

## TOWARDS A SAFE WORKPLACE: ANALYSING OCCUPATIONAL HEALTH IN NIGERIA AND THE UNITED KINGDOM\*

### Abstract

*A safe work environment is crucial to the productivity and overall development of any society. Industrial growth and development has been one of the indices of civilization and development over time. When workers are motivated and the work environment is ideal, the productivity is higher. Thus, it is sacrosanct that there should be a framework that guarantees a safe work environment. This article attempts an analysis of the legal framework for occupational health and safety under the Nigerian and the United Kingdom laws; this is because of their shared history as common wealth jurisdictions. It finds that both jurisdictions offer a robust legal framework with Nigeria adopting a multi legislation approach while the UK has a single legislation, it also finds that there are however areas of weaknesses that needs to be addressed especially as regards sanction in Nigeria and concludes by making recommendations for mutual lessons to be drawn by both jurisdictions.*

**Keywords:** Safety, Workplace, Occupational Health, Nigeria, United Kingdom

### 1. Introduction

A lot has happened in the Nigerian labour space since the introduction of wage earning employment in Nigeria through contact with the Europeans in the eighteenth and nineteenth century. Under the indigenous Nigerian labour space, the labour relationship was essentially subsistence as family members provided each other with the required labour more so as polygamy and the attendant large family was a common thing amongst the more affluent families. In addition, cooperative labour and barter systems also existed.<sup>1</sup> The existence of slave labour was also a factor in the labour relationship of indigenous Nigerian society.<sup>2</sup> With the advent of the Europeans as missionaries, traders and a system of government revolutionized the Nigerian labour space and introduced the wage earning employment albeit for the convenience of the colonial government.<sup>3</sup> Hence, the English common law remains a major influence of the Nigerian labour law.<sup>4</sup> Nevertheless the Nigerian labour law is presently essentially statutory as there are a number of statutes that regulates the employment relationship most of which is a codification of a lot of the common law principles. Thus, the development of the Nigerian labour jurisprudence has been fashioned along that of the English common law.<sup>5</sup> The world over, a stable employment space is a catalyst for economic growth and development; the security and overall development of a country. This is because the workforce is a veritable driver through which developmental goals are achieved and an enabling work environment which guarantees the health, safety and welfare of the workforce is indispensable. Yet, the reality is that every occupation has its health and safety hazards, thus it is the responsibility of all stakeholders to ensure that the work environment is as safe as possible. It has been reported that there is as much as 2.78 million work place deaths globally which means an average of a death per every fifteen seconds;<sup>6</sup> this excludes the non-fatal work place injuries which also runs into millions annually. Thus, perhaps the view that occupational hazards cannot be totally eradicated hence occupational health and safety is about the least harm may be true. Whatever the case, the goal of regulating occupational health and safety is to ensure a safe work place. It should be noted that the implications of an unsafe work place which results into death and injuries both fatal and non-fatal are grave. There are economic implications to the loss of lives and/ or capacity of an otherwise active and productive “genre” besides losing the skill and knowledge of the dead or incapacitated

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<sup>1</sup> Among the Yoruba people of south west Nigeria, the concepts of Owe and Aaro exemplify the cooperative labour system

<sup>2</sup> Akintunde Emiola, *Nigerian Labour Law* 4<sup>th</sup> edn, 2008 Emiola Publishers, Nigeria. See also J.I.Roper, *Labour Problems in West Africa* (1958) Penguin, London p.12 it should be stated that the indigenous Nigerian society was heterogeneous in nature yet there were and still are similarities in the ways of life of the different heterogeneous units.

<sup>3</sup> Wage earning employment has come a long way in Nigeria as there have been series of Commissions were set up to develop and review the structure of wages over time like The Hunt Commission 1934 which was set up to structure the wages of the unskilled labour in the colonial service; The Bridges Committee 1941, The Provincial Wages Committee 1942, The Miller Committee 1946 and the Gorsuch Committee 1954-55 all contributed to the development of wage earning employment in Nigeria. Even post independence Committees like The Morgan Commission 1964, The Edwood Panel, The Adebo Wages and Salaries Review Commission 1970-71, The Udoji Commission 1974 also contributed one way or the other to the solidification and development of the wage earning employment in Nigeria.

