

Regulation of Ozone-Depleting Substances in India

A few decades ago, the global community took up the project of protecting the ozone layer from the effects of human activities and industrialization and preventing its further depletion. It was recognized at that time that this mammoth task required nothing less than international consensus and joint action by all countries.

The first significant milestone in international deliberations for developing a framework for the protection of the ozone layer was reached with the adoption of the Vienna Convention for the Protection of the Ozone Layer (Vienna Convention), adopted in 1985. The Vienna Convention emphasized the need for further research in this area and scientific assessments of the physical and chemical processes that affect the ozone layer and lead to its depletion. The adoption of the Vienna Convention soon led to the creation of clear targets for the phasing out of the production and consumption of harmful ozone-depleting substances (ODS). These proposed regulations were contained in the Montreal Protocol on Substances That Deplete the Ozone Layer (Montreal Protocol), adopted in 1987. Under the Montreal Protocol, the international community agreed to completely phase out chlorofluorocarbons (CFCs), halons, carbon tetrachloride (CTC), and methyl chloroform (MCF) within the agreed time line. The Montreal Protocol is regarded as one of the most successful international treaties, particularly for setting an example of unparalleled international cooperation.¹

India adopted the Vienna Convention in June 1991 and the Montreal Protocol in September 1992. Thereafter, the Ozone Depleting Substances (Regulations and Control) Rules, 2000, (ODS Rules) were formulated under the Environment Protection Act, 1986, to give effect to India's obligations under the Montreal Protocol. However, prior to the formulation of the ODS Rules, India had undertaken several other licensing, fiscal, and regulatory measures for regulating the manufacture, use, and transboundary trade in ozone-depleting substances.

Essential Components of the Montreal Protocol

- Identifies chemicals and substances causing damage to the ozone layer. Initially, the parties could agree only on eight chemicals, but now nearly 100 are included.
- Creates controls on the production as well as the consumption of CFCs, which are applicable in developed as well as developing countries.
- Creates flexibility in the implementation for countries; they are free to frame regulations on how the reductions are to be achieved, such as creating controls on specific usage, introducing financial incentives/disincentives.
- Restricts transboundary trade in ozone-depleting substances with non-signatory countries.
- Creates a Multilateral Fund for the implementation of the Protocol.

Institutional Framework²

The government of India entrusted work relating to the protection of the ozone layer with the Ministry of Environment and Forests (MoEF), which has set up a specialized, national unit called the "Ozone Cell" to implement the Montreal Protocol and its ODS phaseout program. MoEF also established an Empowered Steering Committee (ESC), which is responsible for the implementation of the Montreal Protocol provisions. The ESC is supported by three standing committees: the Technology and Finance Standing Committee; the Committee for Small-Scale Industry; and the Monitoring and Evaluation Committee. The ESC also reviews various policy and implementation options, grants, and project approvals, and it conducts project monitoring.

The Indian government, through the Directorate General for Foreign Trade (DGFT), manages the import-licensing mechanism for regulating international trade in ozone-depleting substances. And the Indian Meteorological Department is charged with measuring ozone levels in India.³

