to a doctor where later it was revealed that the only treatment provided for the patient was artificial oxygenation. According to him, MoPHRD is responsible for the protection and welfare of miner workers along with employers whose job is to provide workers with safety gear. He further added that Employers need to be sensitized on the strategies for ensuring safety and suggestions need to be considered regarding appropriate labour inspection[88](International Labor Organization, 2017).

"ILO Convention No. 174, with associated recommendation No. 181 represents not only highly practical documents but also a summation of the experience of many countries which have sought to legislate on this subject. They provide a ready template for use by any national administration wishing to do the same. Within the EU, Council Directive 96/82/EC on the control of major accidents hazards involving dangerous substances is transposed into national legislation. In, the conventions and the directive, the key element is the obligation of the employer or operator to submit a safety report" [89](ILO, C- 174).

CONTINUOUS MINES SAFETY CRISIS

The start of the year 2020 has been violent for miners, a miner was killed on January 3 followed by other killings due to electrocuting and mine blasts in Tirah and DaraAdamkhel on 15 and 21 January respectively. Further killings of miners were also reported on 23 and 27 January in the Duki area of Baluchistan. The relevant industry is campaigning to end Pakistan's mine safety crisis and calling on the government to urgently implement the needed steps to improve the safety situation in the country's mines. Glen Mpufane, IndustriALL mining director, says:

> "According to published media reports, more than 430 coal mine workers have been killed since 2010, and this may even be an underestimation. It is urging the government of Pakistan to ratify and implement ILO convention 176 on safety and health in mines without delay. It is high time Pakistan's government takes concrete measures to stop the continuing deaths of coal miners"[90](Safety Crisis in Pakistan Report, 2020).

There are numerous accidents concerning mining extraction but the recent accident/crime in the marble quarry highlights the contemporary slaughter. This horrific accident which was reported by mining affiliates is a vivid example of around 200 killings. It is due to obsolete methods and poor equipment that a lot of workers die. This year on February 25 two

mineworkers were trapped in Dara Adam Khel and other similar incidents happened in DukiBaluchistan on 4 and 23 February[91](Accident, 2020). The informal contract-based mining sector of Pakistan often experience massive explosions and enormous fatalities due to primitive practices, there is no reliable data about the exact number of fatalities but research conducted by "Industries ALL Global Union" and its affiliates shows that an average of 200 miners dies every year. Unskilled workers without safety protocol descend up to 2500 meters where they often die off carbon monoxide, methane and poor ventilation. The rescue workers are also exposed to various threats as they are not properly trained and lack protective equipment. Coalminers are exposed to serious occupational diseases like asthma, bronchitis and lung cancer, gastro and hepatitis, and psychological disorders. More than 100,000 workers work in the improperly inspected, unregulated mining sector of Pakistan that is still run by obsolete laws like The Mines Act 1923. To make mining safer, the governments need to address this carnage through ratification and implementation of ILO Convention 176 on Safety and Health in Mines, provide safety training, and institute a proper inspection mechanism[92](IndustrialAll Global Union, 2020).

REPORTING ISSUE

The safety report is the key element in the control of major hazards. The employer or operator must demonstrate that they have identified and assessed all relevant risks and have taken all the necessary steps to reduce these risks to a level as low as reasonable. The competent authorities under the National assembly are equipped to carry requisite tests and they have crucial involvement in aftermath of the accident so in this regard usually submission of a detailed report is required after the accident takes place[93](ILO-IPEC, 2013).

CRITICISM ON EXISTING MINES LEGISLATIONS

Well-articulated legislation covering various factors is indispensable for the occupational safety of workers. The proposed legislation should be devised through cooperation among the government and employers. The proposed legislation should include adequate provisions of training for miners with aim of minimizing workplace hazards. Further criminal liabilities must be there for non-compliance along with recordings of all activities. It must be ensured that there is no inherent conflict between health and safety and the respective provisions of health and safety in mines Act 1923 and Mine's regulation 1926 must be amended[94](Ishtiaq, 2016).