<sup>4</sup> It was received through the Courts Ordinance of 1876 which received the English common law, doctrines of equity and the pre 1900 statutes of general application in England. See *Lawal & Ors v. Younan & Ors* (1961) ALLNLR 245

<sup>5</sup> See Akanbi, K.O. and Mohammedlawal K.O. An Analysis of the Legal framework for Occupational Health and Safety in *Nigeria Journal of Private and Property Law*, Published by the Faculty of Law, Nassarawa State University.

<sup>6</sup> <https://en.wikipedia.org/wiki/occupational-safety-and-health> accessed 2<sup>nd</sup> March, 2022

workforce is the cost to the employer of training new sets of people, the payment of compensation, the cost of health care, lost work days and interrupted production. Also the social implications of losing a productive generation who often maybe the bread winner of the family, the pain and hardship on the workers and their family: psychological trauma of losing a loved one or seeing a loved one incapacitated or injured are social costs of an unsafe workplace. In addition, the morale of the remaining workers becomes low when lives and limbs of co-workers are lost in the course of employment. Thus, a safe and conducive workplace is in ultimate interest of all stakeholders. The ILO Constitution provides that workers must be protected from work place death, sickness, disease and injury and thus establishes standards on occupational health and safety which will ensure maximum safety at work. In fact almost half of the ILO instruments are on occupational health and safety.<sup>7</sup>

## **2. Occupational Health and Safety**

The history of occupational health and safety can be traced to the era of industrial revolution and the rise of the labour movements which brought to the fore concern for the safety of workers.<sup>8</sup> It seems therefore that the attendant Elizabethan Poor Laws is also influential to the development of the occupational safety laws in the United Kingdom. Increased population and the growth in the textile business meant there was need for more lands and people were dispossessed of their homes; poverty level was therefore high and these homeless people resorted to working at the cotton textile mills. As a result of the increased poverty, orphaned and homeless children and young persons also found themselves engaged in the textile mills and housed in the mills dormitories.<sup>9</sup> However, as is meant to happen where cheap labour is exploited, children and young persons often suffered physical and moral harm.<sup>10</sup> In fact, it was the fatal death of a child on one of the mills that served as a catalyst for the first State intervention in regulating the work environment as the unrest that followed made people to demand for better working conditions.<sup>11</sup> Occupational health and safety is often expressed generally in terms of provision of personal protective equipment, ensuring proper hydration especially for those who work long hours and involved in physical labour, maintenance of work tools especially the seemingly dangerous ones, provision and enforcement of rest periods<sup>12</sup> etc, but as it will be seen in the course of this work, occupational health and safety is all of these and much more as the social, mental and financial health of the workers are part of what constitutes a safe and healthy work environment. The World Health Organization has expressed that the primary focus of occupational health is the prevention of hazards and deals with all aspects of health and safety in the work place<sup>13</sup> and considering the definition of health as the state of complete physical, mental and social well being beyond the absence of disease, it will be trite to say that occupational health involves the mental and physical health in the work place.<sup>14</sup> Thus, occupational health and safety aims at promoting the physical, social, economic and mental health and safety at the work place including the promotion of a healthy relationship between workers and workers and between workers and employers.

## **3. Legal Framework for Occupational Health and Safety in Nigeria**

As stated, the modern employment relationship of master and servant is alien to indigenous Nigeria and the effect of it being a former british colony means its labour laws are fashioned along that of the English law. Yet, Nigerian labour jurisprudence is essentially statutory. Presently, there are about five legislations regulating labour and employment relations in Nigeria. The 1999 Constitution as the ground norm, The Labour Act, The Factories Act, The Trade Unions Act, The Trade Disputes Act and the Employees Compensation Act.

