

When in any area, there are more inspectors than one, the State Government may by notification in the Official Gazette, declare the powers which such Inspectors shall respectively exercise and the Inspector to whom the prescribed notices are to be sent. Inspector appointed under the Act is an Inspector for all purposes of this Act. Assignment of local area to an inspector is within the discretion of the State Government.

A Chief Inspector is appointed for the whole State. He shall in addition to the powers conferred on a Chief Inspector under this Act, exercise the powers of an Inspector throughout the State. Therefore, if a Chief Inspector files a complaint, the court can legally take cognizance of an offence. Even assignment of areas under Section 8(6) does not militate in any way against the view that the Chief Inspector can file a complaint enabling the court to take cognizance. The Additional, Joint or Deputy Chief Inspectors or any other officer so appointed shall in addition to the powers of a Chief Inspector, exercise the powers of an Inspector throughout the State.

Powers of Inspectors (Section 9)

Subject to any rules made in this behalf, an Inspector may, within the local limits for which he is appointed, exercise the following powers-

- (a) enter, with such assistants, being persons in the service of the government, or any local or other public authority, or with an expert as he thinks fit, any place which is used, or which he has reason to believe is used, as a factory;
- (b) make examination of the premises, plant, machinery, article or substance;
- (c) inquire into any accident or dangerous occurrence, whether resulting in bodily injury, disability or not, and take on the spot or otherwise statements of any person which he may consider necessary for such inquiry;
- (d) require the production of any prescribed register or any other document relating to the factory;
- (e) seize, or take copies of, any register, record or other document or any portion thereof as he may consider necessary in respect of any offence under this Act, which he has reason to believe, has been committed;
- (f) direct the occupier that any premises or any part thereof, or anything lying therein, shall be left undisturbed (whether generally or in particular respects) for so long as is necessary for the purpose of any examination under clause (b);
- (g) take measurements and photographs and make such recordings as he considers necessary for the purpose of any examination under clause (b), taking with him any necessary instrument or equipment;
- (h) in case of any article or substance found in any premises, being an article or substance which appears to him as having caused or is likely to cause danger to the health or safety of the workers, direct it to be dismantled or subject it to any process or test (but not so as to damage or destroy it unless the same is, in the circumstances necessary, for carrying out the purposes of this Act), and take possession of any such article or substance or a part thereof, and detain it for so long as is necessary for such examination;
- (i) exercise such other powers as may be prescribed:

It is provided that no person shall be compelled under this section to answer any question or give any evidence tending to incriminate himself.

(ii) Certifying surgeons

According to section 10, the State Government may appoint qualified medical practitioners to be certifying surgeons for the purposes of this Act within such local limits or for such factory or class or description of factories as it may assign to them respectively. A certifying surgeon may, with the approval of the State Government,

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authorize any qualified medical practitioner to exercise any of his powers under this Act for such period as the certifying surgeon may specify and subject to such conditions as the State Government may think fit to impose, and references in this Act to a certifying surgeon shall be deemed to include references to any qualified medical practitioner when so authorized.

No person shall be appointed to be, or authorized to exercise the powers of a certifying surgeon, or having been so appointed or authorized, continue to exercise such powers, who is or becomes the occupier of a factory or is or becomes directly or indirectly interested therein or in any process or business carried on therein or in any patent or machinery connected therewith or is otherwise in the employ of the factory. It is provided that the State Government may, by order in writing and subject to such conditions as may be specified in the order, exempt any person or class of persons from the provisions of this sub-section in respect of any factory or class or description of factories.

The certifying surgeon shall carry out such duties as may be prescribed in connection with-

- (a) the examination and certification of young persons under this Act;
- (b) the examination of persons engaged in factories in such dangerous occupations or processes as may be prescribed;
- (c) the exercising of such medical supervision as may be prescribed for any factory or class or description of factories where –
 - (i) cases of illness have occurred which it is reasonable to believe are due to the nature of the manufacturing process carried on, or other conditions of work prevailing, therein;
 - (ii) by reason of any change in the manufacturing process carried on or in the substances used therein or by reason of the adoption of any new manufacturing process or of any new substance for use in a manufacturing process, there is a likelihood of injury to the health of workers employed in that manufacturing process;
 - (iii) young persons are, or are about to be, employed in any work which is likely to cause injury to their health.

Explanation: In this section “qualified medical practitioner” means a person holding a qualification granted by an authority specified in the Schedule to the Indian Medical Degrees Act, 1916, or in Schedules to the Indian Medical Council Act, 1933.

(iii) Welfare Officer

Section 49 of the Act imposes statutory obligation upon the occupier of the factory of the appointment of Welfare Officer/s wherein 500 or more workers are ordinarily employed. Duties, qualifications and conditions of service may be prescribed by the State Government.

(iv) Safety Officer

Section 40-B empowers the State Government for directing a occupier of factory to employ such number of Safety Officers as specified by it where more than 1,000 workers are employed or where manufacturing process involves risk of bodily injury, poisoning or disease or any other hazard to health of the persons employed therein. The duties, qualifications and working conditions may be prescribed by the State Government.

Duties of Occupier /Manufacturer

(i) Notice by occupier (Section 7) According to sub-section (1), a written notice shall be sent by the occupier ,at least fifteen days before he begins to occupy or use any premises as a factory, to the Chief Inspector. The notice shall contain following details:-

- (a) The name and situation of the factory;
- (b) the name and address of the occupier;
- (bb) the name and address of the owner of the premises or building (including the precincts thereof) referred to in section 93;
- (c) the address to which communications relating to the factory may be sent;
- (d) the nature of the manufacturing process-
 - (i) carried on in the factory during the last twelve months in the case of factories in existence on the date of the commencement of this Act; and
 - (ii) to be carried on in the factory during the next twelve months in the case of all factories;
- (e) the total rated horse power installed or to be installed in the factory, which shall not include the rated horse power of any separate stand-by plant;
- (f) the name of the manager of the factory for the purposes of this Act;
- (g) the number of workers likely to be employed in the factory;
- (h) the average number of workers per day employed during the last twelve months in the case of a factory in existence on the date of the commencement of this Act;
- (i) such other particulars as may be prescribed.

Sub-section (2) states that in respect of all establishments which come within the scope of the Act for the first time, the occupier shall send a written notice to the Chief Inspector containing the particulars specified in sub-section (1) within thirty days from the date of the commencement of this Act.

In pursuance to sub-section (3), the occupier shall send a written notice to the Chief Inspector containing the particulars specified in sub-section (1) at least thirty days before the date of the commencement of work, in case of a factory engaged in a manufacturing process which is ordinarily carried on for less than one hundred and eighty working days in the year resumes working,

Notice of appointment of new manager: Whenever a new manager is appointed, the occupier shall send to the Inspector a written notice and to the Chief Inspector a copy thereof within seven days from the date on which such person takes over charge.

Occupier, deemed manager: During any period for which no person has been designated as manager of a factory or during which the person designated does not manage the factory, any person found acting as a manager, or if no such person is found, the occupier himself, shall be deemed to be the manager of the factory for the purposes of this Act.

(ii) General duties of the occupier (Section 7A)

Sub-section (1) mandates that every occupier shall ensure, so far as is reasonably practicable, the health, safety and welfare of all workers while they are at work in the factory. Apart from general provisions of sub-section 1, sub-section (2) provides the matters covered under this duty of the occupier:

- (a) the provision and maintenance of plant and systems of work in the factory that are safe and without risks to health;
- (b) the arrangements in the factory for ensuring safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances;
- (c) the provision of such information, instruction, training and supervision as are necessary to ensure the health and safety of all workers at work;

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- (d) the maintenance of all places of work in the factory in a condition that is safe and without risks to health and the provision and maintenance of such means of access to, and egress from, such places as are safe and without such risks;
- (e) the provision, maintenance or monitoring of such working environment in the factory for the workers that is safe, without risks to health and adequate as regards facilities and arrangements for their welfare at work.

Except in such cases as may be prescribed, every occupier shall prepare, and, as often as may be appropriate, revise, a written statement of his general policy with respect to the health and safety of the workers at work and the organization and arrangements for the time being in force for carrying out that policy, and to bring the statement and any revision thereof to the notice of all the workers in such manner as may be prescribed.

(iii) General duties of manufacturers, etc., as regards articles and substances for use in factories (Section 7B)

Sub-section (1) casts an obligation on every person who designs, manufactures, imports or supplies any article for use in any factory that he shall-(a) ensure, so far as is reasonably practicable, that the article is so designed and constructed as to be safe and without risks to the health of the workers when properly used;(b) carry out or arrange for the carrying out of such tests and examination as may be considered necessary for the effective implementation of the provisions of clause (a);(c) take such steps as may be necessary to ensure that adequate information will be available

- (i) in connection with the use of the article in any factory;
- (ii) about the use for which it is designed and tested; and
- (iii) about any conditions necessary to ensure that the, when put to such use, will be safe, and without risks to the health of the workers:

It is provided that where an article is designed or manufactured outside India, it shall be obligatory on the part of the importer to see-(a) that the article conforms to the same standards if such article is manufactured in India, or(b) if the standards adopted in the country outside for the manufacture of such article is above the standards adopted in India, that the article conforms to such standards.

Every person, who undertakes to design or manufacture any article for use in any factory may carry out or arrange for the carrying out of necessary research with a view to the discovery and, so far as is reasonably practicable, the elimination or minimization of any risks to the health or safety of the workers to which the design or article may give rise.

The above provisions shall be construed to require a person to repeat the testing, examination or research which has been carried out otherwise than by him or at his instance in so far as it is reasonable for him to rely on the results thereof for the purposes of the said sub-sections.

Any duty imposed on any person by above provision shall extend only to things done in the course of business carried on by him and to matters within his control.

Where a person designs, manufactures, imports or supplies an article on the basis of a written undertaking by the user of such article to take the steps specified in such undertaking to ensure, so far as is reasonably practicable, that the article will be safe and without risks to the health of the workers when properly used, the undertaking shall have the effect of relieving the person designing, manufacturing, importing or supplying the article from the duty imposed by clause (a) of sub-section (1) to such extent as is reasonable having regard to the terms of the undertaking.

For the purposes of this section, an article is not to be regarded as properly used if it is used without regard to any information or advice relating to its use which has been made available by the person who has designed, manufactured, imported or supplied the article.

Explanation : For the purposes of this section, “article” shall include plant and machinery.

Measures to be taken by factories for health, safety and welfare of workers

These measures are provided under Chapters III, IV and V of the Act which are as follows:

A. Health

Chapter III of the Act deals with the following aspects:

(i) Cleanliness: Section 11 of the Act makes provisions for ensuring cleanliness in the factory. It states that every factory shall be kept clean and free from effluvia arising from any drain, privy or other nuisance, and in particular-

- accumulation of dirt and refuse shall be removed daily by sweeping or by any other effective method from the floors and benches of workrooms and from staircases and passages, and disposed of in a suitable manner;
- the floor of every workroom shall be cleaned at least once in every week by washing, using disinfectant, where necessary, or by some other effective method;
- Where a floor is liable to become wet in the course of any manufacturing process to such extent as is capable of being drained, effective means of drainage shall be provided and maintained;
- all inside walls and partitions, all ceilings or tops of rooms and all walls, sides and tops of passages and staircases shall-
 - (i) where they are painted otherwise than with washable water-paint or varnished, be repainted or revarnished at least once in every period of five years;
 - (ia) Where they are painted with washable water-paint, be repainted with at least one coat of such paint at least once in every period of three years and washed at least once in every period of six months;
 - (ii) where they are painted or varnished or where they have smooth impervious surfaces, be cleaned at least once in every period of fourteen months by such method as may be prescribed;
 - (iii) in any other case, be kept whitewashed or colour washed, and the whitewashing or colour washing shall be carried out at least once in every period of fourteen months;
- all doors and window frames and other wooden or metallic framework and shutters shall be kept painted or varnished and the painting or varnishing shall be carried out at least once in every period of five years;
- the dates on which the processes required by clause (d) are carried out shall be entered in the prescribed register.

Power of State Government to exempt: If the State Government finds that a particular factory cannot comply with the above requirements due to its nature of manufacturing process, it may exempt the factory from the compliance of these provisions and suggest some alternative method for keeping the factory clean.

(ii) Disposal of wastes and effluents (Section 12)

Every occupier of a factory shall make effective arrangements for the treatment of wastes and effluents due to the manufacturing process carried on in the factory so as to render them innocuous and for their disposal. Such arrangements should be in accordance with the rules, if any, laid down by the State Government. If the State Government has not laid down any rules in this respect, arrangements made by the occupier should be approved by the prescribed authority, if required by the State Government.

(iii) Ventilation and temperature (Section 13)

Section 13 provides that every factory should make suitable and effective provisions for securing and maintaining (1) adequate ventilation by the circulation of fresh air; and (2) such a temperature as will secure to the workers reasonable conditions of comfort and prevent injury to health. What is reasonable temperature depends upon the circumstances of each case. The State Government has been empowered to lay down the standard of adequate ventilation and reasonable temperature for any factory or class or description of factories or parts thereof. It may direct that proper measuring instruments at such places and in such position as may be specified shall be provided and prescribed records shall be maintained.

Measures to reduce excessively high temperature: To prevent excessive heating of any workroom following measures shall be adopted:

- (i) walls and roofs shall be of such material and so designed that such temperature shall not be exceeded but kept as low as practicable;
- (ii) where the nature of the work carried on in the factory involves, or is likely to involve, the production of excessively high temperatures, such adequate measures as are practicable shall be taken to protect the workers there from, by separating the process which produces such temperatures from the workroom, by insulating the hot parts or by other effective means.

The Chief Inspector is empowered to direct any factory to adopt such methods which will reduce the excessively high temperature. In this regard, he can specify the measures which in his opinion should be adopted.

(iv) Dust and fume (Section 14)

There are certain manufacturing processes like chemical, textile or jute, etc., which generates lot of dust, fume or other impurities. It is injurious to the health of workers employed in such manufacturing process. Therefore, section 14 provides for the following measures to be adopted in this respect:

- Effective measures should be taken to prevent the inhalation and accumulation of dust, fumes etc., in the work-rooms.
- Wherever necessary, an exhaust appliances should be fitted, as far as possible, to the point of origin of dust fumes or other impurities. Such point shall also be enclosed as far as possible.
- In stationery internal combustion engine, exhaust should be connected into the open air.
- In cases of other internal combustion engine, effective measures should be taken to prevent the accumulation of fumes therefrom.

It may be pointed that the evidence of actual injury to health is not necessary. If the dust or fume by reason of manufacturing process is given off in such quantity that it is injurious or offensive to the health of the workers employed therein, the offence is committed under this Section. The offence committed is a continuing offence. If it is an offence on a particular date it does not cease to be an offence on the next day and so on until the deficiency is rectified.