The performance of inspection and monitoring is deplorable and are not properly funded and understaffed. These inspectors easily escape their responsibilities and provincial governments do not pay to heed any checks and balances to reform the mines inspections. Governments and political parties should work to implement OHSE laws and discourage political interference[95](Ghumman and Javed, 2018).Mine inspectors are understaffed and the numbers of mines are in large number and are not properly trained or skilled. Years are taken to inspect mine to confirm OHSE compliance. Sometimes the inspection team

announced their visit and the owners do temporary changes like cleaning; hiding faulty machines, closure dangerous shafts to correct any violation. According to the general secretary of the "Pakistan Mine Workers' Federation" (PMWF); in Hyderabad, mines are more secure as compared to other provinces. Owners are instructed to give a positive report. Due to lack of OHSE standards, gas explosions and coal blasting around 200 laborers die every year. Workers are bullied and do not reveal the facts and their mine-owner are responsible for their OHSE which seldom invest in their security[96](Qadri and Parlaktuna, 2017). According to "ILO's Decent Work Country Programme Report"; in 2014 there were only 547 labour inspectors for 23,983 industries and 327,706 other establishments in Pakistan. One inspector is looking after 643 commercial and industrial units in Pakistan. Furthermore, there is a shortage of competent technicians, vehicles and testing instruments and numerous posts of inspectors are lying vacant[97](ILO Various Standards, 2020)

CHALLENGES FOR OCCUPATIONAL SAFETY

Lack of awareness about safety and health and limited access to relevant facilities are major impediments regarding occupational accidents in mines. Feudalism and the weak contract-based system prevalent in Pakistan has further deteriorated the situation, as the feudal lords seem to be less interested in the occupational health and safety of workers. Accountability for the safety of mines has become a distant dream due to the contractual system associated with mining as neither the contractor nor the owner takes responsibility for the health and safety of workers. Further, the workers and supervisor's reluctance to use Personal protection equipment (PPEs) and the absence of a rescue system has made the dream of occupational health a distant dream. Non registered workers often fail to get access to health facilities and old-age benefits as they are not registered with EOBI and social security. Noncompliance to safety laws along with limited mining inspections is another predominant reason due to which workers live miserable life. The government seems to be less interested regarding the occupational health and safety of workers due to which records are not properly maintained and the fewer inspections made are carried without scientific tools which consequently hampers the implementation of OSH related laws[98](Staff Report, The Nation, 2018). Lack of cooperation among the tripartite stakeholders and failure of provincial and Federal governments' functionaries to interact formally for devising new mechanisms regarding occupational health and safety are the determinant factors for noncompliance to OHS of workers. Federal and Provincial governments must take measures and educate workers through NGOs and UN programs. It is recommendatory that seminars, workshops, refresher courses, field visits should be conducted at all provinces and territories quarterly, half quarterly and annually for experience sharing and improved coordination[99](International Labor Organization, 2017)

SUGGESTION AND CONCLUSION

The work emphasizes the current state of OHS criminal liability and its integration with criminal provisions. In addition, differentiation of safety crimes into its own set of offences and the emerging concept of safety crimes along with the historical separation of safety crimes from criminal law[100](Antrobus, 2011).The theme of most of the literature review is that safety crime is not a real crime and the conventional and responsible discourses construct safety crimes within regulation as non-violent accidents. Corporations have been able to partially self-regulate, with virtually no use of criminal law to prosecute businesses for injuring and killing workers.The work intends to examine the extent to which safety regulation has been shaped by the accident discourse. This work is concluded with a brief discussion of ways to overcome the dominant discourses used to characterize serious injury and death in the workplace.

Overall, this work has revealed the importance of bridging the gap to establish the businesses corporate accountability for the mines safety crimes and critically assess the existing legal structure in Pakistan. Moreover, the work further tries to establish better lessons for Pakistan to incorporate in their future legislation. In this respect, the findings resonate with the business homicide and manslaughter writers who further support for challenging the accident and crimes and its relevant workplace injury and death. A major concern for this work is that safety crimes should be understood and treated as crimes of violence more often than civil liability or other compensatory models.While this claim is not a new one, we must keep interrogating and discussing the mines safety accidents or crimes scenario so that it can be challenged and, hopefully, and ultimately, transformed. Furthermore, this struggleinvolves challenging and addressing the structural issues within our legal system that allow corporate crimes and safety crimes, in particular, to be regulated as minor offences or careless accidents. Namely, this work recommends safety accidents must respond with criminal sanctions rather than administrative law or strict liability crimes. It further recommends convicting, charge or prosecute the corporated offenders or company executives for their OHS responsibility.

At the same time, however, the goal of naming safety crimes as a form of violent crime will mean nothing unless the state addresses the structural reality that investors and corporate directors enjoyan exemption for injuring and killing mineworkers. As such, efforts must be directed towards preventing investors and corporate directors from hiding behind the limited liability of the corporation. Until then, safety crimes will continue to be understood and responded to as little more than regrettable but largely unavoidable accidents.

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