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<sup>7</sup> The ILO standards provide important tools for the three major stakeholders in employment viz: the government, the employer and the worker. <https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/occupational-safety-and-health/lang--en/index.htm> accessed on 15<sup>th</sup> March, 2022

<sup>8</sup> For example, in the United Kingdom, the earliest legislation of occupational health and safety was inspired by the poor health of children working in cotton mills.

<sup>9</sup> David Eves 'Two Steps Forward, One Step Back' A Brief History of the Origins, developments and Implementation of Health and Safety Laws in the United Kingdom, 1802-2014. See <https://www.historyofosh.org.uk/brief/index.html#chapter01> accessed on 15<sup>th</sup> March, 2022

<sup>10</sup> *ibid*

<sup>11</sup> The first intervention was in 1563, later in 1572 imposed tax on local communities, 1576 established Work houses. These laws were consolidated in by the Poor Laws of 1601. Later, the Morals and Health of Apprentices Act 1802 which is sometimes referred to as the first Factory Act was enacted with a view to improving the work place conditions, although its application was limited to cotton textile mills.

<sup>12</sup> <https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/occupational-safety-and-health/lang--en/index.html> accessed 15<sup>th</sup> March, 2022

<sup>13</sup> <http://www.wpro.who.int/topics/occupational-health/en/> accessed 2<sup>nd</sup> March, 2022

<sup>14</sup> It should be stated that there has been a lot of international instruments aimed at protecting occupational health and safety some of which has been ratified by both Nigeria and the United Kingdom. For example, the Promotional Framework For Occupational Safety and health Convention 2006 (No 187) which has not been ratified by Nigeria but ratified by the United Kingdom with effect from 29, May, 2008. The Occupational Safety and Health Convention 1981 (No 155) and its Protocol of 2002 ratified by Nigeria on 3<sup>rd</sup> May, 1994 but not ratified by the United Kingdom.

### Welfare

As stated, a safe work environment includes an environment where the mental, physical, emotional and even financial health of workers is guaranteed. Therefore, it is important that the relationship between workers and workers and employers is healthy and mutually beneficial. One way through which this relationship is enforced is through the trade unions described in section 1 of the Trade Unions Act<sup>15</sup> as a combination of employers or employees, temporary or permanent formed with purpose of regulating the terms and conditions of employment. Also, section 40 of the Constitution guarantees freedom of association which enables one to join or abstain from joining a trade union. One of the ways in which the Trade Unions Act regulates the welfare of workers is through the recognition and regulation of trade unions which is a vehicle for the promotion of a harmonious working relationship between workers and workers and between workers and employers. The Trade Unions Act provides that membership of a trade union shall be voluntary and a worker or employer is free to join any union which he or she feels align with his/her ideals. In the same vein, an employer or worker can abstain from joining a trade union, this is important as freedom to contract is the bedrock of modern employment. In *Hotel and Personal Services Senior Staff Association v. Owena Hotels Ltd*,<sup>16</sup> it was held that where the termination of an employment was because of legitimate trade union activities, the court can set aside such termination. The fact of registration of trade unions which apart from to confer legitimacy on it also allows supervision and monitoring by the government to avoid abuse and illegality.<sup>17</sup>Section 2(1) provides that an unregistered trade union is prohibited from functioning.<sup>18</sup> Also the Act makes provisions for rules of the union which shall be in the nature of the union's constitution. The union's rules book contains all the rights and obligations of members. In the English case of *Bonsor v. Musicians' Union*<sup>19</sup> where a member of a trade union was expelled contrary to the procedure laid down in the union rules, the House of Lords held that the dismissal was wrongful and found in favour of the appellant that he was entitled to both injunction and damages. In the light of the provisions of section 22 of the Trade Unions Act, there is no reason why the decision in *Bonsor* will not be replicated by the Nigerian courts in same circumstances. Also, the union's treasurer is mandated to render accounts to allow for transparency and accountability<sup>20</sup>; yet without prejudice to the duty of the treasurer to render account the registrar may at any time call for the accounts of the union.<sup>21</sup> In addition, members of a trade union are protected from liability in tort in respect of certain actions done in furtherance of a trade dispute. Such protection includes even when such act induces a person to break or threaten to break a contract of employment.<sup>22</sup>