(v) Artificial humidification (Section 15)

Humidity means the presence of moisture in the air. In certain industries like cotton, textile, cigarette, etc., higher degree of humidity is required for carrying out the manufacturing process. For this purpose, humidity of the air is artificially increased. This increase or decrease in humidity adversely affects the health of workers. In respect of all factories in which the humidity of the air is artificially increased, the State Government may make rules,-

- (a) prescribing standards of humidification;
- (b) regulating the methods used for artificially increasing the humidity of the air;

- (c) directing prescribed tests for determining the humidity of the air to be correctly carried out and recorded;
- (d) prescribing methods to be adopted for securing adequate ventilation and cooling of the air in the workrooms.

In any factory in which the humidity of the air is artificially increased, the water used for the purpose shall be taken from a public supply, or other source of drinking water, or shall be effectively purified before it is so used. If it appears to an Inspector that the water used in a factory for increasing humidity which is required to be effectively purified is not effectively purified, he may serve on the manager of the factory an order in writing, specifying the measures which in his opinion would be adopted, and requiring them to be carried out before specified date.

(vi) Overcrowding (Section 16)

Overcrowding in the work-room does not only affect the workers in their efficient discharge of duties but their health also. Section 16 has been enacted with a view to provide sufficient air space to the workers. The section prohibits the overcrowding in the work-rooms to the extent it is injurious to the health of the workers. Apart from this general prohibition, the section lays down minimum working space for each worker as 14.2 cubic metres of space per worker in every workroom. For calculating the work area, the space more than 4.2 metres above the level of the floor, will not be taken into consideration.

Posting of notice: If the Chief Inspector by order in writing so requires, there shall be posted in each workroom of a factory a notice specifying the maximum number of workers who may, in compliance with the Provisions of this section, be employed in the room. According to Section 108, notice should be in English and in a language understood by the majority of the workers. It should be displayed at some conspicuous and convenient place at or near, the entrance. It should be maintained in clean and legible conditions.

Exemptions : The chief Inspector may by order in writing, exempt any work-room from the provisions of this section, subject to such conditions as he may think fit to impose, if he is satisfied that non-compliance of such provision will have no adverse effect on the health of the workers employed in such work-room.

(vii) Lightening(Section 17)

Section 17 made it mandatory to provide and maintain sufficient and suitable lighting, natural or artificial, or both in every part of a factory where workers are working or passing. In every factory all glazed windows and skylights used for the lighting of the workroom shall be kept clean on both the inner and outer surfaces and so far as compliance with the provisions of any rules made under section 13 will allow, free from obstruction. In every factory effective provision shall, so far as is practicable, be made for the prevention of-(a) glare, either directly from a source of light or by reflection from a smooth or polished surface;(b) the formation of shadows to such an extent as to cause eye-strain or the risk of accident to any worker. The State Government may prescribe standards of sufficient and suitable lighting for factories or for any class or description of factories or for any manufacturing process.

(viii) Drinking water (Section 18)

Section 18 deals with the provisions relating to arrangements for drinking water in factories. It provides that in every factory effective arrangements shall be made to provide and maintain at suitable points conveniently situated for all workers employed therein a sufficient supply of wholesome drinking water. All such points shall be legibly marked “drinking water” in a language understood by a majority of the workers employed in the factory, and no such point shall be situated within six meters of any washing place, urinal, latrine, spittoon, open drain carrying sullage or effluent or any other source of contamination] unless a shorter distance is approved in writing by the Chief Inspector. In every factory wherein more than two hundred and fifty workers are ordinarily employed, provisions shall be made for cooling drinking water during hot weather by effective means and for distribution thereof. In respect of all factories or any class or description of factories the State Government may

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make rules for securing compliance with the provisions of this section and for the examination by prescribed authorities of the supply and distribution of drinking water in factories.

(ix) Latrines and urinals (Section19)

The section made it mandatory that in every factory-(a) sufficient latrine and urinal accommodation of prescribed types shall be provided conveniently situated and accessible to workers at all times while they are at the factory;(b) separate enclosed accommodation shall be provided for male and female workers;(c) such accommodation shall be adequately lighted and ventilated, and no latrine or urinal shall, unless specially exempted in writing by the Chief Inspector, communicate with any workroom except through an intervening open space or ventilated passage;(d) all such accommodation shall be maintained in a clean and sanitary condition at all times;(e) sweepers shall be employed whose primary duty it would be to keep clean latrines, urinals and washing places.

For the factories employing more than two hundred and fifty workers ordinarily, there shall be provided all latrine and urinal accommodation of prescribed sanitary types; the floors and internal walls, up to a height of ninety centimeters, of the latrines and urinals and the sanitary blocks shall be laid in glazed tiles or otherwise finished to provide a smooth polished impervious surface; the floors, portions of the walls and blocks so laid or finished and the sanitary pans of latrines and urinals shall be thoroughly washed and cleaned at least once in every seven days with suitable detergents or disinfectants or with both.

The State Government may prescribe the number of latrines and urinals to be provided in any factory in proportion to the numbers of male and female workers ordinarily employed therein, and provide for such further matters in respect of sanitation in factories, including the obligation of workers in this regard, as it considers necessary in the interest of the health of the workers employed therein.

(x) Spittoons (Section20)

According to the section, there shall be provided, in every factory, a sufficient number of spittoons in convenient places and they shall be maintained in a clean and hygienic condition.

The State Government may make rules prescribing the type and the number of spittoons to be provided and their location in any factory and provide for such further matters relating to their maintenance in a clean and hygienic condition.

A notice containing the provision shall be prominently displayed at suitable places in the premises that no person shall spit within the premises of a factory except in the Spittoons provided for the purpose. The notice shall also stipulates the penalty for its violation which shall exceeding five rupees.

B. SAFETY

Chapter IV of the Act contains provisions relating to safety. These are discussed below:

(i) Fencing of machinery (Section21)

According to the section, fencing of machinery in use or in motion is obligatory. This Section requires that following types of machinery or their parts, while in use or in motion, shall be securely fenced by safeguards of substantial construction and shall be constantly maintained and kept in position, while the parts of machinery they are fencing are in motion or in use. Such types of machinery or their parts are:

- (i) every moving part of a prime mover and every flywheel connected to a prime mover, whether the prime mover or flywheel is in the engine house or not;
- (ii) the headrace and tailrace of every water-wheel and water turbine;
- (iii) any part of a stock-bar which projects beyond the head stock of a lathe; and

- (iv) unless they are in such position or of such construction as to be safe to every person employed in the factory as they would be if they were securely fenced, the following, namely,-(a) every part of an electric generator, a motor or rotary convector;(b) every part of transmission machinery; and(c) every dangerous part of any other machinery;

It is provided that for the purpose of determining whether any part of machinery is in such position or is of such construction as to be safe as aforesaid, account shall not be taken of any occasion when-

- (i) it is necessary to make an examination of any part of the machinery aforesaid while it is in motion or, as a result of such examination, to carry out lubrication or other adjusting operation while the machinery is in motion, being an examination or operation which it is necessary to be carried out while that part of the machinery is in motion, or
- (ii) in the case of any part of a transmission machinery used in such process as may be prescribed (being a process of a continuous nature the carrying on of which shall be, or is likely to be, substantially interfered with by the stoppage of that part of the machinery), it is necessary to make an examination of such part of the machinery while it is in motion or, as a result of such examination, to carry out any mounting or shipping of belts or lubrication or other adjusting operation while the machinery is in motion, and such examination or operation is made or carried out in accordance with the provisions section 22.

The State Government may by rules prescribe such further precautions as it may consider necessary in respect of any particular machinery or part thereof, or exempt, subject to such condition as may be prescribed, for securing the safety of the workers, any particular machinery or part thereof from the provisions of this section.

(ii) Work on or near machinery in motion (Section 22)

Section 22 lays down the procedure for carrying out examination of any part while it is in motion or as a result of such examination to carry out the operations mentioned under Section 21. Such examination or operation shall be carried out only by specially trained adult male worker wearing tight fitting clothing (which shall be supplied by the occupier) whose name has been recorded in the register prescribed in this behalf and who has been furnished with a certificate of appointment and while he is so engaged. No woman or young person shall be allowed to clean, lubricate or adjust any part of a prime-mover or any transmission machinery while the prime-mover or transmission machinery is in motion or to clean, lubricate or adjust any part of any machine if the cleaning, lubrication and adjustment thereof would expose the woman or the young person to risk of injury from any moving part either of that machine or of any adjacent machinery.

(iii) Employment of young persons on dangerous machines (Section 23)

According to the section, any young person shall not be required or allowed to work at any machine to which this section applies, unless he has been fully instructed as to the dangers arising in connection with the machine and the precautions to be observed and-(a) has received sufficient training in work at the machine, or (b) is under adequate supervision by a person who has a thorough knowledge and experience of the machine.

The above provision shall apply to such machines as may be prescribed by the State Government, being machines which in its opinion are of such a dangerous character that young person's ought not to work at them unless the foregoing requirements are complied with.

(iv) Striking gear and devices for cutting off power (Section 24)

The section provides that in every factory suitable striking gears or other efficient mechanical appliances shall be provided and maintained and used to move driving belts to and from fast and loose pulleys which form part of the transmission machinery and such gear or appliances shall be so constructed, placed and maintained as to prevent the belt from creeping back on the fast pulley. Further, driving belts when not in use shall not be allowed to rest or ride upon shafting in motion. Suitable devices for cutting off power in emergencies from running

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machinery shall be provided and maintained in every work-room in every factory. It is also provided that when a device which can inadvertently shift from 'off' to 'on position in a factory', cutoff power arrangements shall be provided for locking the devices on safe position to prevent accidental start of the transmission machinery or other machines to which the device is fitted.

(v) Self-acting machines (Section 25)

The section provides further safeguards to the workers injured by self-acting machines. It provides that no traversing part of a self-acting machine in any factory and no material carried thereon shall, if the space over which it runs is a space over which any person is liable to pass, whether in the course of his employment or otherwise, be allowed to run on its outward or inward traverse within a distance of forty-five centimeters from any fixed structure which is not part of the machine. It is provided that the Chief Inspector may permit the continued use of a machine installed before the commencement of this Act which does not comply with the requirements of this section on such conditions for ensuring safety as he may think fit to impose.

(vi) Casing of new machinery (Section 26)

The section provides for mandatory casing of new machinery to safeguard the lives of workers, It makes it mandatory to provide in all machinery driven by power and installed in any factory after the commencement of this Act,-(a) every set screw, bolt or key on any revolving shaft, spindle, wheel or pinion shall be so sunk, encased or otherwise effectively guarded as to prevent danger;(b) all spur, worm and other toothed or friction gearing which does not require frequent adjustment while in motion shall be completely encased, unless it is so situated as to be as safe as it would be if it were completely encased.

The State Government may make rules specifying further safeguards to be provided in respect of any other dangerous part of any particular machine or class or description of machines.

A statutory punishment has been prescribed for everyone who sells or lets on hire or, as agent of a seller or hirer, causes or procures to be sold or let on hire, for use in a factory any machinery driven by power which does not comply with the provisions this section or any rules made under thereunder. It has prescribed imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with both.

(vii) Prohibition of employment of women and children near cotton-openers (Section 27)

No woman or child shall be employed in any part of a factory for pressing cotton in which a cotton opener is at work. It is provided that if the feed-end of a cotton-opener is in a room separated from the delivery end by a partition extending to the roof or to such height as the Inspector may in any particular case specify in writing, women and children may be employed on the side of the partition where the feed-end is situated.

(viii) Hoists and lifts (Section 28)

Section 28 (1) requires that in every factory every hoist and lift shall be-(i) of good mechanical construction, sound material and adequate strength;(ii) properly maintained, and shall be thoroughly examined by a competent person at least once in every period of six months and a register shall be kept containing the prescribed particulars of every such examination;

Every hoist way and lift way shall be sufficiently protected by an enclosure fitted with gates, and the hoist or lift and every such enclosure shall be so constructed as to prevent any person or thing from being trapped between any part of the hoist or lift and any fixed structure or moving part; the maximum safe working load shall be plainly marked on every hoist or lift, and no load greater than such load shall be carried thereon; the cage of every hoist or lift used for carrying persons shall be fitted with a gate on each side from which access is afforded to a landing;

Every gate referred to shall be fitted with interlocking or other efficient device to secure that the gate cannot be opened except when the cage is at the landing and that the cage cannot be moved unless the gate is closed.

The following additional requirements shall apply to hoists and lifts used for carrying persons and installed or reconstructed in a factory after the commencement of this Act, namely:

- (a) where the cage is supported by rope or chain, there shall be at least two ropes or chains separately connected with the cage and balance weight, and each rope or chain with its attachments shall be capable of carrying the whole weight of the cage together with its maximum load;
- (b) efficient devices shall be provided and maintained capable of supporting the cage together with its maximum load in the event of breakage of the ropes, chains or attachments;
- (c) an efficient automatic device shall be provided and maintained to prevent the cage from over-running.

The Chief Inspector may permit the continued use of a hoist or lift installed in a factory before the commencement of this Act which does not fully comply with above provisions upon such conditions for ensuring safety as he may think fit to impose.

If State Government it is of opinion that it would be unreasonable to enforce any of above requirement in respect of any class or description of hoist or lift, it may, by order, direct such requirement shall not apply to such class or description of hoist or lift.

Explanation: For the purposes of this section, no lifting machine or appliance shall be deemed to be a hoist or lift unless it has a platform or cage, the direction or movement of which is restricted by a guide or guides.

(ix) Lifting machines, chains, ropes and lifting tackles (Section 29)

The section provides for that the following provisions shall be complied in any factory in respect of every lifting machine (other than a hoist and lift) and every chain, rope and lifting tackle for the purpose of raising or lowering persons, goods or materials:

- (a) all parts, including the working gear, whether fixed or movable, of every lifting machine and every chain, rope or lifting tackle shall be-(i) of good construction, sound material and adequate strength and free from defects;(ii) properly maintained; and(iii) thoroughly examined by a competent person at least once in every period of twelve months, or at such intervals as the Chief Inspector may specify in writing; and a register shall be kept containing the prescribed particulars of every such examination;
- (b) no lifting machine and no chain, rope or lifting tackle shall, except for the purpose of test, be loaded beyond the safe working load which shall be plainly marked thereon together with an identification mark and duly entered in the prescribed register; and where this is not practicable, a table showing the safe working loads of every kind and size of lifting machine or, chain, rope or lifting tackle in use shall be displayed in prominent positions on the premises;
- (c) while any person is employed or working on or near the wheel track of a traveling crane in any place where he would be liable to be struck by the crane, effective measures shall be taken to ensure that the crane does not approach within six meters of that place.