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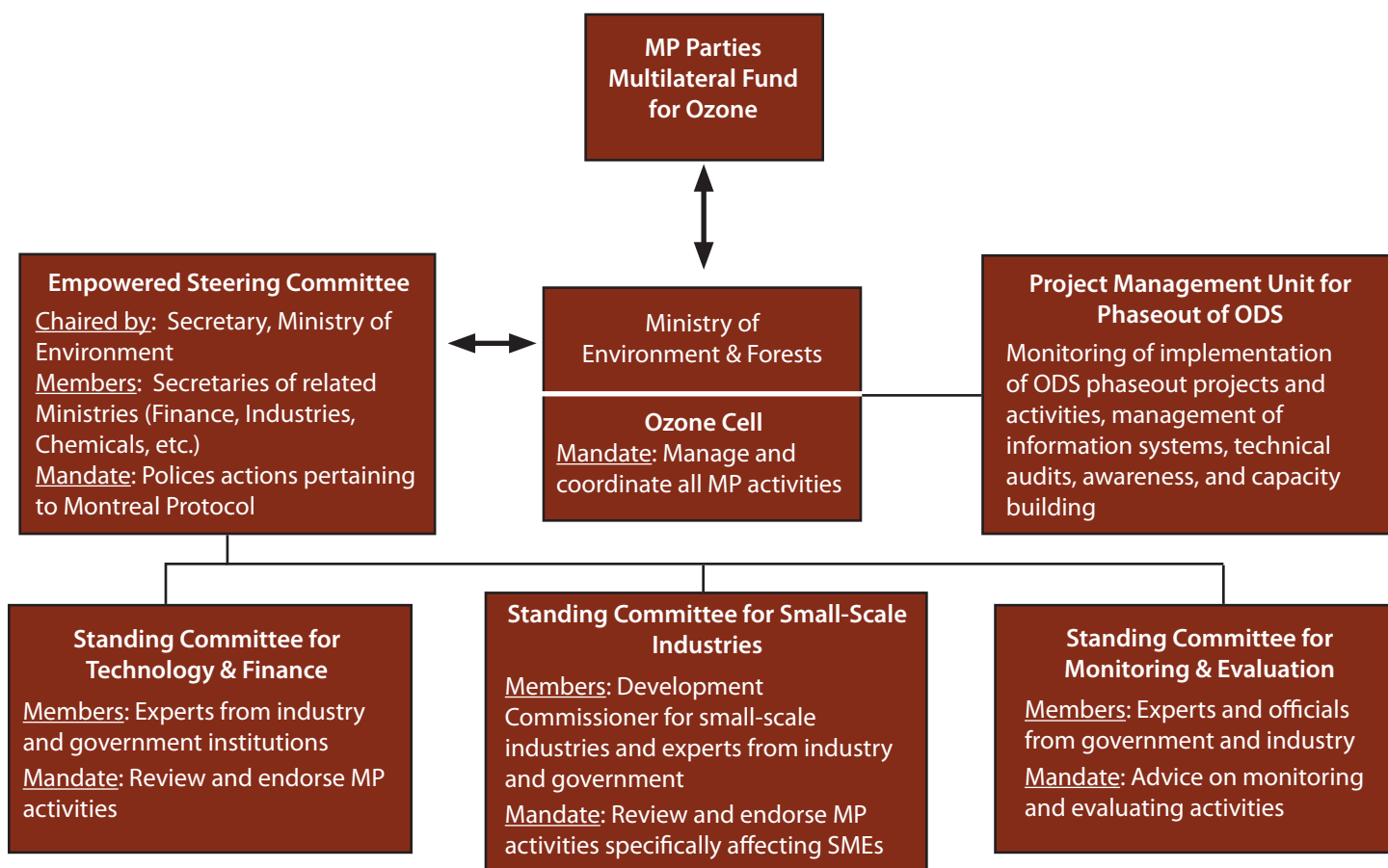
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Institutional Framework for Implementation of the Montreal Protocol (MP) in India



Production and Use of ODS in India

The early use of ozone-depleting substances and chemicals in India can be traced back to the 1960s and early 1970s, when these substances were mainly used in refrigeration, air-conditioning, foam manufacturing, and aerosols. At that time, the CFCs needed for the industry were primarily imported. Gradually, the availability of CFCs from domestic production increased.

Regulatory and Fiscal Measures Prior to the Enactment of the ODS Rules

India had prepared a detailed program in 1993 to phase out ozone-depleting substances in accordance with its National Industrial Development Strategy. The program aimed to systematically phase out ozone-depleting substances with minimum economic disruptions as a result of the conversion to non-ODS technology and maximization of local production. This program also gave preference to immediate, as opposed to gradual, replacement of ozone-depleting substances.⁴ The intent was to avoid creating any burden on businesses or consumers.

In the 1990s, India also introduced a licensing system based on the recommendations of the Meeting of Parties

at Geneva in 1995. The Ozone Cell and DGFT were made responsible for implementing the export/import licensing system. The objective of the licensing system is to regulate the import and export of ozone-depleting substances in accordance with the Montreal Protocol. All ozone-depleting substances under Annex A, Annex B, and Group I of Annex C of the Montreal Protocol are covered by the import licensing system, whereby their import into India is permitted only with an import license. Trade in ozone-depleting substances with non-party countries has been banned. In addition, certain controls have been imposed on the export and import of products that contain ozone-depleting substances.