The recognition of the concept of collective bargaining is another way through which the trade unions promote the welfare of workers. Collective bargaining defined as the process of negotiation between employers union and the workers union on the terms and conditions of employment is an important way of solving work place problems. It has been described as a fundamental right according to the International Labour Organization Constitution.<sup>23</sup> Apart from the fact that terms and conditions of employment includes issues of wages and general welfare of workers, the fact that collective bargaining provides an avenue to air opinions and negotiate on knotty areas means that the workers are more motivated. Thus, through it, grievances and differences are addressed and the workplace is safer for it.<sup>24</sup> No doubt, collective bargaining is a tool for extending labour protection.

The Labour Act being a foremost legislation charged with the regulation of labour relations in Nigeria also provides for the protection of the welfare of workers. Fundamentally, the concept of freedom and mutuality of contract which is the bedrock of modern employment relationship is reinforced in the Labour Act as it prohibit forced labour in section 34 (1)c and makes it a crime to procure forced labour.<sup>25</sup> In addition, in promoting mutuality and consensus between the worker and the employer, the Act makes it mandatory that certain important aspect of the employment are mutually agreed upon at the onset of the employment. Section 7

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<sup>15</sup> Cap T14 LFN 2004

<sup>16</sup> (2005)3NLLR (Pt.3)163

<sup>17</sup> According to E.E. Uvieghara, one of the advantages of registering a trade union is that its profits are exempted from taxation. See E.E. Uvieghara, *Labour Law in Nigeria* (Malthouse Press Ltd, 2001) p.388

<sup>18</sup> Note however the proviso

<sup>19</sup> (1956)AC 104

<sup>20</sup> Section 38 (1-8)

<sup>21</sup> Section 40(1)

<sup>22</sup> Section 44

<sup>23</sup> <https://www.ilo.org/global/topics/collective-bargaining-labour-relations/lang--en/index.htm> See also 1998 ILO Declaration on Fundamental Principles and Rights at Work.

<sup>24</sup> Note the effect of section 2(1) Trade Disputes Act is that collective bargaining is an important mechanism for the settlement of trade disputes.

<sup>25</sup> See section 73

provides that an employer shall give a worker written particulars of terms of employment irrespective of whether the contract of employment is written or oral.<sup>26</sup> The written particulars of terms of employment shall be given not later than three months after the commencement of the employment.<sup>27</sup>

In addition, supervisory responsibility is placed on the government exercised through the minister of labour to ensure that employers comply with the provisions of the Act. For example, section 68 empowers the minister to make regulations for a register of employers and an authorized labour officer can enter any premises to ensure that the provisions of the Act are complied with.<sup>28</sup> Also, the employer has a duty to keep a record of the general conditions of the employment including that of wages and this can be checked at anytime under the authority of the minister of labour.<sup>29</sup> The restriction on the employment of a young person less than 14 years to a daily one which allows the child to return home is a way of safeguarding the welfare of a young person.<sup>30</sup> The Act provides that its provisions are mandatory and thus creates an offence when an employment is entered into contrary to the laid down procedures.<sup>31</sup> This criminalization of non compliance is commendable as it will prevent exploitation and abuse especially as social and economic reality usually places prospective employees at a disadvantage and in their desperation, may accept unfavourable terms of employment thereby jeopardizing their welfare.