The State Government may make rules in respect of any lifting machine or any chain, rope or lifting tackle used in factories-(a) prescribing further requirements to be complied with in addition to those set out in this section;(b) providing for exemption from compliance with all or any of the requirements of this section, where in its opinion, such compliance is unnecessary or impracticable.

For the purposes of this section a lifting machine or a chain, rope or lifting tackle shall be deemed to have been thoroughly examined if a visual examination supplemented, if necessary, by other means and by the dismantling of parts of the gear, has been carried out as carefully as the conditions permit in order to arrive at a reliable conclusion as to the safety of the parts examined.

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Explanation: In this sections,

- (a) "lifting machine" means a crane, crab, winch, teagle, pulley block, gin wheel, transporter or runway;
- (b) "lifting tackle" means any chain, sling, rope sling, hook, shackle, swivel, coupling, socket, clamp, tray or similar appliance, whether fixed or movable, used in connection with the raising or lowering of persons, or loads by use of lifting machines.

(x) Revolving machinery (Section 30)

This section prescribes for permanently affixing or placing a notice in every factory in which process of grinding is carried on. Such notice shall indicate maximum safe working peripheral speed of every grindstone or abrasive wheel, the speed of the shaft or spindle upon such shaft or spindle necessary to secure such safe working peripheral-speed. Speed indicated in the notice shall not be exceeded and effective measures in this regard shall be taken to ensure that the safe working peripheral speed of every revolving vessel, cage, basket, fly-wheel, pulley, disc or similar appliance driven by power is not exceeded.

(xi) Pressure plant (Section 31)

The section provides for taking effective measures to ensure that safe working pressure of any plant and machinery, used in manufacturing process operated at pressure above atmospheric pressure, does not exceed the limits. The State Government may make rules to regulate such pressures or working and may also exempt any part of any plant or machinery from the compliance of this section.

(xii) Floors, stairs and means of access (Section 32)

The section provides that in every factory (a) all floors, steps, stairs passages and gangways shall be of sound construction and properly maintained and shall be kept free from obstruction and substances likely to cause persons to slip and where it is necessary to ensure safety, steps, stairs passages and gangways shall be provided with substantial handrails, (b) there shall, be so far as is reasonably practicable, be provided, and maintained safe means of access of every place at which any person is at any time required to work; (c) when any person has to work at a height from where he is likely to fall, provision shall be made, so far as is reasonably, practicable, by fencing or otherwise, to ensure the safety of the person so working.

(xiii) Pits, sumps, opening in floors, etc.(Section 33)

The section requires that in every factory every fixed vessel, sump, tank, pit or opening in the ground or in a floor which, by reason of its depth, situation, construction, or contents is or may be source of danger shall be either securely covered or securely fence. The State Government may exempt any factory from the compliance of the provisions of this Section subject to such conditions as it may prescribe.

(xiv) Excessive weights (Section 34)

This section provides that no person shall be employed in any factory to lift, carry or make any load so heavy as to be likely to cause him injury. The State Government may make rules prescribing the maximum weights which may be lifted, carried or moved by adult men, adult women, adolescents and children employed in factories or in any class or description of factories or in carrying on any specified process.

(xv) Protection of eyes (Section 35)

The section requires the State Government to make rules and require for providing the effective screens or suitable goggles for the protection of persons employed on or in immediate vicinity of any such manufacturing process carried on in any factory which involves (i) risk of injury to the eyes from particles or fragments thrown off in the course of the process or; (ii) risk to the eyes by reason of exposure to excessive light.

(xvi) Precautions against dangerous fumes, gases, etc.(Section 36)

In order to prevent the factory workers against dangerous fumes, special measures have been taken under the Factories Act. The Act prohibits entry in any chamber, tank, vat, pit, pipe, flue, or other confined space in any factory in which any gas, fume, vapour or dust is likely to be present, to such an extent as to involve risk to

persons being overcome thereby, except in cases where there is a provision of a manhole of adequate size or other effective means of egress. [Section 36 (1)]. No person shall be required or allowed to enter any confined space such as is referred to in sub-section (1) until all practicable measures have been taken to actually remove the gas, fumes or dust, which may be present so as to bring its level within the permissible limits and to prevent any ingress of such gas, fume, vapour or dust and unless (a) a certificate in writing has been given by a competent person, based on a test carried out by himself that the space is reasonably free from dangerous gas, fume, vapour or dust; or (b) such person is wearing suitable breathing apparatus and a belt securely attached to a rope, the free end of which is held by a person outside the confined space. [Section 36 (2)].

(xvii) Precautions regarding the use of portable electric light (Section 36-A)

The Act prohibits use of portable electric light or any other electric appliance of voltage exceeding 24 volts inside any chamber, tank, vat, pit, pipe, flue or other confined space in any factory unless adequate safety devices are provided; **and** if any inflammable gas, fume or dust is likely to be present in such chamber, tank, vat, pit, pipe, flue or other confined space, no lamp or light other than that of flame proof construction shall be permitted to be used therein unless adequate safety devices are provided.

(xviii) Explosive or inflammable dust, gas, etc. (Section 37)

The section provides for mandatory requirement to take all practicable measure in every factory where any manufacturing process produces dust, gas, fume or vapour of such character and to such extent to be likely to explode on ignition, to prevent any such explosion. These practical measures include (a) effective enclosure of the plant or machinery used in the process (b) removal or prevention of the accumulation of such dust, gas fume or vapour, and (c) exclusion or effective enclosure of all possible sources of ignition.

(xix) Precautions in case of fire (Section 38)

In every factory all practicable measures shall be taken to outbreak of fire and its spread, both internally and externally and to provide and maintain (a) safe means of escape for all persons in the event of fire, and (b) the necessary equipment and facilities for extinguishing fire. Effective measures shall be taken to ensure that in every factory all the workers are familiar with the means of escape in case of fire and have been adequately trained in the outline to be followed in such case.

The State Government may make rules, in respect of any factory or class or description of factories, requiring the measures to be adopted to give effect to the provisions.

The Chief Inspector may, having regard to the nature of the work carried on in any factory, the construction of such factory, special risk to life or safety, or any other circumstances, by order in writing, require that such additional measures as he may consider reasonable and necessary, be provided in the factory before such date as is specified in the order.

(xx) Power to require specifications of defective parts or tests of stability (Section 39)

If it appears to the Inspector that any building or part of a building or any part of the ways, machinery or plant in a factory is in such a condition that it may be dangerous to human life or safety, he may serve on the occupier or manager or both of the factory an order in writing requiring him before a specified date-(a) to furnish such drawings, specifications and other particulars as may be necessary to determine whether such buildings, ways, machinery or plant can be used with safety, or (b) to carry out such tests in such manner as may be specified in the order, and to inform the Inspector of the results thereof.

(xxi) Safety of buildings and machinery (Section 40.)

If it appears to the Inspector that any building or part of a building or any part of the ways, machinery or plant in a factory is in such a condition that it is dangerous to human life or safety, he may serve on the occupier or manager or both of the factory an order in writing specifying the measures, which in his opinion should be adopted and requiring them to be carried out before a specified date.

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If it appears to the Inspector that the use of any building or part of a building or any part of the ways, machinery or plant in a factory involves imminent danger to human life or safety he may serve on the occupier or manager or both of the factory an order in writing prohibiting its use until it has been properly repaired or altered.

(xxii) Maintenance of buildings (Section 40-A)

If it appears to the Inspector that any building or part of a building in a factory is in such a state of disrepair as is likely to lead to conditions detrimental to the health and welfare of the workers, he may serve on the occupier or manager or both of the factory an order in writing specifying the measures which in his opinion should be taken and requiring the same to be carried out before such date as is specified in the order.

(xxiii) Safety Officers (Section 40-B)

If State Government requires, by notification in Official Gazette, the occupier shall employ such number of Safety Officers as may be specified in that notification in every factory-(i) wherein one thousand or more workers are ordinarily employed, or(ii) wherein, in the opinion of the State Government, any manufacturing process or operation is carried on, which process or operation involves any risk of bodily injury, poisoning or disease or any other hazard to health, to the person employed in the factory.

The duties, qualifications and conditions of service of Safety Officers shall be such as may be prescribed by the State Government.

(xxiv) Power to make rules to supplement this Chapter (Section 41)

This section vests in the State Government authority to make rules requiring the provision in any factory or in any class or description of factories of such further devices and measures for securing safety of persons employed therein as it may deem necessary.

Provisions relating to Hazardous Processes

The Factories (Amendment) Act, 1987, has inserted this new chapter in the Act after Chapter IV. The new Chapter lays down provisions relating to hazardous process in sections 41A to 41H.

Constitution of Site Appraisal Committees (Section 41A)

The State Government may, for purposes of advising it to consider applications for grant of permission for the initial location of a factory involving a hazardous process or for the expansion of any such factory, appoint a Site Appraisal Committee. The Committee shall examine an application for the establishment of a factory involving hazardous process and make its recommendation to the State Government within a period of ninety days of the receipt of such application in the prescribed form.

Where any process relates to a factory owned or controlled by the Central Government or to a corporation or a company owned or controlled by the Central Government, the State Government shall co-opt in the Site Appraisal Committee a representative nominated by the Central Government as a member of that Committee. The Committee shall have power to call for any information from the person making an application for the establishment or expansion of a factory involving a hazardous process.

Where the State Government has granted approval to an application for the establishment or expansion of a factory involving a hazardous process, it shall not be necessary for an applicant to obtain a further approval from the Central Board or the State Board established under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981.

Compulsory disclosure of information by the occupier (Section 41B)

The occupier of every factory involving a hazardous process shall disclose in the manner prescribed, all information regarding dangers including health hazards and the measures to overcome such hazards arising

from the exposure to or handling of the materials or substances in the manufacture, transportation, storage and other processes, to the workers employed in the factory, the Chief Inspector, the local authority, within whose jurisdiction the factory is situate, and the general public in the vicinity. The information furnished shall include accurate information as to the quantity, specifications and other characteristics of wastes and the manner of their disposal.

The occupier shall, at the time of registering the factory involving a hazardous process lay down a detailed policy with respect to the health and safety of the workers employed therein and intimate such policy to the Chief Inspector and the local authority and, thereafter, at such intervals as may be prescribed, inform the Chief Inspector and the local authority of any change made in the said policy.

Every occupier shall, with the approval of the Chief Inspector, draw up an on-site emergency plan and detailed disaster control measures for his factory and make known to the workers employed therein and to the general public living in the vicinity of the factory, the safety measures required to be taken in the event of an accident taking place.

Every occupier of a factory shall inform the Chief Inspector of the nature and details of the process in such form and in such manner as may be prescribed if (a) such factory is engaged in a hazardous process on the commencement of the Factories (Amendment) Act, 1987 within a period of thirty days of such commencement; and (b) if such factory purposes to engage in a hazardous process at any time after such commencement, within a period of thirty days before the commencement of such process. Where any occupier of a factory contravenes this provision, the license issued under section 6 to such factory shall, notwithstanding any penalty to which the occupier of the factory shall be subjected to under the provisions of this Act, be liable for cancellation.

The occupier of a factory involving a hazardous process shall, with the previous approval of the Chief Inspector, lay down measures for the handling usage, transportation and storage of hazardous substances inside the factory premises and the disposal of such substances outside the factory premises and publicise them in the manner prescribed among the workers and the general public living in the vicinity.

Specific responsibility of the occupier in relation to hazardous processes (Section 41C)

Every occupier of a factory involving any hazardous process shall maintain accurate and up-to-date health records or, as the case may be, medical records, of the workers in the factory who are exposed to any chemical, toxic or any other harmful substances which are manufactured, stored, handled or transported and such records shall be accessible to the workers subject to such conditions as may be prescribed.

Such occupier shall appoint persons who possess qualifications and experience in handling hazardous substances and are competent to supervise such handling within the factory and to provide at the working place all the necessary facilities for protecting the workers in the manner prescribed. It is provided that where any question arises as to the qualifications and experience of a person so appointed, the decision of the Chief Inspector shall be final.

Such occupier shall provide for medical examination of every worker-(i) before such worker is assigned to a job involving the handling of, or working with, a hazardous substance, and (ii) while continuing in such job, and after he has ceased to work in such job, at intervals not exceeding twelve months in such manner as may be prescribed,

Power of Central Government to appoint Inquiry Committee (Section 41D)

The Central Government may, in the event of the occurrence of an extraordinary situation involving a factory engaged in a hazardous process, appoint an Inquiry Committee to inquire into the standards of health and safety observed in the factory with a view to finding out the causes of any failure or neglect in the adoption of all measures or standards prescribed for the health and safety of the workers employed in the factory or the general public affected, or likely to be affected, due to such failure or neglect and for the prevention and

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recurrence of such extraordinary situations in future in such factory or elsewhere.

The Committee so appointed shall consist of a Chairman and two other members and the terms of reference of the Committee and the tenure of office of its members shall be such as may be determined by the Central Government according to the requirements of the situation.

The recommendations of the Committee shall be advisory in nature.

Emergency standards (Section 41E)

Where the Central Government is satisfied that no standards of safety have been prescribed in respect of a hazardous process or class of hazardous processes, or where the standards so prescribed are inadequate, it may direct the Director-General of Factory Advice Service and Labour Institutes or any Institution specialised in matters relating to standards of safety in hazardous processes, to lay down emergency standards for enforcement of suitable standards in respect of such hazardous processes.

The emergency standards laid down shall, until they are incorporated in the rules made under this Act, be enforceable and have the same effect as if they had been incorporated in the rules made under this Act.

Permissible limits of exposure of chemical and toxic substances (Section 41F)

The maximum permissible threshold limits of exposure of chemical and toxic substances in manufacturing processes (whether hazardous or otherwise) in any factory shall be of the value indicated in the Second Schedule. The Central Government may, at any time, for the purpose of giving effect to any scientific proof obtained from specialised institutions or experts in the field, by notification in the Official Gazette, make suitable changes in the said Schedule.

Workers' participation in safety management (Section 41G)

The section provides for constitution of Safety Committee consisting of equal number of representatives of workers and management. Such Safety Committee shall be set up by the occupier in every factory where a hazardous process takes place, or where hazardous substances are used or handled. The functions of the Safety Committee are to promote co-operation between the workers and the management in maintaining proper safety and health at work and to review periodically the measures taken in that behalf.

It is provided that the State Government may, by order in writing and for reasons to be recorded, exempt the occupier of any factory or class of factories from setting up such Committee.

The composition of the Safety Committee, the tenure of office of its members and their rights and duties shall be such as may be prescribed.