In January 1995, India introduced a mechanism for exemption of payment of customs and central excise duties on capital goods required to implement ODS phaseout projects funded by the Multilateral Fund created under the Montreal Protocol. This fiscal incentive was subsequently extended for all ODS phaseout projects and investment in non-ODS technology as a one-time support.⁵ This incentive is, however, available subject to the condition that the concerned enterprises give clear commitment to stopping the use of ozone-depleting substances in

all future manufacturing operations after the projects are implemented. The Indian financial institutions have decided not to finance or refinance new ODS-producing and consuming enterprises.⁶

Formulation of ODS Rules

The ODS Rules were formulated to give effect to India's obligations under the Montreal Protocol and to regulate the production, use, consumption, and transboundary movement of ozone-depleting substances and ODS-containing products. The ODS Rules classify a total of 97 chemical substances into 10 different ozone-depleting groups. The ODS Rules are based on a two-pronged strategy: first, the gradual phasing-out of ozone-depleting substances, including the phasing-out of the use of ozone-depleting substances in specific processes; and second, a prohibition on the creation of new capacities and new investments coupled with the regulation of producers, manufacturers, and users of ozone-depleting substances in India through a licensing regime.

The ODS Rules specifically prohibit the creation of new capacities or the expansion of existing ones for the production of most of the ODS groups in India, from the date of its coming into force or a subsequent phaseout date. Cut-off dates for the cessation of the creation or expansion of capacities for the production of manufactured items containing ozone-depleting substances have also been prescribed. The rules also specify phaseout dates for the regulation of the consumption of ozone-depleting substances in specific industries or processes, including the manufacture of polyol for foam products, fire extinguishers and fire extinguishing systems, refrigeration and air-conditioning products, and others.

In most of these processes and systems, the use of ozone-depleting substances has already been phased out, except for the manufacture of products using Group VI ODS and the use of methyl bromide (except in pre-shipment and quarantine). For example, the production and consumption of CFCs, CTC, and halons have been phased out as of January 2010, except for the use of pharmaceutical-grade CFCs in the manufacturing of metered-dose inhalers for asthma and chronic obstructive pulmonary diseases patients. Special programs for phasing out these ozone-depleting substances were undertaken by the Indian government

Regulation on Consumption of ODS on End-Use Basis (as per Schedule IV of the ODS Rules)

Name of Activity	Phaseout Date
Manufacture of aerosol products excluding metered-dose inhalers	Jan. 1, 2003
Manufacture of foam products (including domestic refrigerators)	Jan. 1, 2003
Manufacture of mobile air-conditioners	Jan. 1, 2003
Manufacture of other refrigeration and air-conditioning products	Jan. 1, 2003
Manufacture of products based on other ODS	Jan. 1, 2010
Manufacture of metered-dose exhalers	Jan. 1, 2010
Use of methyl bromide except in quarantine and pre-shipment	Jan. 1, 2015
Manufacture of products based on HCFC	Jan. 1, 2040

with the assistance of the Multilateral Fund created under the Montreal Protocol.

The ODS Rules mandate registration of the producers, purchasers, sellers, importers, and exporters of ozone-depleting substances with the relevant MoEF officials. In addition, the reclamation and destruction of ODS also require registration with the MoEF. These entities dealing with ozone-depleting substances are also required to maintain certain registers recording the actual production, consumption, or usage of ozone-depleting substances and to file those registers with the MoEF from time to time.

The transboundary movement of ozone-depleting substances is allowed only to or from countries that are signatories to the Montreal Protocol and subject to a license to be obtained from the DGFT. While granting an import license, the DGFT is required to consider the calculated base level of consumption and the calculated base level of production of India as a whole for each ODS group, a figure that is released by the government.