The Factories Act in its Part IV contains provisions safeguarding the welfare of workers. Sections 40 provide that drinking water should be provided and accessible to workers. This will help maintain proper hydration especially as some classes of workers work for long hours and some require physical or manual labour and thus need to be properly hydrated. It is also required that employer/ occupier of premises provides facilities for washing and change of clothes for clothes not worn during the work hours.<sup>32</sup> It also provides that first aid resources or an ambulance room in lieu of is provided for emergency situations.<sup>33</sup> In the same vein, the Employees Compensation Act<sup>34</sup> which is a social security legislation which regulates compensation for workers injured in the course of employment and for relatives of workers who died in the course of employment. Thus, it can be said that its ultimate mandate is the welfare of workers and/or their relatives as the circumstances determines. It also provides for the rehabilitation of injured workers.<sup>35</sup> It thus establishes an Employees' Compensation Fund administered by the Nigerian Social Insurance Trust Fund Management Fund. Section 56 establishes the Employee's Compensation Fund which shall be the pool in which contributions from employers are paid into and used to compensate injured workers or families of dead or injured workers as circumstances determine. The government provides the take off fund and employers are mandated to contribute to the fund which may be invested and from which injured workers are rehabilitated and/or paid compensation accordingly. The funds can also be used for preventive purposes by providing aids that will enhance a safe work place and prevent or reduce occupational hazards.<sup>36</sup> As stated, the Act makes provisions for the welfare of workers and dependants depending on the circumstances. Thus, when a worker suffers an injury that is of such a nature that the worker can no longer earn a living, the ECA ensures that he or she is still able to make a decent living; and where the worker dies, the welfare of the dependant is taken care of with payment of a specific percentage monthly. Section 17 provides that compensation shall be paid to the dependants of a worker when death occurs from the workplace and further provides the quantum of compensation to be paid to the dependants depending on the circumstances.<sup>37</sup>

## **Health**

The different labour legislation in Nigeria makes provisions for the protection of the health of workers. The Factories Act is generally administered by the minister and supported by director of factories and inspectors who also administer it under authority of the minister. <sup>38</sup> It should be noted that by the definition of a factory

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<sup>26</sup> Note the proviso in 7(6) (a) and (b)

<sup>27</sup> Terms of employment to be included in the written particulars include nature of the employment, duration, termination and appropriate notices to be given in respect of it, hours of work, wages, names of the parties.

<sup>28</sup> Section 78

<sup>29</sup> See section 75

<sup>30</sup> Section 59 (3)

<sup>31</sup> Section 21, See also section 64

<sup>32</sup> Sections 41 and 42

<sup>33</sup> See sections 43 and 44

<sup>34</sup> Employee's Compensation Act 2010

<sup>35</sup> CONFIRM S1

<sup>36</sup> Section 58

<sup>37</sup> See section 17(1) (a-g) it should be noted that the provisions on compensation is in tandem with the provisions of the International Labour Convention C121

<sup>38</sup> See sections 1, 63 and 67

given under the Act, a factory is much more than a production centre as basic as a car wash centre qualifies as a factory to which the provisions of the Act apply.<sup>39</sup> Section 7 provides a duty on the occupier of premises to keep the factory clean. This is to protect workers from diseases and other health hazards incidental to working in an unclean environment. There are other duties on the occupier of premises to safeguard the health of workers which includes the provision of sufficient lightning<sup>40</sup> and good sanitary conditions.<sup>41</sup> Section 8 in particular provides that a factory should not be overcrowded as this can increase the likelihood of injury or even diseases. The Labour Act also contains provisions to safeguard the physical and mental health of workers as it provides in section 13 that there should be a period of rest in every six hours and a work free day in every seven days. This is to ensure that the workers are not overworked and stressed. Also, it places a duty on the employer to provide for the medical examination of the worker at the commencement of the employment. This will even help to determine the suitability of the worker to the proposed employment and guide the employer in assigning responsibilities to the worker.<sup>42</sup> It also provides for employer's liability for injuries sustained in the course of employment.<sup>43</sup> The Labour Act also contains provisions that protect the health of children as a vulnerable class of workers. Apart from the limitations on the nature of employment that a child of a young person can be employed in<sup>44</sup>, it also provides that a child can only be employed by a family member and the work should not require the lifting of heavy equipment but of a generally light nature.<sup>45</sup> In fact, the Act specifically prohibits young persons from employment that is dangerous to their health.<sup>46</sup> It must be noted that the Act contains special provisions as regard the employment of women which on the face of it seeks to protect the health of women, however, a thorough look at some of the provisions suggest that the provisions are sexist and violates the essence of equal opportunity for the male and female gender. For example, sections 55 and 56 which restricts a woman from working overnight except as a nurse or in a management cadre; and from working in an underground mining except for training limits the opportunities for women to maximize their potentials. In the same vein, the provisions of section 54 on maternity protection for women is commendable as it seeks to protect the health of the woman and the child<sup>47</sup> but this can be said to be discriminatory of men as fathers too as the emotional and physical needs of a child should be met by both parents. A paternity protection for men will afford the child and the father to bond and this will help to further a happy and secured family life and by extension a happier workplace.