Right of workers to warn about imminent danger (Section 41H)

Where the workers employed in any factory engaged in a hazardous process have reasonable apprehension that there is a likelihood of imminent danger to their lives or health due to any accident, they may, bring the same to the notice of the occupier, agent, manager or any other person who is in-charge of the factory or the process concerned directly or through their representatives in the Safety Committee and simultaneously bring the same to the notice of the Inspector. It shall be the duty of such occupier, agent, manager or the person in-charge of the factory or process to take immediate remedial action if he is satisfied about the existence of such imminent danger and send a report forth-with of the action taken to the nearest Inspector.

If the occupier, agent, manager or the person in-charge is not satisfied about the existence of any imminent danger as apprehended by the workers, he shall, nevertheless, refer the matter forth-with to the nearest Inspector whose decision on the question of the existence of such imminent danger shall be final.

WELFARE (SECTIONS 42 TO 50)

Washing facilities (Section 42)

In every factory, there shall be provided (a) adequate and suitable facilities for washing shall be provided and maintained for use of the workers therein; (b) separate and adequately screened facilities shall be provided for the use of male and female workers; (c) such facilities shall be conveniently accessible and shall be kept clean.

The State Government may, in respect of any factory or class or description of factories or of any manufacturing process, prescribe standards of adequate and suitable facilities for washing.

Facilities for storing and drying clothing (Section 43)

The State Government may, in respect of any factory or class or description of factories, make rules requiring the provision therein of suitable place for keeping clothing not worn during working hours and for the drying of wet clothing.

Facilities for sitting (Section 44)

There shall be suitable arrangements for sitting in every factory and they shall be maintained for all workers obliged to work in a standing position. The provision ensures such worker may take advantage of any opportunities for rest which may occur in the course of their work.

If, in the opinion of the Chief Inspector, the workers in any factory engaged in a particular manufacturing process or working in a particular room, are able to do their work efficiently in a sitting position, he may, by order in writing, require the occupier of the factory to provide before a specified date such seating arrangements as may be practicable for all workers so engaged or working.

The State Government is vested with the power to exempt, by notification in the Official Gazette, any specified factory or class or description of factories or to any specified manufacturing process from compliance of the provisions of this section.

First-aid-appliances (Section 45)

In every factory, there shall be provided and maintained so as to be readily accessible during all working hours' first-aid boxes or cupboards equipped with the prescribed contents. At least one such box or cupboard shall be provided and maintained for every one hundred and fifty workers ordinarily employed at any one time in the factory. It is also mandatory that nothing except the prescribed contents shall be kept in a first-aid box or cupboard.

Each first-aid box or cupboard shall be kept in the charge of a separate responsible person, who holds a certificate in first-aid treatment recognized by the State Government and who shall always be readily available during the working hours of the factory. There shall be provided and maintained an ambulance room of the prescribed size, containing the prescribed equipment in every factory wherein more than five hundred workers are ordinarily employed. The ambulance shall be in the charge of such medical and nursing staff as may be prescribed and those facilities shall always be made readily available during the working hours of the factory.

Canteens (Section 46)

The State Government may make rules requiring that the occupier shall provide and maintain a canteen or canteens for the use of the workers in any specified factory wherein more than two hundred and fifty workers are ordinarily employed. Without prejudice in the generality of the foregoing power, such rules may provide for-

- (a) the date by which such canteen shall be provided;
- (b) the standard in respect of construction, accommodation, furniture and other equipment of the canteen;

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- (c) the foodstuffs to be served therein and the charges which may be made therefor;
- (d) the constitution of a managing committee for the canteen and representation of the workers in the management of the canteen;
- (dd) the items of expenditure in the running of the canteen which are not to be taken into account in fixing the cost of foodstuffs and which shall be borne by the employer ;
- (e) the delegation to Chief Inspector subject to such conditions as may be prescribed, of the power to make rules under clause (c).

Shelters, rest-rooms and lunch-rooms (Section 47)

It is mandatory to provide and maintain adequate and suitable shelters or rest-rooms and a suitable lunch-room, with provision for drinking water, where workers can eat meals brought by them in every factory wherein more than one hundred and fifty workers are ordinarily employed.

It is provided that any canteen maintained in accordance with the provisions of section 46 shall be regarded as part of the requirements of this section. It is also provided further that where a lunch-room exists no worker shall eat any food in the work-room.

The shelters or rest-room or lunch-room to be provided shall be sufficiently lighted and ventilated and shall be maintained in a cool and clean condition. The State Government may (a) prescribe the standards, in respect of construction accommodation, furniture and other equipment of shelters, rest-rooms and lunch-rooms to be provided under this section;(b) by notification in the Official Gazette, exempt any factory or class or description of factories from the requirements of this section.

Creches (Section 48)

It is compulsory to provide and maintain a suitable room or rooms for the use of children under the age of six years of women in every factory wherein more than thirty women workers are ordinarily employed. Such rooms shall provide adequate accommodation, shall be adequately lighted and ventilated, shall be maintained in a clean and sanitary condition and shall be under the charge of women trained in the care of children and infants.

The State Government may make rules-(a) prescribing the location and the standards in respect of construction, accommodation; furniture and other equipment of rooms to be provided, under this section;(b) requiring the provision in factories to which the section applies, of additional facilities for the care of children belonging to women workers, including suitable provision of facilities for washing and changing their clothing;(c) requiring the provision in any factory of free milk or refreshment or both for such children;(d) requiring that facilities shall be given in any factory for the mothers of such children to feed them at the necessary intervals.

Welfare Officers (Section 49):

In every factory wherein five hundred or more workers are ordinarily employed the occupier shall employ in the factory such number of welfare officers as may be prescribed. The State Government may prescribe the duties, qualifications and conditions of service of officers so employed.

In the case of *Associated Cement Cos. Ltd. v. Sharma, A.I.R. 1965 S.C. 1595*, the Supreme Court held that Rule 6 of Punjab Welfare Officers Recruitment and Conditions of Service Rules, 1952, requiring the concurrence of the Labour Commissioner before the management can dismiss or terminate the services of Welfare Officer is not ultra vires.

Power to make rules to supplement this Chapter (Section 50)

The State Government may make rules-

- (a) exempting, subject to compliance with such alternative arrangements for the welfare of workers as may be prescribed, any factory or class or description of factories from compliance with any of the provisions of this Chapter,
- (b) requiring in any factory or class or description of factories that representatives of the workers employed in the factories shall be associated with the management of the welfare arrangements of the workers.

WORKING HOURS OF ADULTS (SECTIONS 51 TO 66)

Weekly hours (Section 51)

No adult worker shall be required or allowed to work in a factory for more than forty-eight hours in any week.

Weekly holidays (Section 52)

There shall be holiday for the whole day in every week and such weekly holiday shall be on the first day of the week. However, such holiday may be substituted for any one of the three days immediately before or after the first day of the week provided the manager of the factory has:

- (i) delivered a notice at the office of the Inspector; and
- (ii) displayed a notice in the factory to this effect.

The effect of all this is that subject to above said conditions (i) and (ii) there shall be a holiday during ten days. In other words no adult worker shall work for more than ten days consecutively without a holiday for the whole day. It is not possible for an employer to change the weekly off solely on the ground that there was no material available for work to be provided on a particular date, avoiding requirements to be fulfilled under Section 25(m) of Industrial Disputes Act regarding lay off (LAB IC 1998 Bom. 1790). Such notices of substitution may be cancelled by an appropriate notice but not later than the day of weekly holiday or the substituted holiday whichever is earlier.

Compensatory holidays (Section 53)

Where, as a result of the passing of an order of the making of a rule under the provisions of this Act exempting a factory or the workers therein from the provisions of section 52, a worker is deprived of any of the weekly holidays for which provision is made that section, he shall be allowed, within the month in which the holidays were due to him or within the two months immediately following that month, compensatory holidays of equal number to the holidays so lost. The State Government may prescribe the manner in which the holidays for which provision is made shall be allowed.

Daily hours (Section 54)

An adult worker, whether male or female shall not be required or allowed to work in a factory for more than 9 hours in any day. Section 54 should be read with Section 59. In other words, the daily hours of work should be so adjusted that the total weekly hours does not exceed 48. The liability of the employer under this Section cannot be absolved on the ground that the workers are willing to work for longer hours without any extra payment. The daily maximum hours of work specified in Section 54 can be exceeded provided (i) it is to facilitate the change of shift; and (ii) the previous approval of the Chief Inspector has been obtained.

Intervals for rest (Section 55)

The periods of work of adult workers in a factory each day shall be so fixed that no period shall exceed five hours and that no worker shall work for more than five hours before he has had an interval for rest of at least half an hour. The State Government or, subject to the control of the State Government, the Chief Inspector,

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may, by written order and for the reason specified therein, exempt any factory from compliance of this section so however that the total number of hours worked by a worker without an interval does not exceed six.

Spread over (Section 56)

The period of work of an adult worker in a factory shall be so arranged that inclusive of his intervals for rest under section 55, they shall not spread over more than ten and a half hours in any day. It is provided that the Chief Inspector may, for reasons to be specified in writing, increase the spread over up to twelve hours.

Night shifts (Section 57)

Where a worker in a factory works on a shift which extends beyond midnight,-

- (a) for the purposes of sections 52 and 53, a holiday for a whole day shall mean in his case a period of twenty-four consecutive hours beginning when his shift ends;
- (b) the following day for him shall be deemed to be the period of twenty-four hours beginning when such shift ends, and the hours he has worked after midnight shall be counted in the previous day.

Prohibition of overlapping shifts (Section 58)

Work shall not be carried on in any factory by means of a system of shifts so arranged that more than one relay of workers is engaged in work of the same kind at the same time. The State Government or subject to the control of the State Government, the Chief Inspector, may, by written order and for the reasons specified therein, exempt on such conditions as may be deemed expedient, any factory or class or description of factories or any department or section of a factory or any category or description of workers therein from the provisions of this section.

Extra wages for overtime (Section 59)

Where a worker works in a factory for more than nine hours in any day or for more than forty-eight hours in any week, he shall, in respect of overtime work, be entitled to wages at the rate of twice his ordinary rate of wages. The ordinary rate of wages here means the basic wages plus such allowances, including the cash equivalent of the advantage accruing through the concessional sale to workers of foodgrains and other articles, as the worker is for the time being entitled to, but does not include a bonus and wages for overtime work.

House rent allowance, though payable to employers who were not provided with accommodation, cannot be taken into account to calculate overtime wages of employees provided with such accommodation (Govind Babu Salve v. Vishwanath Janardhan Joshi, 1995 SCC (L&S) 308). An employer requiring the workman to work for more than the maximum number of hours overtime work postulated by Section 64(4)(iv) cannot merely on this ground, deny him overtime wages for such excessive hours (HMT v. Labour Court, 1994 I LLN 156).

Where any workers in a factory are paid on a piece-rate basis, the time-rate shall be deemed to be equivalent to the daily average of their full-time earnings for the days on which they actually worked on the same or identical job during the month immediately preceding the calendar months during which the overtime work was done, and such time-rates shall be deemed to be the ordinary rates of wages of those workers.

Provided that in the case of a worker who has not worked in the immediately preceding calendar month on the same or identical job, the time-rate shall be deemed to be equivalent to the daily average of the earnings of the worker for the days on which he actually worked in the week in which the overtime work was done.

Explanation. - For the purposes of this sub-section in computing the earnings for the days on which the worker actually worked, such allowances including the cash equivalent of the advantage accruing through the concessional sale to workers of food grains and other articles, as the worker is for the time being entitled to,

shall be included but any bonus or wages for overtime work payable in relation to the period with reference to which the earnings are being computed shall be excluded.

The cash equivalent of the advantage accruing through the concessional sale to a worker of foodgrains and other articles shall be computed as often as may be prescribed on the basis of the maximum quantity of foodgrains and other articles admissible to a standard family.

Explanation 1. - "Standard family" means a family consisting of the worker, his or her spouse and two children below the age of fourteen years requiring in all three adult consumption units.

Explanation 2. - "Adult consumption unit" means the consumption units of a male above the age of fourteen years, and the consumption unit of a female above the age of fourteen years and that of a child below the age of fourteen years shall be calculated at the rates of 8 and 6, respectively of one adult consumption unit.

The State Government may make rules prescribing- (a) the manner in which the cash equivalent of the advantage accruing through the concessional sale to a worker of food grains and other articles shall be computed; and (b) the registers that shall be maintained in a factory for the purpose of securing compliance with the provisions of this section.

Restriction on double employment (Section 60)

No adult worker shall be required or allowed to work in any factory on any day on which he has already been working in any other factory, save in such circumstances as may be prescribed.

Notice of periods of work for adults (Section 61)

There shall be displayed and correctly maintained in every factory in accordance with the provisions for sub-section (2) of section 108, a notice of periods of work for adults, showing clearly for every day the periods during which adult workers may be required to work. The periods shown in the notice shall be fixed beforehand in accordance with the following provisions of this section, and shall be such that workers working for those periods would not be working in contravention of any of the provisions of sections 51, 52, 54, 55, 56 and 58.

Where all the adult workers in a factory are required to work during the same periods, the manager of the factory shall fix those periods for such workers generally. Where all the adult workers in a factory are not required to work during the same periods, the manager of the factory shall classify them into groups according to the nature of their work indicating the number of workers in such group.

For each group, which is not required to work on a system of shifts, the manager of the factory shall fix the periods during which the group may be required to work. Where any group is required to work on system of shifts and the relays are to be subject to pre-determined periodical changes or shifts, the manager of the factory shall fix the periods during which each relay of the group may be required to work.

Where any group is to work on a system of shifts and the relays are to be subject to pre-determined periodical changes of shifts, the manager of the factory shall draw up a scheme of shifts, whereunder the period during which any relay or group may be required to work and the relay which will be working at any time of the day shall be known for any day.

The State Government may prescribe forms of the notice and the manner in which it shall be maintained. In the case of a factory beginning work after the commencement of this Act, a copy of the notice shall be sent in duplicate to the Inspector before the day on which work is begun in the factory.

Any proposed change in the system of work in any factory which will necessitate a change in the notice shall be notified to the Inspector in duplicate before the change is made, and except with the previous sanction of the Inspector, no such change shall be made until one week has elapsed since that last change.

Register of adult workers (Section 62)

The manager of every factory shall maintain a register of adult workers, to be available to the Inspector at all times during working hours, or when any work is being carried on in the factory, showing-

- (a) the name of each adult worker in the factory;
- (b) the nature of his work;
- (c) the group, if any, in which he is included;
- (d) where his group works on shift, the relay to which he is allotted; and
- (e) such other particulars as may be prescribed:

It is provided that if the Inspector is of opinion that any muster-roll or register maintained as a part of the routine of a factory gives in respect of any or all the workers in the factory the particulars required under this section, he may, by order in writing, direct that such muster-roll or register shall to the corresponding extent be maintained in place of, and be treated as, the register of adult workers in that factory.