The import of manufactured products containing certain ozone-depleting substances, such as automobile and truck air-conditioning, domestic or commercial refrigeration and air-conditioning, pre-polymers, aerosol products, insulation boards, and others, also requires prior registration. The products that do not contain any ozone-depleting substances are required to carry a label to that effect. Similarly, a product containing ozone-depleting substances is also required to carry a label for easy identification of such products.

Regulations for Safe Use of Hydrocarbons as Non-ODS Alternatives

The government encourages the development and use of non-ODS alternatives. As a result of the intensive research in this sphere, a large number of substitute chemicals to replace CFCs, halons, CTCs, methyl chloroform, and HCFCs have been discovered over the years. For example, hydrocarbons including isobutane and cyclopentane are available as non-ODS alternatives for use in aerosols, foam-blowing, and refrigeration.

The Petroleum Act, 1934, and Petroleum Rules, 1976, relate to the production and handling of petroleum products and the safe use of hydrocarbons, including licensing requirements. The manufacture and storage of hydrocarbons is also regulated under the Manufacture, Storage, and Import of Hazardous Chemicals Rules, 1989. These rules specify responsibilities and the reporting requirements for large industrial activities or processes using such hydrocarbons.

Hydrocarbons may also be regulated under the Liquefied Petroleum Gas (Regulation and Supply and Distribution) Order, 1993, which governs the possession, supply, and consumption of liquefied petroleum gas. The Gas Cylinder Rules, 1981, address the filling, possession, import, and transport of cylinders.

Lastly, the Tariff Advisory Committee (TAC), a statutory body under the Insurance Act, 1938, decided to grant suitable discounts on fire-insurance premiums if alternative fire-extinguishing agents are used in place of halons in fire-extinguishing systems.

The Way Forward

Because it is a developing country, India was given a 10-year grace period to comply with its obligations under the Montreal Protocol. India is also eligible for financial and technical support from the Multilateral Fund to phase out the production and consumption of ozone-depleting substances. With that support, India has successfully achieved its initial freeze and control targets for ODS. India has also actively participated in the evolution of policies and principles for effective implementation of the Montreal Protocol at the global level. The next challenge for India is the phaseout of HCFCs. The government recently launched a road map for this process, termed the HCFC Stage-I Phaseout Management Plan. The plan envisages a freeze in the production and consumption of HCFCs at the baseline level in 2013 and the first reduction target of 10% in 2015.⁷

ENDNOTES

- 1 "Perhaps the single most successful international agreement to date has been the Montreal Protocol." Kofi Annan, Former Secretary General of the United Nations.
- 2 See *Ozone Cell*, MoEF, <http://www.ozonecell.com/viewsection.jsp?lang=0&cid=0,163>.
- 3 The Indian Meteorological Department has established a National Ozone Centre. The Centre maintains and controls a network of Ozone Monitoring Stations located at New Delhi, Srinagar, Nagpur, Pune, Kodaikanal, Thiruvananthapuram, Varanasi, and Maitri, India's research station in Antarctica.
- 4 *India's Commitment to Montreal Protocol*, MOEF ENVIRONMENTAL INFORMATION CENTER, <http://envis.nic.in/sdnp/casestudy/cases/montreal/montc2.html> (last visited May 15, 2013).
- 5 For projects approved by the Multilateral Fund Secretariat, approval for duty exemption is directly given by the Ozone Cell, after drawing reference to the project. For projects approved by UNDP and UNIDO, procurement is done through UNOPS on the basis of its own standardized system for procuring equipment after availing duty exemption. For the World Bank projects, IDBI functions as the financial intermediary and based specific approval by Ozone Cell on duty exemption, imports are effected under the World Bank projects. See <http://www.ozonecell.com>.
- 6 MOEF OZONE CELL, ANNUAL REPORT (2012).
- 7 HCFC Phaseout Management Plan Stage-I.

Regulation of Asbestos in India

Asbestos is a major occupational health hazard: prolonged exposure to asbestos or asbestos dust can cause mesothelioma and asbestosis, serious and life-threatening lung diseases. Because asbestos dust is airborne, it can also affect family members of workers. The signs of asbestos-induced diseases appear over a period of time, so it is nearly impossible for workers to take timely preventative action unless they are medically tested from time to time.