The Employee's Compensation Act as stated is more of a rehabilitative legislation than preventive.<sup>48</sup> Thus, a number of its provisions are on rehabilitative measures when the health of a worker has been compromised. Section 4 provides a timeframe within which death or injury is reported to the appropriate authority in order to facilitate quick payment of compensation in order to reduce hardship on the worker and/or his/her dependants. The scope of injuries compensable is wide as it includes both physical and mental injuries<sup>49</sup> in fact, section 8(2) provides that where the mental stress by the decision of the employer to change the working conditions in a way that stretches the worker beyond his capacity leading to mental stress, such is liable to compensation. This is commendable considering that mental health is often ignored and stigmatized in Nigeria.

### **Safety**

The drafters of the 1999 Constitution in their wisdom; and understanding the crucial role of a safe and enabling environment on the overall development of the country provides in part II of the second schedule of the Constitution that both the National and State Houses of Assembly should make law for the protection of a safe

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<sup>39</sup> Section 88 defines a factory as a premises where one or more people are employed for cleaning, making or printing articles or locomotives; or any premises where a mechanical power is used in connection with a water supply or where engineering construction is done.

<sup>40</sup> See section 10

<sup>41</sup> See section 12

<sup>42</sup> Section 8

<sup>43</sup>Section 12. Hence, common employment is not a defence. Note the decision in the old case of *Western Nigerian Trading Company v. Busari Ajao* (1965)NMLR 178, where the defendant worker of the plaintiff was blinded when a fellow worker cut a splinter of glass and it entered his eyes. He brought an action against his employer on the ground of breach of common law duty of care. The trial court gave judgment in favour of the worker and this was affirmed on appeal. The court reiterated the importance of the employer's duty which is founded both under the common law and statute.

<sup>44</sup> See generally section 59

<sup>45</sup> Section 59(1)

<sup>46</sup> Section 59(6)

<sup>47</sup> The reality of a woman being the gender to physically carry and nurture a pregnancy to birth and the need for breastfeeding especially in the light of the World Health Organisation requirement on breastfeeding makes the provisions of section 54 on breaks for breastfeeding and maternity protection good for the promotion of the health of the mother and child.

<sup>48</sup> However, this is not suggesting that it contains no mechanisms for the prevention of workplace harm and injury.