No adult worker shall be required or allowed to work in any factory unless his name and other particulars have been entered in the register of adult workers.

The State Government may prescribe the form of the register of adult workers, the manner in which it shall be maintained and the period for which it shall be preserved.

Hours of work to correspond with notice under section 61 and register under section 62 (Section 63)

No adult worker shall be required or allowed to work in any factory otherwise than in accordance with the notice of periods of work for adults displayed in the factory and the entries made beforehand against his name in the register of adult workers of the factory.

Power to make exempting rule (Section 64)

The State Government may make rules defining the persons who hold positions of supervision or management or are employed in a confidential position in a factory or empowering the Chief Inspector to declare any person, other than a person defined by such rules as a person holding position of supervision or management or employed in a confidential position in a factory if, in the opinion of the Chief Inspector, such person holds such position or is so employed and the provision of this Chapter, other than the provisions of clause (b) of sub-section (1) of section 66 and of the proviso to that sub-section, shall not apply to any person so defined or declared :

Provided that any person so defined or declared shall, where the ordinary rate of wages of such person does not exceed the wage limit specified in sub-section (6) of section 1 of the Payment of Wages Act, 1936, as amended from time to time, be entitled to extra wages in respect of overtime work under section 59.

The State Government may make rules in respect of adult workers in factories providing for the exemption, to such extent and subject to such conditions as may be prescribed-

- (a) of workers engaged on urgent repairs, from the provisions of sections 51, 52, 54, 55 and 56;
- (b) of workers engaged in work in the nature of preparatory or complementary work which must necessarily be carried on outside the limits laid down for the general working of the factory, from the provisions of sections 51, 54, 55 and 56;
- (c) of workers engaged in work which is necessarily so intermittent that intervals during which they do not work while on duty, ordinarily amount to more than the intervals for rest required by or under section 55, from the provisions of sections 51, 54, 55 and 56;

- (d) of workers engaged in any work which for technical reasons must be carried on continuously from the provisions of sections 51, 52, 54, 55 and 56;
- (e) of workers engaged in making or supplying articles of prime necessity which must be made or supplied every day, from the provisions of section 51 and section 52;
- (f) of workers engaged in a manufacturing process which cannot be carried on except during fixed seasons, from the provisions of section 51, section 52 and section 54;
- (g) of worker engaged in a manufacturing process, which cannot be carried on except at times dependent on the irregular action of natural forces, from the provisions of sections 52 and 55;
- (h) of workers engaged in engine-rooms of boiler-houses or in attending to power-plant or transmission machinery, from the provisions of section 51 and section 52; (i) of workers engaged in the printing of newspapers, who are held up on account of the breakdown of machinery, from the provisions of sections 51, 54 and 56. *Explanation.* - In this clause the expression “newspapers” has the meaning assigned to it in the Press and Registration of Books Act, 1867;
- (j) of workers engaged in the loading or unloading of railway wagons or lorries or trucks, from the provisions of sections 51, 52, 54, 55 and 56;
- (k) of workers engaged in any work, which is notified by the State Government in the Official Gazette as a work of national importance, from the provisions of section 51, section 52, section 54, section 55 and section 56.

Rules made under this section providing for any exemption may also provide for any consequential exemption from the provisions of section 61 which the State Government may deem to be expedient, subject to such conditions as it may prescribe.

In making rules under this section, the State Government shall not exceed, except in respect of exemption under clause (a) , the following limits of work inclusive of overtime : -(i) the total number of hours of work in any day shall not exceed ten;(ii) the spreadover, inclusive of intervals for rest, shall not exceed twelve hours in any one day;

Provided that the State Government may, in respect of any or all of the categories of workers referred to in clause (d) , make rules prescribing the circumstances in which, and the conditions subject to which, the restrictions imposed by clause (i) and clause (ii) shall not apply in order to enable a shift worker to work the whole or part of a subsequent shift in the absence of a worker who has failed to report for duty;(iii) the total number of hours of work in a week including overtime, shall not exceed sixty;(iv) the total number of hours of overtime shall not exceed fifty for any one quarter.

Explanation. - “Quarter” means a period of three consecutive months beginning on the 1st of January, the 1st of April, the 1st of July or the 1st of October.

It may be noted that rules made under this section shall remain in force for not more than five years.

Power to make exempting orders (Section 65)

Where the State Government is satisfied that, owing to the nature of the work carried on or to other circumstances, it is reasonable to require that the periods of work of any adult worker in any factory or class or description of factories should be fixed beforehand, it may, by written order, relax or modify the provisions of section 61 in respect of such workers therein, to such extent and in such manner as it may think fit, and subject to such conditions as it may deem expedient to ensure control over periods of work.

The State Government or, subject to the control of the State Government the Chief Inspector may, by

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written order, exempt on such conditions as it or he may deem expedient, any or all of the adult workers in any factory or group or class or description of factories from any or all of the provisions of sections 51, 52, 54 and 56 on the ground that the exemption is required to enable the factory or factories to deal with an exceptional pressure of work. However, any exemption so granted shall be subject to the following conditions, namely:

- the total number of hours of work in any day shall not exceed twelve;
- the spreadover, inclusive of intervals for rest, shall not exceed thirteen hours in any one day;
- the total number of hours of work in any week, including overtime, shall not exceed sixty;
- no worker shall be allowed to work overtime, for more than seven days at a stretch and the total number of hours of overtime work in any quarter shall not exceed seventy-five.

Further restriction on employment of women (Section 66)

The provisions of this Chapter shall, in their application to women in factories, be supplemented by the following further restrictions, namely:-(a) no exemption from the provisions of section 54 may be granted in respect of any woman;(b) no woman shall be required or allowed to work in any factory except between the hours 6 A.M. and 7 P.M.;

Provided that the State Government may, by notification in the Official Gazette, in respect of any factory or group or class or description of factories, vary the limits laid down in clause (b), but so that no such variation shall authorise the employment of any woman between the hours of 10 P.M. and 5 A.M. (c) there shall be no change of shifts except after a weekly holiday or any other holiday.

The State Government may make rules providing for the exemption from these restrictions to such extent and subject to such conditions as it may prescribe, of women working in fish-curing or fish-canning factories, where the employment of women beyond the hours specified in the said restrictions, is necessary to prevent damage to, or deterioration in any raw material. These rules made shall remain in force for not more than three years at a time.

The Madras High Court in the case of **Vasantha R. v. Union of India (2001) II LLJ 843 Mad1**, struck down Section 66(1)(b) on the grounds that it was violative of Article 14, 15 and 16 of the Constitution of India. The petitioners were women workers who were working in the mill and some who were on the management of the various mills or factories filed petitions challenging the constitutionality and the batch of writ petitions was filed on the grounds that no discrimination should be practiced against women on account of their gender. The petitioner could not work in the third shift between 10 p.m. and 6 a.m. due to the statutory provisions banning night work of women. The Court held that, "potential employment cannot be denied on the sole ground of sex when no other factor arises" and struck down Section 66(1) (b)

EMPLOYMENT OF YOUNG PERSONS (SECTIONS 67 TO 77)

Prohibition of employment of young children (Section 67)

There cannot be employed any child who has not completed his fourteenth year in any factory.

Non-adult workers to carry tokens (Section 68)

A child who has completed his fourteenth year or an adolescent can required or allowed to work in any factory only if (a) a certificate of fitness granted with reference to him under section 69, is in the custody of manager of the factory, and (b) such child or adolescent carries while he is at work, a token giving a reference to such certificate.

Certificate of fitness (Section 69)

A certifying surgeon shall, on the application of any young person or his parent or guardian accompanied by a document signed by the manager of a factory that such person will be employed therein if certified to be fit for work in a factory, or on the application of the manager of the factory, in which any young person wishes to work, examine such person and ascertain his fitness for work in a factory.

The certifying surgeon, after examination, may grant to such young person, in the prescribed form, or may renew-

- (a) certificate of fitness to work in a factory as a child, if he is satisfied that the young person has completed his fourteenth year, that he has attained the prescribed physical standards and that he is fit for such work;
- (b) a certificate of fitness to work in a factory as an adult, if he is satisfied that the young person has completed his fifteenth year and is fit for a full day's work in a factory:

It is provided that unless the certifying surgeon has personal knowledge of the place where the young person proposes to work and of the manufacturing process in which he will be employed, he shall not grant or renew a certificate under this sub-section until he has examined such place.

A certificate of fitness granted or renewed (a) shall be valid only for a period of twelve months from the date thereof (b) may be made subject to conditions in regard to the nature of the work in which the young person may be employed, or requiring reexamination of the young person before the expiry of the period of twelve months.

A certifying surgeon shall revoke any certificate granted or renewed if in his opinion the holder of it is no longer fit to work in the capacity stated therein in a factory. Where a certifying surgeon refuses to grant or renew a certificate or a certificate of the kind requested or revokes a certificate, he shall, if so requested by any person who could have applied for the certificate or the renewal thereof, state his reasons in writing for so doing.

Where a certificate under this section with reference to any young person is granted or renewed subject to such conditions, the young person shall not be required or allowed to work in any factory except in accordance with those conditions. Any fee payable for a certificate under this section shall be paid by the occupier and shall not be recoverable from the young person, his parents or guardian.

Effect of certificate of fitness granted to adolescent (Section 70)

An adolescent who has been granted certificate of fitness to work as an adult in a factory by the Certifying Surgeon u/s 69 of the Act, is to be treated as an adult for the purposes of working hours and annual leave with wages. But in case, such certificate has not been granted to him then irrespective of his age he is to be treated as child for the purpose of this Act. But an adolescent who has not attained the age of seventeen years but has obtained a certificate of fitness to work in a factory as an adult shall be required or allowed to work between 6 a.m. and 7 p.m. only. However, the State Government may, by notification in the Official Gazette, in respect of any factory or group or class or description of factories: "vary the limit laid down in this sub-section. So, however, that no such sub-section authorise the employment of any female adolescent between 10 p.m. and 5 a.m.;" State Government may grant exemption from the provision of this sub-section in case of serious emergency where national interest is involved.

Section 71. Working hours for children.

A child is not permitted to be employed or work in any factory for more than four and a half hours in any day and during the night. Here, "night" shall mean a period of at least twelve consecutive hours which shall include the interval between 10 P.M. and 6 A.M. The period of work of all children employed in a factory shall be limited to two shifts which shall not overlap or spreadover more than five hours each; and each child shall be employed in

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only one of the relays which shall not, except with the previous permission in writing of the Chief Inspector, be changed more frequently than once in a period of thirty days.

The provisions of section 52 dealing with weekly holidays shall apply also to child workers and no exemption from the provisions of that section may be granted in respect of any child.

A child shall not be required or allowed to work in any factory on any day on which he has already been working in another factory. A female child shall not be required or allowed to work in any factory except between 8 A.M. and 7 P.M.

Notice of period of work for children (Section 72)

It is mandatory in every factory to display and maintain correctly a notice of periods of work for children in accordance with the provisions of section 108. The notice shall show clearly for every day the periods during which children may be required or allowed to work. This requirement is applicable in factories employing children.

The periods shown in the notice shall be fixed beforehand in accordance with the method laid down for adult workers in section 61, and shall be such that children working for those periods would not be working in contravention of any of the provisions of section 71.

The provisions of sub-sections (8), (9) and (10) of section 61 shall apply also to the notice required by this section.

Register of child workers (Section 73)

It is mandatory for the manager of every factory in which children are employed to maintain a register of child workers. This register shall be available to the Inspector at all times during working hours or when any work is being carried on in a factory. The register shall contain the following particulars -

- the name of each child worker in the factory,
- the nature of his work,
- the group, if any, in which he is included,
- where his group works on shifts, the relay to which he is allotted, and
- the number of his certificate of fitness granted under section 69.

A child worker shall neither be required nor allowed to work in any factory unless his name and other particulars have been entered in the register of child workers. The State Government may prescribe the form of the register of child workers, the manner in which it shall be maintained and the period for which it shall be preserved.

Hours of work to correspond with notice under section 72 and register under section 73 (Section 74)

A child shall not be employed in any factory otherwise than in accordance with the notice of periods of work for children displayed in the factory and the entries made beforehand against his name in the register of child workers of the factory.

Power to require medical examination. (Section 75)

Where an Inspector is of opinion -(a) that any person working in factory without a certificate of fitness is a young person, or (b) that a young person working in a factory with a certificate of fitness is no longer fit to work in the capacity stated therein, he may serve on the manager of the factory a notice requiring that such person or young person, as the case may be, shall be, examined by a certifying surgeon, and such person

or young person shall not, if the Inspector so directs, be employed, or permitted to work, in any factory until he has been so examined and has been granted a certificate of fitness or a fresh certificate of fitness, as the case may be, under section 69, or has been certified by the certifying surgeon examining him not to be a young person.

Power to make rules (Section 76)

This section has vested power in the State Government to make rules covering the following:

- (a) prescribing the forms of certificate of fitness to be granted under section 69, providing for the grant of duplicates in the event of loss of the original certificate, and fixing the fees which may be charged for such certificates and renewals thereof and such duplicates;
- (b) prescribing the physical standards to be attained by children and adolescents working in factories;
- (c) regulating the procedure of certifying surgeons under this Chapter;
- (d) specifying other duties which certifying surgeons may be required to perform in connection with the employment of young persons in factories, and fixing the fees which may be charged for such duties and the persons by whom they shall be payable.

Certain other provisions of law not barred (Section 77)

The provisions of this Chapter shall be in addition to, and not in derogation of, the provisions of the Employment of Children Act, 1938.

ANNUAL LEAVE WITH WAGES (SECTIONS 78 TO 84)

Application of Chapter (Section 78)

The provisions of this Chapter shall not

- (i) operate to prejudice of any right to which a worker may be entitled under any other law or under the terms of any award, agreement including settlement or contract of service. It is provided that if such award, agreement (including settlement) or contract of service provides for a longer annual leave with wages than provided in this Chapter, the quantum of leave, which the worker shall be entitled to, shall be in accordance with such award, agreement or contract of service, but in relation to matters not provided for in such award, agreement or contract of service or matters which are provided for less favourable therein, the provisions of sections 79 to 82, so far as may be, shall apply.
- (ii) not apply to workers in any factory of any railway administered by the Government, who are governed by leave rules approved by the Central Government

Annual leave with wages (Section 79)

According to section 79, the following provisions have been made with regard to annual leave with wages.:

- (i) **Basis of leave** : Where a worker has worked for a minimum period of 240 days or more in a factory during any calendar year, i.e., the year beginning from 1st January, he is entitled to leave with wages on the following basis – (i) for adults – One day for every 20 days of work performed by them during the previous calendar year. (ii) for children – One day for every fifteen days of work performed by him during the previous calendar year.