In 1986, the International Labour Organization (ILO) highlighted the need to protect workers from occupational exposure to asbestos in ILO Convention C162, commonly known as the Asbestos Convention. The ILO Asbestos Convention stressed the promotion of national laws and regulations for the prevention and control of asbestos-exposure-related ailments. The Convention also mandated the 35 parties to prescribe safe limits for the exposure of workers to asbestos. Obligations to comply rest with employers. A resolution adopted at the 95th Session of the International Labour Conference, held in June 2006, stated that all forms of asbestos are classified as known human carcinogens by the International Agency for Research on Cancer. It also stated that the ILO Asbestos Convention should not be used to provide a justification for, or endorsement of, the continued use of asbestos. It was recommended to the parties that the most effective means of protecting workers from asbestos exposure and preventing future asbestos-related diseases and deaths involve the elimination of the future use of asbestos and the identification and proper management of asbestos currently in place.

The ILO Asbestos Convention was followed by the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (Basel Convention), adopted in 1989, which listed asbestos (in dust and fiber forms) as a hazardous waste and mandated prior informed consent of the states involved in the transboundary movement of such waste as an essential condition for import.¹ Nine years later, certain variants of asbestos, including actinolite, anthophyllite, amosite, crocidolite, and tremolite, were recognized as hazardous under the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (Rotterdam Convention), adopted in 1998. The Rotterdam Convention also invokes the concept of prior informed consent.

Beyond international conventions and treaties,

voices against the mining and use of asbestos in modern industry have been gaining momentum. Several countries, including Australia, Japan, and several European countries, have imposed limits on the extraction and use of asbestos through domestic legislation.

India is a party to the Basel Convention and the Rotterdam Convention. However, in India, asbestos is widely used for various industrial purposes, including low-cost housing, vehicles (brake lining and brake shoes), water supply pipes, fireproofing, and soundproofing. Although Indian laws regulate asbestos mining and use, there is a reluctance to adopt tougher measures to eliminate the use of asbestos.

Asbestos Mining in India

Asbestos is mined in various Indian states, including Rajasthan, Karnataka, Andhra Pradesh, Bihar, and Jharkhand. The Mines and Minerals (Development and Regulation) Act, 1957, and Mineral Concession Rules, 1960, provide for the granting of concessions for the mining of minerals in India. Such mining must be done strictly within the terms of the mining license. The mining of asbestos also requires prior environmental clearance under the Environment Impact Assessment Notification, 1994 (EIA Notification). In other words, the mining of asbestos is a regulated activity that cannot be undertaken unless the project proponent has assessed its potential environmental and social impacts in accordance with the EIA Notification and has obtained an environmental clearance from the relevant authorities. However, for asbestos mining, India has restricted the granting of fresh mining leases and the renewal of existing mining leases on health grounds.² Asbestos is being mined in the areas already held under existing mining leases.

The Metalliferous Mines Regulations, 1961 (Mines Regulations), set out the measures to be undertaken by the owner of a mine, wherein the “permissible limit” of dust concentration—including asbestos dust—is specified with a view to ensure the health and safety of workers engaged in mining operations.³ These regulations stipulate a maximum concentration of asbestos fibers in the air of 2 fibers/ml. The sorting, grading, mixing, and packing of asbestos fibers, as well as the collection and disposal of waste, including filtered dust, must be carried out in such a manner that asbestos dust does not escape into the air. The regulations also make mandatory the display of warning notices for workers regarding the health hazards from asbestos dust and the need for the use of protective clothing and gear.

Asbestos Waste as a Hazardous Waste

The Hazardous Waste (Management, Handling and Transboundary Movement) Rules, 2008 (HW Rules), categorizes any waste containing asbestos (in concentration equal to or higher than 5,000 mg/kg) as hazardous waste. The management, handling, recycling, and disposal of such waste require prior registration with the state pollution control board (SPCB) of the state in which the industry is located. The activities involving hazardous waste should be undertaken in an environmentally sound manner and in strict compliance with the HW Rules.