<sup>49</sup> See sections 7-10

and healthy work environment. Also, the very basis of human civilization as proffered by John Locke<sup>50</sup>, the social contract between man and the State wherein man gives up his freedom in exchange for safety and protection by the State can be argued to be a justification for promoting safety at work place.<sup>51</sup> For the regulation of the safety of the work place, the Factories Act provides that the building plan and incidental matters be submitted to the Director of Factories before a factory is constructed. This is to ensure that construction of the factory ab initio conforms to acceptable standards.<sup>52</sup> The manufacturers and sellers of equipment are also under an obligation to secure such equipment properly to ensure safety. Sections 14-39 contain robust provisions for the use and maintenance of machineries and equipment in a factory. For example, section 22 provides that self acting machines should not run within a distance of 46 centimeters from a fixed structure. Also, any worker whose work entails operating a machine capable of causing bodily injury must be given adequate training and supervision before he/she uses the machine. Generally, these provisions are to safeguard the health and safety of a worker in the work place. Apart from the duties on the employer as occupier of premises to take care of the safety of workers, the Act also places a duty on workers to take care of the safety of other workers in the course of employment. Section 69 (2) states that where a worker commits an offence under the Act in respect of duties of the worker, the worker will be liable except there is proof that the employer or occupier of premises did not prevent the offence. The Act creates an offence if an employer maltreats a worker employed under Part II of the Act. Section 46 provides that such an employer will be liable on conviction for up to a year imprisonment or a fine not more than five hundred naira.<sup>53</sup> In addition, the minister upon receipt of the report of the conviction by the court, can cancel such contract of employment and the government shall bear the cost of transporting such worker back to his place of abode though such monies spent is recoverable from the employer by the federal government. The Act also prohibits inappropriate employment of expatriate workers in Nigeria and of Nigerian workers outside the shores of the country. Thus, Part II provides procedures for recruitments generally. This is very good especially in recent times when the lure to leave the country has become higher and people are more susceptible to being smuggled under the guise of foreign employment.<sup>54</sup>

#### **4. The UK Health and Safety at Work Act 1974**

Unlike the Nigerian multi legislation situation, the UK has a single comprehensive health and safety legislation. It has as its objectives the protection of employees health, welfare and safety; the protection of members of the public who may be affected by work activities and the elimination and control of work place risks. There are however other incidental regulations like the Display Screen Equipment DSE Regulations 1992<sup>55</sup> the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 and the Workplace Health, Safety and Welfare Regulations 1992. For example, the DSE regulation provides that apart from providing a safe work place for workers, employers must also make sure that workers who are exposed to display screen equipment for more than one hour at a stretch are protected from the hazards that comes with using display screen equipment. The Act is administered by the Health and Safety Executive and Commission. The Act provides for an Employment Medical Advisory Service which gives expert opinion on health and safety issues. Section 2 of the Act provides that every employer shall have a health and safety policy. This is good as it enables employer and businesses to have a health and safety culture. This is a preventive rather than rehabilitative approach. The health and safety policy is required to be given to the workers.<sup>56</sup> The provision of a health and safety policy also facilitates a self regulatory procedure which is the best regulatory method. The Act in section 2 makes it obligatory on the employer to ensure as far as practicable the health, safety and welfare of his employees. Specifically, the employer must make sure that the work environment is safe and without risk to the health of the workers and must not compromise the welfare of workers. The employer must also provide the workers with such information, training and supervision necessary for the protection of the health and safety of the workers e.g by training workers on the safe use of specific equipments. The employer must also make arrangement for the safe movement of articles and substances which are liable to cause injury. The employer also has a duty to provide a safe access and exit procedure for the workers and must generally maintain the work place in a way that is risky to the health and safety of workers.<sup>57</sup>

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<sup>50</sup> See John Locke *The Second Treatise of Government* 1960

<sup>51</sup> Beyond idealism, the social contract theory has played a significant role in the development of the modern democracy which Nigeria also currently practices.

<sup>52</sup> Section 28

<sup>53</sup> There is no doubt that the amount of fine payable on conviction is ridiculous and incapable of having any deterrent or prohibitory or retributive effect. Yet, this is a pattern in the Labour Act and one of the reasons why the Act needs an overhaul at least in respect of the sanctions.

<sup>54</sup> It is only regrettable that the monetary sanction is inadequate

<sup>55</sup> Amended in 2002

<sup>56</sup> Section 2(3)

<sup>57</sup> See generally section 2(2)a-e

The trade union also has an important duty in protecting the welfare of workers under this Act. Section 2(4) provides that trade unions shall nominate safety representatives from among the employees to serve in committee with the employers. This is a further testimony to the importance of harmonious relationship and collective efforts in the workplace especially because of the inevitability of disputes as a result of the naturally different goals of the employer and employee at the beginning of an employment relationship. Thus, having representatives of workers on safety matters will better address the health and safety needs of the workers; after all he who wears the shoes feels the pinch.