If a worker does not commence his services from 1st January, he is entitled to these leaves at the above mentioned rates provided he has worked for 2/3rd of the total number of days in the remaining

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part of the calendar year. These leaves are exclusive of all holidays whether occurring during or at either end of the period of leave.

In calculating leave, fraction of leave of half a day or more shall be treated as one full day's leave and fraction of less than half a day shall be ignored.

(ii) Computation of qualifying period of 240 days: For the purpose of calculating the minimum period, following periods are also included:

- (i) any days of lay-off as agreed or as permissible under the Standing Orders.
- (ii) for female workers, period of maternity leave not exceeding 12 weeks.
- (iii) leave earned in the year prior to that in which the leave is enjoyed.

Though the above mentioned days included in calculated the qualifying period, but the worker will not be entitled to earn leave for these days. A worker who is discharged or dismissed from service or quits his employment or is superannuated or dies while in service during the course of calendar year, he or his heir or nominee as the case may be, shall be entitled to wages in lieu of the quantum of leave to which he was entitled immediately before his discharge, dismissal, quitting of employment, superannuation or death, calculated at the rates specified in sub-section (1), even if he had not worked for the entire period specified in this section making him eligible to avail of such leave and such payment shall be made:

- (i) where the worker is discharged or dismissed or quits employment, before the expiry of second working day from the date of such discharge, dismissal or quitting;
- (ii) where the worker is superannuated or dies while in service, before the expiry of two months from the date of such superannuation or death.

(iii) Accumulation or carry forward of leaves: If any worker does not avail any earned leave entitled to him during the calendar year, it can be carried forward to the next calendar year subject to the maximum of 30 days for an adult worker and 40 days for a child worker. But if a worker applies for leave with wages and is not granted such leave in accordance with any approved scheme under this section, or in contravention of this section, he can carry forward the leave refused, without any limit.

(iv) How to apply for leave with wages: If a worker wants to avail leave with wages earned by him during the year, he must apply in writing, to the manager of the factory at least 15 days before the date on which he wishes to go on leave. In case a worker is employed in a public utility service as defined in Section 2(n) of the Industrial Disputes Act, 1947, the application for leave with wages shall be made at least 30 days in advance. The annual leave with wages cannot be availed for more than three times during any year.

The application to avail annual leave with wages for illness purposes can be made at any time. An application for leave which does not contravene the provisions of the section shall not be refused unless the refusal is in accordance with the scheme for the time being in operation under this section.

(v) Scheme of leave :To ensure continuity of work, the grant of leave can be regulated. For this purpose, the occupier or the manager should prepare a scheme in writing, regulating the grant of leave to the workers and lodge it with the Chief Inspector. The Scheme should be prepared in agreement with the following bodies or persons:

- (a) (i) Works Committee formed under Section 3 of the Industrial Disputes Act, 1947, or
 - (i) Such other Committee formed under any other Act, or
 - (ii) In the absence of any of the above Committee, the representatives of the workers chosen in the prescribed manner.

The scheme shall be valid for 12 months from the date on which it comes into force. It can be renewed, with or without modification, for a further period of 12 months. A notice of renewal shall be sent to the Chief Inspector. The Scheme shall be displayed at some conspicuous and convenient places in the factory.

Wages during leave periods (Section 80)

Provision is made in section 80 to calculate wages for which a worker will be entitled to during leave periods. For the leave allowed to him under section 78 or section 79, as the case may be, a worker shall be entitled to wages at a rate equal to the daily average of his total full time earnings for the day on which he actually worked during the months immediately preceding his leave, exclusive of any overtime and bonus but inclusive of dearness allowance and the cash equivalent of advantage accruing through the concessional sale to the worker of foodgrains and other articles.

It is provided that in the case of a worker who has not worked on any day during the calendar month immediately preceding his leave, he shall be paid at a rate equal to the daily average of his total full time earnings for the days on which he actually worked during the last calendar month preceding his leave, in which he actually worked, exclusive of any overtime and bonus but inclusive of dearness allowance and the cash equivalent of the advantage accruing through the concessional sale to the workers of foodgrains and other articles.

The cash equivalent of the advantage accruing through the concessional sale to the worker of foodgrains and other articles shall be computed as often as may be prescribed, on the basis of the maximum quantity of foodgrains and other articles admissible to a standard family.

Explanation 1. - “Standard family” means a family consisting of a worker, his or her spouse and two children below the age of fourteen years requiring in all three adult consumption units.

Explanation 2. - “Adult consumption unit” means the consumption unit of a male above the age of fourteen years; and the consumption unit of a female above the age of fourteen years, and that of a child below the age of fourteen years shall be calculated at the rates of 8 and 6 respectively of one adult consumption unit.

The State Government may make rules prescribing -(a) the manner in which the cash equivalent of the advantage accruing through the concessional sale to a worker of foodgrains and other articles shall be computed; and (b) the registers that shall be maintained in a factory for the purpose of securing compliance with the provisions of this section.

Payment in advance in certain cases (Section 81)

A worker who has been allowed leave for not less than four days, in the case of an adult, and five days, in the case of a child, shall, before his leave begins, be paid the wages due for the periods of the leave allowed.

Mode of recovery of unpaid wages (Section 82)

Any sum required to be paid by an employer, under this Chapter but not paid by him, shall be recoverable as delayed wages under the provisions of the Payment of Wages Act, 1936.

Power to make rules (Section 83)

The State Government may make rules directing managers of factories to keep registers containing such particulars as may be prescribed and requiring the registers to be made available for examination by Inspectors.

Power to exempt factories (Section 84)

Where the State Government is satisfied that the leave rules applicable to workers in a factory provide benefits which in its opinion, are not less favourable than those for which this Chapter makes provisions, it may by written order, exempt the factory from all or any of the provisions of this Chapter subject to such conditions as may be specified in the order.

Explanation. - For the purposes of this section, in deciding whether the benefits which are provided for by any leave rules are less favourable than those for which this Chapter makes provision, or not, the totality of the benefits shall be taken into account.

SPECIAL PROVISIONS (SECTIONS 85 TO 91A)

Power to apply the Act to certain premises (Section 85)

An exception may be created by the State Government, by notification in the Official Gazette, declare that all or any of the provisions of this Act shall apply to any place wherein a manufacturing process is carried on with or without the aid of power or is so ordinarily carried on, notwithstanding that -

- (i) the number of persons employed therein is less than ten, if working with the aid of power, and less than twenty if working without the aid of power, or
- (ii) the persons working therein are not employed by the owner thereof but are working with the permission of, or under agreement with, such owner. It is provided that the manufacturing process is not being carried on by the owner only with the aid of his family.

After a place is so declared, it shall be deemed to be a factory for the purposes of this Act, and the owner shall be deemed to be the occupier, and any person working therein, to be a worker.

Explanation. - For the purpose of this section "owner" shall include a lessee or mortgagee with possession of the premises.

Power to exempt public institution (Section 86)

The State Government may exempt, subject to such conditions as it may consider necessary, any workshop or workplace where a manufacturing process is carried on and which is attached to a public institution maintained for the purposes of education training, research or information, from all or any of the provisions of this Act. It is provided that no exemption shall be granted from the provisions relating to hours of work and holidays unless the persons having the control of the institution submit, for the approval of the State Government, a scheme of the regulation of the hours of employment, intervals for meals, and holidays of the persons employed in or attending the institution or who are inmates for the institution, and the State Government is satisfied that the provisions of the scheme are not less favourable than the corresponding provisions of the Act.

Dangerous operations (Section 87)

Where the State Government is of opinion that any manufacturing process or operation carried on in a factory exposes any persons employed in it to a serious risk of bodily injury, poisoning or disease, it may order or make rules applicable to any factory or class or description of factories in which manufacturing process or operation is carried on –

- (a) specifying the manufacturing process or operation and declaring it to be dangerous;
- (b) prohibiting or restricting the employment of women, adolescents or children in the manufacturing process or operation;
- (c) providing for the periodical medical examination for persons employed or seeking to be employed, in the manufacturing process or operation, and prohibiting the employment of persons not certified as fit for such employment and requiring the payment by the occupier of the factory of fees for such medical examination;
- (d) providing for the protection of all persons employed in the manufacturing process or operation or in the vicinity of the places where it is carried on;

(e) prohibiting, restricting or controlling the use of any specified materials or processes in connection with the manufacturing process or operation:

(f) requiring the provision of additional welfare amenities and sanitary facilities and the supply of protective equipment and clothing, and laying down the standards thereof, having regard to the dangerous nature of the manufacturing process or operation;

Power to prohibit employment on account of serious hazard (Section 87A)

Where it appears to the Inspector that conditions in a factory or part thereof are such that they may cause serious hazard by way of injury or death to the persons employed therein or to the general public in the vicinity, he may, by order in writing to the occupier of the factory, state the particulars in respect of which he considers the factory or part thereof to be the cause of such serious hazard and prohibit such occupier from employing any person in the factory or any part thereof other than the minimum number of persons necessary to attend to the minimum tasks till the hazard is removed. Any order issued by the Inspector shall have effect for a period of three days until extended by the Chief Inspector by a subsequent order.

Any person aggrieved by an order of the Inspector or the Chief Inspector, shall have the right to appeal to the High Court. Any person, whose employment has been affected by such order, shall be entitled to wages and other benefits and it shall be the duty of the occupier to provide alternative employment to him wherever possible and in the manner prescribed. These provisions of appeal shall be without prejudice to the rights of the parties under the Industrial Disputes Act, 1947.

Notice of certain accident (Section 88)

Where in any factory an accident occurs which causes death, or which causes any bodily injury by reason of which the person injured is prevented from working for a period of forty-eight hours or more immediately following the accident, or which is of such nature as may be prescribed in this behalf, the manager of the factory shall send notice thereof to such authorities, in such form and within such time, as may be prescribed. Where such a notice relates to an accident causing death, the authority to whom the notice is sent shall make an inquiry into the occurrence within one month of the receipt of the notice or if there is no such authority, the Chief Inspector cause the Inspector to make an inquiry within the said period. The State Government may make rules for regulating the procedure inquires under this section.

Notice of certain dangerous occurrences (Section 88A)

Where in a factory any dangerous occurrence of such nature as may be prescribed, occurs, whether causing any bodily injury or disability, or not, the manager of the factory shall send notice thereof to such authorities, and in such form and within such time, as may be prescribed.

Notice of certain diseases (Section 89)

Where any worker in a factory contracts any disease specified in the Third Schedule, the manager of the factory shall send notice thereof to such authorities, and in such form and within such time, as may be prescribed. If any medical practitioner attends on a person, who is or has been employed in a factory, and who is, or is believed by the medical practitioner to be suffering from any disease specified in the Third Schedule, the medical practitioner shall without delay send a report in writing to the office of the Chief Inspector stating -

- the name and full postal address of the patient,
- the disease from which he believes the patient to be suffering, and
- the name and address of the factory in which the patient is, or was last employed.

Where the report is so confirmed to the satisfaction of the Chief Inspector, by the certificate of the certifying

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surgeon or otherwise, that the person is suffering from a disease specified in the Third Schedule, he shall pay to the medical practitioner such fee as may be prescribed, and the fee so paid shall be recoverable as an arrear of land revenue from the occupier of the factory in which the person contracted the disease. If any medical practitioner fails to comply with his obligations under this section, he shall be punishable with fine which may extend to one thousand rupees.

The Central Government may, by notification in the Official Gazette, and to or alter the Third Schedule and any such addition or alteration shall have effect as if it had been made by this Act.

Power to direct inquiry into cases of accident or disease (Section 90)

The State Government may, if it considers it expedient so to do, appoint a competent person to inquire into the causes of any accident occurring in a factory or into any case where a disease specified in the Third Schedule has been, or is suspected to have been, contracted in a factory, and may also appoint one or more persons possessing legal or special knowledge to act as assessors in such inquiry. The person appointed to hold an inquiry under this section shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908, for the purposes of enforcing the attendance of witnesses and compelling the production of documents and material objects and may also, so far as may be necessary for the purposes of the inquiry, exercise any of the powers of an Inspector under this Act; and every person required by the person making the inquiry to furnish any information, shall be deemed to be legally bound so to do within the meaning of section 176 of the Indian Penal Code.

The person holding an inquiry under this section shall make a report to the State Government stating the cause of the accident, or as the case may be, disease, and any attendant circumstances, and adding any observations which he or any of the assessors may think fit to make. The State Government may, if it thinks fit, cause to be published any report made under this section or any extracts therefrom. The State Government may make rules for regulating the procedure of inquiries under this section.

Power to take samples (Section 91)

An Inspector may at any time during the normal working hours of a factory, after informing the occupier or manager of the factory or other person for the time being purporting to be in-charge of the factory, take, in the manner hereinafter provided, a sufficient sample of any substance used or intended to be used in the factory, such use being -

- in the belief of the Inspector, in contravention of any of the provisions of this Act or the rules made thereunder, or
- in the opinion of the Inspector, likely to cause bodily injury to, or injury to the health of, workers in the factory.

Where the Inspector takes a sample under this section, he shall, in the presence of the person informed, unless such person wilfully absents himself, divide the sample into three portions and effectively, seal and suitably mark them, and shall permit such person to add his own seal and mark thereto. The person informed shall, if the Inspector so requires, provide the appliances for dividing, sealing and marking the sample taken under this section. The Inspector shall-

- (a) forthwith give one portion of the sample to the person informed under this section.
- (b) forthwith send the second portion to a Government analyst for analysis and report thereon;
- (c) retain the third portion for production to the Court before which proceedings, if any, are instituted in respect of the substance.

Any document purporting to be a report under the hand of any Government analyst upon any substance submitted to him for analysis and report under this section, may be used as evidence in any proceeding instituted in respect of the substance.

Safety and occupational health surveys (Section 91A)

The Chief Inspector, or the Director-General of Factory Advice Service and Labour Institutes, or the Director-General of Health Services, to the Government of India, or such other officer as may be authorised in this behalf by the State Government or the Chief Inspector or the Director-General of Factory Advice Service and Labour Institutes or the Director-General of Health Services, may, at any time during the normal working hours of a factory, or at any other time as is found by him to be necessary, after giving notice in writing to the occupier or manager of the factory or any other person who for the time being purports to be in-charge of the factory, undertake safety and occupational health surveys and such occupier or manager or other person shall afford all facilities for such survey, including facilities for the examination and testing of plant and machinery and collection of samples and other data relevant to the survey.