In terms of the HW Rules, the industry is liable for the damage caused to the environment or to a third party due to the improper handling or disposal of hazardous waste. The relevant SPCB may also impose financial penalties on the industry for noncompliance with the provisions of the HW Rules, in consultation with the Central Pollution Control Board (CPCB).

Further, to ensure compliance with the Basel Convention, the HW Rules also prohibit the import and export of asbestos dust and fiber. Glue asbestos (crocidolite), the most harmful form of asbestos fiber, has also been placed in the negative list of imports under India's Foreign Trade Policy.⁴ However, various other articles containing asbestos, such as asbestos-cement sheets and tiles, fabricated asbestos fibers, and certain kinds of brake linings, are freely importable in India under the terms of the Foreign Trade Policy, 2009-2014.⁵

Asbestos and Ship Breaking

Closely related to asbestos processing in India is its ship-breaking industry. The Basel Convention, to which India is a party, seeks to regulate the transboundary movement of ships destined for final disposal or recycling that contain hazardous materials. It imposes substantive obligations on all the parties to prevent the movement and disposal of these ships in contravention of the Basel Convention. Since asbestos waste and residue is a hazardous waste both under national as well as international regulations, the dismantling of a ship containing asbestos, which would generate asbestos waste, would come within the purview of such regulations.

In India, the ship-breaking industry is a full-fledged industry. It was recognized by the government as a manufacturing activity as early as the 1970s and is carried out at various locations on India's coast. Large ships, including ships coming from overseas, are scrapped and dismantled at these locations. The ship-breaking industry damages the local environment and endangers the health and safety of the inhabitants of the areas close to the ship-breaking

Ships Permitted for Dismantling

"Riky," an asbestos-laden ship, arrived for scrapping at Alang, Gujarat, on April 23, 2005, from Denmark. The government of India determined that the ship could not be classified as a "waste" within the scope of Article 2(1) of the Basel Convention. The Ministry of Environment and Forests (MoEF) was also of the view that the ship did not contain any objectionable matter and had obtained all necessary permissions for ship-breaking in India. The Supreme Court of India challenged the government's decision in a public interest litigation. But on June 2, 2005, the Supreme Court Monitoring Committee on Hazardous Waste permitted the dismantling of the ship subject to certain conditions.

"Blue Lady" was a Norwegian ship destined for India for scrapping at Alang. The ship was alleged to be laden with highly toxic materials. Nevertheless, the Supreme Court in September 2007 permitted the dismantling of the ship.

Ships Not Permitted for Dismantling

"Clemenceau" was a famous French warship. On December 31, 2005, the ship, laden with toxins, including asbestos, PCBs, lead, mercury, and other toxic chemicals, left the French port of Toulon to be dismantled in Alang. However, in 2006, the Supreme Court denied access to it as the ship was in violation of the Basel Convention.

"Platinum II," a passenger ship, was coming from Dubai for scrapping at Alang. It contained highly toxic and radioactive substances, including asbestos and lead. The MoEF, in an order dated November 9, 2009, prohibited the dismantling of the ship based on, among other reasons, the precautionary principle.

yards. There have been several instances in the past when asbestos-containing ships arrived in India for dismantling and subsequently ran into trouble because of imminent environmental and health perils. In one of its landmark judgments, the Supreme Court of India set out the guidelines for regulating the ship-breaking industry.⁶ The Supreme Court stressed the need for taking special care while handling toxic materials, including asbestos, and mandated that ship-breaking activities involving the handling of hazardous waste must be authorized under the HW Rules.

Worker Safety and Health

The working conditions, including health and safety conditions, of workers engaged in asbestos-manufacturing processes are regulated under the Factories Act, 1948 (Factories Act). The Factories Act, which sets out higher health and safety standards for hazardous processes,

classifies the “manufacture, handling and processing of asbestos or its products”⁷ as a hazardous process. As such, it requires the creation of detailed health and safety policies for the workers, on-site emergency plans, disaster control mechanisms, and effective measures for the handling, usage, transportation, storage, and disposal of asbestos within the factory premises. The employer must also provide for the medical examination of every worker before, during, and after employment. The employer is also required to prepare and maintain accurate and up-to-date medical and health records of workers who may be exposed to toxic or harmful substances.