It must also be stated that beyond the workers, the employer has a duty to protect the health and safety of third parties who can be affected by work activities.<sup>58</sup> This duty also extends to self employed persons too. It seems that the this provision is a codification of the neighborhood principle expressed in *Donoghue v. Stevenson*<sup>59</sup> as this section places a duty on an employer and non employer occupier of premises to take responsibility for the health and safety of all those who can be affected by activities at his workplace.<sup>60</sup> Manufacturers of substances and articles are also under an obligation to make sure that such substances and articles do not jeopardize the health and safety of workers.<sup>61</sup> The duties include that such substance/ article is produced in a way that does not constitute a risk to the health and safety of the users; to test and examine or facilitate the testing and examination of such article or substance as circumstances demand; providing adequate information about the use of substance and article and conducting research for the purpose of discovering likely accompanying risks. The Act further provides that workers must take reasonable care of their own safety too and the safety of their co workers.<sup>62</sup> The Act also makes provisions for the appointment of inspectors and empowers them to enforce its provisions which can be by investigation and examination of the premises and articles within the premises.<sup>63</sup> The inspector's power is such that he can exercise his discretion in dealing with substances which he believes is likely to cause immediate danger.<sup>64</sup>

## 5. Conclusion and Recommendations

Both the Nigerian and the United Kingdom have commendable initiatives towards promoting a safe work place in line with international best practices canvassed by the international labour organization. However, there is still room for improvement as the reality is that some work presents significant risk to workers and sometimes to innocent third parties. Therefore, both jurisdictions must continue to evolve in order to achieve the goals of a safer work place. Not surprising, both jurisdictions share some similarities for example, both places a duty on workers to ensure the safety of their co-workers and of themselves. Also, both contain robust provisions on the powers and duties of inspectors to enforce the laws. In addition, there is need to update the sanctions applicable in the two jurisdictions. Beyond fine and imprisonment which are the only sanctions recognized under the Nigerian legal framework, the UK has in addition to fine and imprisonment, the sanction of remedial order. However, there is need for both jurisdictions to introduce more means of sanctioning violators. Hence, sanctions like community service and equity fine can also be introduced. Apart from introducing new sanctions, there is also the limitation of inadequacy of fines as a sanction. An inadequate sanction cannot be effective. While, the financial sanction under the UK's Health and Safety Act<sup>65</sup> is higher than that under the Nigerian legislations, it is doubtful that it will also be adequate and punitive especially when it involves large multinational companies. Also, as stated, the Nigerian legal framework offers a multi legislation approach; it is suggested that it may adopt a holistic approach to regulating work place safety by merging the Labour Act and Factories Act. It is also recommended that the discriminatory sections of the Labour Act violating the concept of gender equality should be expunged. Also, the self regulatory approach contained in section 2(3) of the Health and Safety at Work Act should be adopted. This will aid employers to develop a culture of safety and compliance. The establishment of an employment medical advisory service is another advantage that the UK's Health and Safety legislation has over the Nigerian legislation. Perhaps, in order to avoid waste and unnecessary bureaucracy, a medical advisory unit should be created in the ministry of labour instead of creating a separate service like in the UK.

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<sup>58</sup> Sections 3, 4 and 5

<sup>59</sup> (1932) AC 562 at 580

<sup>60</sup> The neighborhood principle in context of the tort of negligence in *Donoghue's* case defined a neighbor as someone who is closely and directly affected by one's acts that one should be considerate of them and the fact that they would be affected in taking decisions and acting on them. See Per Lord Atkin in *Donoghue v. Stevenson (supra)*

<sup>61</sup> See generally section 6

<sup>62</sup> See section 7

<sup>63</sup> Sections 19 and 20

<sup>64</sup> Section 25

<sup>65</sup> Sections 33 and 34, the fine not more than four hundred pounds.