For the purpose of facilitating surveys, every worker shall, if so required by the person conducting the survey, present himself to undergo such medical examinations as may be considered necessary by such person and furnish all information in his possession and relevant to the survey. Any time spent by a worker for undergoing medical examination or furnishing information shall, for the purpose of calculating wages and extra wages for overtime work, be deemed to be time during which such worker worked in the factory.

Penalties and Procedure

The Factories Act, 1948 was enacted for betterment of condition of workmen in factories. Yet some employers have still not applied the prescribed guidelines. Hence the act prescribes fines and imprisonment if the employers fail to apply factory act in true spirit. Section 92 – 106 provide for Penalties and Procedure along with procedural matters.

Sl. No.	Section	Provision	Penalty
1.	Section 92. General penalty for offences. <i>Who shall be liable?</i> The occupier or manager of the factory	<ul style="list-style-type: none"> • Except as otherwise expressly provided in this Act and subject to the provisions of section 93 • Contravention <ul style="list-style-type: none"> (i) of the provisions of this Act or (ii) of any rules made thereunder or (iii) of any order in writing given thereunder 	Imprisonment-Max. 2 years OR Fine- Max. 1 lakh rupees OR Both
		<ul style="list-style-type: none"> • Continued Contravention 	Further fine which may extend to one thousand rupees for each day on which the contravention is so continued.
		If any of following contravention has resulted in an accident causing death or serious bodily injury: <ul style="list-style-type: none"> • the provisions of Chapter IV or any rule made thereunder or • under section 87 	(i) Min. Fine Rs.25,000 in the case of an accident causing death (ii) Min. Fine Rs.5,000 in the case of an accident causing serious bodily injury.

2.	Section 94. Enhanced penalty after previous conviction.	(i) Contravention of the same provision of Sec. 92.	(i) Imprisonment which may extend to 3 years or with fine, not < Rs.10,000 but which may extend to Rs.2 Lakh or both Provided that the Court may, for any adequate and special reasons to be mentioned in the judgement impose a fine of less than Rs. 10,000
		(ii) If contravention of any of the provisions has resulted in an accident causing death or serious bodily injury <ul style="list-style-type: none"> • of Chapter IV or any rule made thereunder or • under Section 87. 	The fine shall not be less than Rs. 35,000 in case of death and Rs. 10,000 in the case of an accident causing serious bodily injury.
		Note: No cognizance shall be taken of any conviction made more than two years before the commission of the offence for which the person is subsequently convicted.	
3.	Section 95. Penalty for obstructing inspector.	Whoever wilfully obstructs an Inspector in the exercise of any power conferred on him by or under this Act, or fails to produce on demand by an Inspector any register or other documents kept in his custody in pursuance of this Act or of any rules made thereunder, or conceals or prevents any workers, in a factory from appearing before, or being examined by, an inspector.	Imprisonment for a term which may extend to six months or with fine which may extend to Rs.10,000 or with both.
4.	Section 96. Penalty for wrongfully disclosing results of analysis under section 91.	Whoever, except in so far as it may be necessary for the purposes of a prosecution for any offence punishable under this Act, publishes or discloses to any person the results of an analysis made under section 91.	Imprisonment for a term, which may extend to six months or with fine, which may extend to Rs.10,000 or with both.
5.	Section 96A. Penalty for contravention of the provisions of sections 41B, 41C and 41H.-	<ul style="list-style-type: none"> (i) in respect of such failure or contravention, (ii) in case the failure or contravention continues (iii) If the failure or contravention continues beyond a period of one year after the date of conviction. 	<ul style="list-style-type: none"> (i) Imprisonment for a term which may extend to seven years and with fine which may extend to two lakh rupees (ii) with additional fine which may extend to five thousand rupees for every day during which such failure or contravention continues, after the conviction for the first such failure or contravention. (iii) Imprisonment for a term which may extend to ten years.

6.	Section 97. Offences by workers.	(1) Subject to the provisions of section 111, if any worker employed in a factory contravenes any provision of this Act or any rules or orders made thereunder, imposing any duty or liability on workers, (2) Where a worker is convicted of an offence punishable under subsection (1) the occupier or manager of the factory shall not be deemed to be guilty of an offence in respect of that contravention, unless it is proved that he failed to take all reasonable measures for its prevention.	Fine which may extend to five hundred rupees.
7.	Section 98. Penalty for using false certificate of fitness.	Whoever knowingly uses or attempts to use, as a certificate of fitness granted to himself under section 70, a certificate granted to another person under that section, or who, having procured such a certificate, knowingly allow it to be used, or an attempt to use it to be made by, another person,	Imprisonment for a term, which may extend to two months or with fine which may extend to one thousand rupees or with both.
8.	Section 99. Penalty for permitting double employment of child.	If a child works in a factory on any day on which he has already been working in another factory, the parent or guardian of the child or the person having custody of or control over him or obtaining any direct benefit from his wages,	Fine which may extend to one thousand rupees, unless it appears to the Court that the child so worked without the consent or connivance of such parent, guardian or person.

Note:

1. - In section 92 and in section 94 “serious bodily injury” means an injury which involves, or in all probability will involve, the permanent loss of the use of, or permanent injury to, any limb or the permanent loss of, or injury to sight or hearing, or the fracture of any bone, but shall not include, the fracture of bone or joint (not being fracture of more than one bone or joint) of and phalanges of the hand or foot.

Liability of owner of premises in certain circumstances (Section 93)

It is the owner of the premises who shall be responsible for the provision and maintenance of common facilities and services such as approach roads, drainage, water-supply, lighting and sanitation where in any premises separate building are being leased out by the owner to different occupiers for use as separate factories. Where in any premises, independent floors or flats are leased to different occupiers for use as separate factories, the owner shall be liable as if he were the manager or occupier of a factory for any contravention of the provisions of this Act in respect of

- (i) latrines, urinals, washing facilities and common supply of water for this purpose;

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- (ii) fencing of machinery and plant belonging to the owner and not entrusted to the custody or use of an occupier;
- (iii) safe means of access to floors or flats and maintenance and cleanliness of staircase and common passages;
- (iv) precautions in case of fire;
- (iv) maintenance of hoists and lifts; and
- (vi) maintenance of any other common facilities provided in the premises.

But the liability of the owner arises only wherein any premises, independent rooms with common latrine, urinals and washing facilities are leased to different occupiers for use as separate factories so that the owner should also comply with the provisions of maintaining such facilities.

The whole of the premises shall be deemed to be single factory for the purposes computing the total number of workers employed,

The owner is liable for contravention of Chapter III except Sections 14 and 15; Chapter IV except Sections 22, 23, 27, 34, 35 and 36 where in any premises, portions of a room or a shed leased out to different occupiers for use as separate factories. It is provided that in respect of the provisions of Sections 21, 24 and 32, the owners liability shall be only in so far as such provisions relate to things under his control and the occupier shall be responsible for complying with the provisions of Chapter IV in respect of plant and machinery belonging to or supplied by him and for contravention of Section 42. The Chief Inspector has been empowered to issue orders to the owners in respect of the carrying out of the provisions as mentioned above but subject to the control of the State Government.

Exemption of occupier or manager from liability in certain cases (Section 101)

Where the occupier or manager of a factory is charged with an offence punishable under this Act and he charges another person as the actual offender, he can bring such person before the Court at the time appointed for hearing the charge. But before doing this, he shall make a due complaint and give the prosecutor at least three clear days' notice in writing of his intention so to do. If, after the commission of the offence has been proved, the occupier or manager of the factory, as the case may be, proves to the satisfaction of the Court -(a) that he has used due diligence to enforce the execution of this Act, and (b) that the said other person committed the offence in question without his knowledge, consent or connivance, then that other person shall be convicted of the offence and shall be liable to the like punishment as if he was the occupier or manager of the factory, and the occupier or manager, as the case may be, shall be, discharged from any liability under this Act in respect of such offence.

It is provided that in seeking to prove as aforesaid, the occupier or manager of the factory, as the case may be, may be examined on oath, and his evidence and that of any witness whom he calls in his support, shall be subject to cross-examination on behalf of the person he charges as the actual offender and by the prosecutor.

It is provided further that, if the person charged as the actual offender by the occupier or manager, cannot be brought before the court at the time appointed for hearing the charge, the court shall adjourn the hearing from time to time for a period not exceeding three months and if by the end of the said period the person charged as the actual offender cannot still be brought before the court, the court shall proceed to hear the charge against the occupier or manager and shall, if the offence be proved, convict the occupier or manager.

Power of court to make orders (Section 102)

Where the occupier or manager of a factory is convicted of an offence punishable under this Act the court is vested with the power to require him, by order in writing, to take such measures as may be so specified for

remedying the matters in respect of which the offence was committed. This power of the court is in addition to awarding any punishment. The person so ordered shall fulfill the same within a period specified in the order (which the court may, if it thinks fit and on application in such- behalf, from time to time extend).

In case of such an order being made, the occupier or manager of the factory, as the case may be, shall not be liable under this Act in respect of the continuation of the offence during the period or extended period, if any, allowed by the court, but if, on the expiry of such period or extended period, as the case may be, the order of the court has not been fully complied with, the occupier or manager, as the case may be, shall be deemed to have committed a further offence, and may be sentenced therefor by the court to undergo imprisonment for a term which may extend to six months or to pay a fine which may extend to one hundred rupees for every day after such expiry on which the order has not been complied with, or both to undergo such imprisonment and to pay such fine as aforesaid.

Presumption as to employment (Section 103)

If a person is found in a factory at any time, except during intervals for meals or rest, when work is going on or the machinery is in motion, he shall until the contrary is proved, be deemed for the purposes of this Act and the rules made thereunder to have been at that time employed in the factory.

Onus as to age (Section 104)

When any act or omission would, be an offence punishable under this Act, if a person was under a certain age and such person is in the opinion of the Court prima facie under such age, the burden shall be on the accused to prove that such person is not under such age. A declaration in writing by a certifying surgeon relating to a worker that he has personally examined him and believes him to be under the age stated in such declaration shall, for the purposes of this Act and the rules made thereunder, be admissible as evidence of the age of that worker.

Onus of proving limits of what is practicable, etc. (Section 104A.)

In any proceeding for an offence for the contravention of any provision of this Act or rules made thereunder consisting of a failure to comply with a duty or requirement to do something, it shall be for the person who is alleged to have failed to comply with such duty or requirement, to prove that it was not reasonably practicable or as the case may be, all practicable measures were taken to satisfy the duty or requirement.

Cognizance of offences (Section 105)

An offence punishable under this Act can be tried only by a Court which is equivalent or superior to the rank that of a Presidency Magistrate or of a Magistrate of the first class. Such Court can take cognizance of any offence under this Act only on complaint by an Inspector or with previous sanction in writing of an Inspector.

Limitation of prosecution (Section 106)

The complaint under this Act shall be made within three months of the date when the alleged commissioning of offence came to the knowledge of an Inspector. A court can only then take cognizance of any offence punishable under this Act. It is provided that where the offence consists of disobeying a written order made by an Inspector, complaint thereof may be made within six months of the date on which the offence is alleged to have been committed.

Explanation. - For the purposes of this section, -(a) in the case of a continuing offence, the period of limitation shall be computed with reference to every point of time during which the offence continues; (b) where for the performance of any act time is granted or extended on an application made by the occupier or manager of a factory the period of limitation shall be computed from the date on which the time so granted or extended expired.

Jurisdiction of a Court for entertaining proceedings, etc., for offence (Section 106-A.)

For the purposes of conferring jurisdiction on any Court in relation to an offence under this Act or the rules made thereunder in connection with the operation of any plant, the place where the plant is for the time being situate shall be deemed to be the place where such offence has been committed.

SUPPLEMENTAL (SECTIONS 107 TO 119)

Appeals (Section 107)

The section gives an opportunity to the manager of a factory on whom an order in writing by an Inspector has been served under the provisions of this Act or the occupier of the factory that he may appeal against it to the prescribed authority. Such authority may confirm, modify or reverse the order. Appeal shall be filed within thirty days of the service of the order.

The appellate authority may, or if so required in the petition of appeal shall, hear the appeal with the aid of assessors, one of whom shall be appointed by the appellate authority and the other by such body representing the industry concerned as may be prescribed.

It is provided that if no assessor is appointed by such body before the time fixed for hearing the appeal, or if the assessor so appointed fails to attend the hearing at such time, the appellate authority may, unless satisfied that the failure to attend is due to sufficient cause, proceed to hear the appeal without the aid of such assessor or, if it thinks fit, without the aid of any assessor.

Subject to such conditions as to partial compliance or the adoption of temporary measures as the appellate authority may in any case think fit to impose, the appellate authority may, if it thinks fit, suspend the order appealed against pending the decision of the appeal.

The provisions of the section are subject to such rules as may be made by the State Government with respect to them.

Display of notices (Section 108)

The section provides for statutory requirement of displaying in every factory a notice containing such abstracts of this Act and of the rules made thereunder as may be prescribed and also the name and address of the Inspector and the certifying surgeon. This requirement is in addition to the notices required to be displayed in any factory by or under this Act.

All notices required by or under this Act to be displayed in a factory shall be in English and in a language understood by the majority of the workers in the factory, and shall be displayed at some conspicuous and convenient place at or near the main entrance to the factory, and shall be maintained in a clean and legible condition. The Chief Inspector may, by order in writing served on the manager of any factory, require that there shall be displayed in the factory any other notice or poster relating to the health, safety or welfare of the workers in the factory.

Service of notices (Section 109)

The State Government may make rules prescribing the manner of the service of orders under this Act on owners, occupiers or managers of factories.

Returns (Section 110)

The State Government may make rules requiring owners, occupiers or managers of factories to submit such returns, occasional or periodical, as may be, in its opinion be required for the purposes of this Act.

Obligations of workers (Section 111)

Apart from imposing obligations on occupier or manager of a factory for welfare of workers, the Act also provides for prohibition on workers too. According to this section, a worker in a factory shall not be indulged in the following activities:

- (a) wilfully interfere with or misuse any appliance, convenience or other thing provided in a factory for the purposes of securing the health, safety or welfare of the workers therein;
- (b) wilfully and without reasonable cause do anything likely to endanger himself or others; and
- (c) wilfully neglect to make use of any appliance or other thing provided in the factory for the purposes of securing the health or safety of the workers therein.

If any worker employed in a factory contravenes any of the provisions of this section or of any rule or order made thereunder, he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one hundred rupees, or with both.

Right of workers, etc. (Section 111-A)

The section gives certain right to every worker as follows:

- (i) obtain from the occupier, information relating to workers' health and safety at work,
- (ii) get trained within the factory wherever possible, or, to get himself sponsored by the occupier for getting trained at a training centre or institute, duly approved by the Chief Inspector, where training is imparted for workers' health and safety at work,
- (iii) represent to the Inspector directly or through his representative in the matter of inadequate provision for protection of his health or safety in the factory.