An important aspect of the above health and safety framework is the disclosure of information to the workers regarding hazardous processes, their associated health and safety hazards, and protective measures to be taken. The workers have a right to be informed that they are dealing with a hazardous process that may pose a danger to their health and safety so as to enable the workers to make an informed decision regarding their work. If the workers believe there is imminent danger of an accident, they are required to inform the factory manager or the employer. Upon receipt of such information, the factory manager or employer must undertake appropriate safety and preventative measures. The Factories Act also lists asbestosis as a notifiable disease. If any worker contracts asbestosis, the employer must notify government authorities.

Yet, despite the existence of clear provisions under the Factories Act, their enforcement has been lax and less than satisfactory. In the absence of appropriate health and safety measures by the industry, the likelihood of workers contracting deadly diseases due to exposure to asbestos and asbestos dust becomes a reality.

In this regard, the landmark judgment of the Supreme Court in *Consumer Education Research Centre v. Union of India* is noteworthy.⁸ This public interest case highlighted the damaging effect of the use of asbestos by various industrial agents. The Supreme Court allowed the writ petition and issued significant directions to industry, including a requirement to maintain and update the health record of every worker up to a minimum period of 40 years from the beginning of the employment or 15 years after retirement or cessation of employment, whichever is later. The industry was also instructed to provide compulsory health insurance coverage to every worker. In addition, central and state governments were directed to review the standards of permissible exposure to asbestos in line with international standards. An Inspector of Factories from the state of Gujarat was also

directed to send all workers identified by a hospital for reexamination by the National Institute of Occupational Health (NIOH) to detect whether any of them were suffering from asbestosis. In case they were found to suffer from health issues due to occupational health hazards, the workers would be entitled to compensation of 100,000 rupees (US\$2,500) payable by the concerned factory or industry or establishment within a period of three months from the date of certification by the NIOH.

This judgment is significant, as the Court not only discussed issues concerning the contraction, prevention, and treatment of life-threatening diseases on account of prolonged exposure to asbestos, but also mulled over the gaps in the existing law. The Court noted that the Employees State Insurance Act, 1948, and the Workmen’s Compensation Act, 1923, provide for the payment of mandatory compensation for injury or death caused to a worker while in employment. Neither Act provides for payment of compensation after cessation of employment. Recognizing this gap in the law, the Court held that based on the doctrine of tortious liability, the factories or companies shall be bound to compensate the workmen for health hazards.

Conclusion

While India’s environmental regime embodies the precautionary principle, it is surprising that—despite scientific studies and the ILO’s specific recommendation on elimination of asbestos use—India has, to date, not taken a tough stance on the complete elimination of asbestos. India appears to be content with its environmental, health, and safety regulations, knowing fully well that these laws may not cover all aspects of asbestos manufacturing, mining, and use, especially in the unorganized sector. It is time the government rethinks its policy and position on asbestos and makes a comprehensive assessment of its current laws on the subject, bridging gaps as necessary.

ENDNOTES

- 1 The concept of prior informed consent provides that in the case of the export of a hazardous substance, the authorities of the state of export must notify the authorities of the prospective states of import and transit, providing them with detailed information on the intended movement. The movement may only proceed if and when all states concerned have given their written consent (Articles 6 and 7, Basel Convention).
- 2 The Minister of Mines, *Unstarred Question No. 254* (Nov. 23, 2012), available at <http://mines.gov.in/writeraddata/Contentlinks/d556ef9b923f4af5a735bb5315616850.pdf>
- 3 Framed under the Mines Act, 1952.
- 4 *Questions on Asbestos*, OCCUPATIONAL & ENVIRONMENTAL HEALTH NETWORK OF INDIA, <http://www.oejni.in/13thloksabha> (last visited May 15, 2013).
- 5 ITC (HS) Classification, Chapter 68.
- 6 Research Foundation for Science Technology National Resource Policy v. UoI (Writ Petition No. 657 of 1995).
- 7 Entry 24, First Schedule to the Factories Act.
- 8 AIR 1995 SC 922: (1995) 3 SCC 42.