General power to make rules (Section 112)

The State Government may make rules providing for any matter which, under any of the provisions of this Act, is to be or may be prescribed or which may be considered expedient in order to give effect to the purposes of this Act.

Power of Centre to give directions (Section 113)

The Central Government may give directions to a State Government as to the carrying into execution of the provisions of this Act.

No charge for facilities and conveniences (Section 114)

Subject to the provisions of section 46, no fee or charge shall be realised from any worker in respect of any arrangements or facilities to be provided, or any equipments or appliances to be supplied by the occupier under the provisions of this Act.

Application of Act to Government factories (Section 116)

Unless otherwise provided this Act shall apply to factories belonging to the Central or any State Government.

Protection to persons acting under this Act (Section 117)

The section provides for immunity from any suit, prosecution or other legal proceeding which shall not lie against any person for anything which is in good faith done or intended to be done under this Act.

Restriction on disclosure of information (Section 118)

An Inspector is prohibited from disclosing any information relating to any manufacturing or commercial business or any working process which may come to his knowledge in the course of his official duties. This prohibition is applicable not only when he is in service but also after leaving the service. However, he may disclose such information only in connection with the execution, or for the purposes, of this Act.

But an Inspector may disclose any such information

- with the previous consent in writing of the owner of such business or process or
- for the purposes of any legal proceeding (including arbitration) pursuant to this Act or of any criminal proceeding which may be taken, whether pursuant to this Act or otherwise, or
- for the purposes of any report of such proceedings as aforesaid.

The statutory punishment on an Inspector for contravention of above provisions is imprisonment for a term which may extend to six months, or fine which may extend to one thousand rupees, or both.

Restriction on disclosure of information (Section 118-A)

Every Inspector shall treat as confidential the source of any complaint brought to his notice on the breach of any provision of this Act. No Inspector shall, while making an inspection under this Act, disclose to the occupier, manager or his representative that the inspection is made in pursuance of the receipt of a complaint. It is provided that name of the complainant can be disclosed with his previous consent.

Act to have effect notwithstanding anything contained in Act 37 of 1970 (Section 119)

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Contract Labour (Regulation and Abolition) Act, 1970 or any other law for the time being in force.

LESSON ROUNDUP

- According to the Factories Act, 1948, a 'factory' means "any premises including the precincts thereof - (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on; but this does not include a mine subject to the operation of the Mines Act, 1952, or a mobile unit belonging to the armed forces of the union, a railway running shed or a hotel, restaurant or eating place."
- No adult worker shall be required or allowed to work in a factory:- (i) for more than forty-eight hours in any week; and/ or (ii) for more than nine hours in any day.
- Where a worker works in a factory for more than nine hours in any day or for more than forty-eight hours in any week, he shall, in respect of overtime work, be entitled to wages at the rate of twice his ordinary rate of wages. The 'ordinary rate of wages' means the basic wages plus such allowances, including the cash equivalent of the advantage accruing through the concessional sale to workers of food grains and other articles, as the worker is for the time being entitled to, but does not include a bonus and wages for overtime work.
- Where a worker is deprived of any of the weekly holidays, he shall be allowed, within the month in which the holidays were due to him or within the two months immediately following that month, compensatory holidays of equal number to the holidays so lost.

- The periods of work of adult workers in a factory each day shall be so fixed that no period shall exceed five hours and that no worker shall work for more than five hours before he has had an interval for rest of at least half an hour.
- Every worker who has worked for a period of 240 days or more in a factory during a calendar year shall be allowed during the subsequent calendar year, leave with wages for a number of days calculated at the rate of - (i) if an adult, one day for every twenty days of work performed by him during the previous calendar year; (ii) if a child, one day for every fifteen days of work formed by him during the previous calendar year. In the case of a female worker, maternity leave for any number of days not exceeding twelve weeks.
- In order to safeguard the health of the workers:-
 - Every factory shall be kept clean and free from effluvia arising from any drain, privy or other nuisance and in particular accumulations of dirt.
 - Effective arrangements shall be made in every factory for the treatment of wastes and effluents due to the manufacturing process carried on therein, so as to render them innocuous and for their disposal.
 - Effective and suitable provision shall be made in every factory for securing and maintaining in every workroom adequate ventilation by the circulation of fresh air; and such a temperature that will secure to workers reasonable conditions of comfort and prevent injury to health.
 - No room in any factory shall be overcrowded to an extent injurious to the health of the workers employed therein.
 - Every part of a factory, where workers are working or passing, shall be provided with sufficient and suitable lighting, natural or artificial, or both.
 - In every factory effective arrangements shall be made to provide, at suitable points conveniently situated for all workers employed therein, a sufficient supply of wholesome drinking water.
- In order to ensure safety of the workers:-
 - Every dangerous part of any machinery shall be securely fenced and constantly maintained to keep it in position.
 - No young person shall be required or allowed to work at any dangerous machine unless he has been fully instructed as to the dangers arising from it and the precautions to be observed as well as has received sufficient training in work at the machine.
 - No woman or child shall be employed in any part of a factory for pressing cotton in which a cotton-opener is at work (subject to the given conditions).
 - In every factory every hoist and lift shall be - (i) of good mechanical construction, sound material and adequate strength; (ii) properly maintained, and thoroughly examined by a competent person at least once in every period of six months.
 - No person shall be required or allowed to enter any chamber, tank, vat, pit, pipe, flue or other confined space in any factory in which any gas, fume, vapour or dust is likely to be present to such an extent as to involve risk to the workers, unless it is provided with a manhole of adequate size or other effective means of egress.
- Certain facilities to be provided to the workers:-
 - Every factory shall provide and maintain readily accessible first-aid boxes or cupboards equipped with the prescribed contents, and the number of such boxes or cupboards shall not be less than one for every one hundred and fifty workers ordinarily employed at any one time in the factory.

Section II

The Contract Labour (Regulation and Abolition) Act, 1970

LESSON OUTLINE

- Learning Objectives
- History of the Legislation
- Judicial Activism in Reference to Contract Labour Abolition
- Constitutional Validity of the Act
- Contract Labour vis-a-vis Employees
- Object and Scope of the Act
- Definitions
- The Advisory Boards
- Registration of Establishments Employing Contract Labour
- Jurisdiction of Industrial Tribunals to abolish contract labour
- After effect of abolition of Contract Labour
- Appointment of Licensing Officer and Licensing of Contractors
- Rules regarding Appeal
- Welfare and Health of Contract Labour
- Penalties and Procedure
- Inspecting staff
- Registers and other records to be maintained
- Effect of laws and agreements inconsistent with this Act
- Power to exempt in special cases
- Protection of action taken under this Act
- Power to give directions.
- Power to make rules
- Important Case studies
- LESSON ROUND UP
- SELF-TEST QUESTIONS

LEARNING OBJECTIVES

Before the enactment of this Act, there was no specific legislation which dealt in detail with the problem of contract labour. Although there were legislation like Industrial Disputes Act, 1947, Payment of Wages Act, 1936 etc. But these enactment were not specifically designed to solve the problem of contract labour. Therefore, there was a need to for a specific legislation to stop exploitation of contract labourer by Contractors and Establishments. The Government enacted the Contract Labour (Regulation and Abolition) Act in 1970 and it came into force on 10.2.1971.

The main object of the Act is to provide for regulation of the employment of contract labour and its abolition under certain circumstances. The Act has been brought to the fore to regulate the employment of contract labour in certain establishments and to provide for its abolition in certain circumstances and for matters connected therewith. The Act essentially applies to the principal employer of an establishment and the contractor who employed 20 or more workmen even for one day, in the preceding twelve months as the contract labourer. The Act, however, does not pertain to seasonal employment or intermittent employment. This Act makes an endeavor to create a balance between, providing minimum wages to contract workers through the licensing of contractors and holding the principle employers accountable for the enforcement of the law.

The Act enumerates certain joint and several responsibilities on the principal employer and the contractor. It is the duty of the principal employer to ensure that the contractor adheres to the liabilities under the Act. The principal employer is obliged under the CLA to ensure that wages have been paid to the contract labour in the presence of its (principal employer's) authorized representative. If the contractor fails to pay wages to any worker, the principal employer has been made duty bound to pay the same.

In this lesson, students will be acclimatized with the legal frame work stipulated under the Contract Labour (Regulation and Abolition) Act, 1970.

An Act to regulate the employment of contract labour in certain establishments and to provide for its abolition in certain circumstances and for matters connected therewith.

HISTORY OF THE LEGISLATION

Contract Labour has its root from time immemorial but the size of contract labour in India has significantly expanded in the post-independence period with the expansion of construction activity following substantial investment in the Plans. During the early period of industrialisation, the industrial establishments were always faced with the problems of labour recruitment. Low status of factory workers, lack of labour mobility, caste and religious taboo, language, etc., were some of the problems with which most of the employers in general and British employers or their representatives, in particular were not familiar. They were unable to solve these problems. Therefore, they had to depend on middlemen who helped them in recruitment and control of labour. These middlemen or contractors were known by different names in various parts of the country. Contract Labourers were considered as exploited section of the working class mainly due to lack of organisation on their part. Due to this, the Whitley Commission (1860) recommended the abolition of contract labour by implication. Before 1860, in addition to the many disadvantages suffered by the contract labour, the Workman's Breach of Contract Act 1859 operated in holding them criminally responsible in the event of a breach of contract service.

Following this, the Government constituted various committees to study the socio-economic conditions of contract labours e.g. The Bombay Textile Labour Enquiry Committee (1938), The Bihar Labour Enquiry Committee (1941), The Rega Committee (1946). As a result of recommendations of these committees, the scope of the definition of "workers" in the Factories Act (1948), the Mines Act (1952) and the Plantations Labour Act (1951), was enlarged to include contract labour.

In the Second Five Year Plan, the Planning Commission stressed the need of improvement in the working conditions of contract labour and thus, recommended for a special treatment to the contract labour so as to ensure them continuous employment where it was not possible to abolish such type of labour. It was discussed at various meetings of Tripartite Committees at which the State Governments were also represented and the general consensus of opinion was that the system of contract should be abolished wherever possible and practicable and that in case where this system could not be abolished altogether, the working conditions of contract labour should be regulated so as to ensure payment of wages and provision of essential amenities. Based on these views "The Contract Labour (Regulation and Abolition) Act, 1970" was passed by both the Houses of Parliament and received the assent of the President on 5th September, 1970 and it came into force from 10th February, 1971. The Contract Labour (Regulation and Abolition) Central Rules, 1971 were also notified for enforcement of the Act.

Judicial activism In reference to Contract Labour Abolition

The Courts took very active role in interpreting and favouring of the abolition of the Contract Labour and regulating the rights of the Contract Labour.

The First of it is the landmark judgement in *Standard Vacuum Refining Company v. Its Workmen*, [1960] 3 SCR 466 in which the Supreme Court had affirmed the direction of the Industrial Tribunal for the abolition of the contract system of labour. Further the judgement of the Supreme Court in this historic case said that contract labour should not be employed where

- (a) the work is perennial and goes on from day to day;
- (b) the work is necessary for the factory;
- (c) the work is sufficient to employ a considerable number of whole-time workmen; and
- (d) the work is being done in most concerns through regular workmen.

Further in *Catering Cleaners of Southern Railway v. Union of India & Ors.*, AIR 1987 SC 777 the Supreme Court expressed in dismay with reference to contract labour engagement as follows: "Of late there has been a noticeable tendency on the part of big companies including public sector companies to get the work done through contractors rather than through their own departments". "it is a matter of surprise that employment of

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contract labour is steadily on the increase in many organised sectors including the public sector, which one expects to function as a model employer.”

Further in *Gujarat Electricity Board v. Hind Mazdoor Sabha*, Supreme Court has expressed its dismay “While parting with these matters, we cannot help expressing our dismay over the fact that even the undertakings in the public sector have been indulging in unfair labour practice by engaging contract labour when workmen can be employed directly even according to the tests laid down by Section 10 of the Act. The only ostensible purpose in engaging the contract labour instead of the direct employees is the monetary advantage by reducing the expenditure. Apart from the fact that it is an unfair labour practice, it is also an economically short-sighted and unsound policy, both from the point of view of the undertaking concerned and the country as a whole.

The economic growth is not to be measured only in terms of production and profits. It has to be gauged primarily in terms of employment and earnings of the people. Man has to be the focal point of development. The attitude adopted by the undertakings is inconsistent with the need to reduce unemployment and the Government policy declared from time to time, to give jobs to the unemployed. This is apart from the mandate of the directive principles contained in Articles 38, 39, 41, 42, 43 and 47 of our Constitution.”

From the above, it can be inferred that the courts are also of the view that the Contract Labour engagement shall be abolished over a period of time as it leads to the abuse of labour rights for the economic benefit of the employers and is used mainly to depart from the responsibilities being an employer towards the employees.

Constitutional Validity of the Act

The Supreme Court in *Gammon India Ltd. v. Union of India 1974 SCC (L&S) 252* while dealing with the Contract Labour Act, 1970 held that “The Act provides for regulation and abolition of contract labour. The underlying policy of the Act is to abolish contract labour, wherever possible and practicable and where it cannot be abolished altogether, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provision of essential amenities. That is why the Act provides for regulated conditions of work and contemplates progressive abolition to the extent contemplated by section 10 of the Act. Section 10 of the Act deals with abolition while the rest of the Act deals mainly with regulation. The dominant idea of the section 10 of the Act is to find out whether contract labour is necessary for the industry, trade, business, manufacture or occupation which is carried on in the establishment. The Act in section 10 empowers the Government to prohibit employment of contract labour in any establishment.” and it was further held that “the Act does not violate Articles 14 and 15 of the Constitution of India.”

Contract Labour vis-a-vis Employees

According to the Act a “contract labour” is hired in or in connection with such work by or through a contractor and such hiring is with or without the knowledge of the principal employer. However “An employee” is “a person who works in the service of another under express or implied contract for hire, under which the employer has the right to control details of work performance” (Black’s Law Dictionary).

“Contract labour” can be distinguished from employees in terms of employment relationship with the principal establishment and the method of wage payment. A workman is deemed to be a contract labour when he/she is hired in connection with the work or contract for service of an establishment by or through a contractor. They are indirect employees. Contract labour is neither borne on pay roll or muster roll or wages paid directly to the employer.

In *Basanta Kumar Mohanty v. State Of Orissa (1992) ILLJ 190 Ori.* it was held that “a workman shall be deemed to have been employed as contract labour when he is hired in, or in connection with a particular work of the principal employer. The determinative factor, therefore, is whether a workman was hired in or in connection with work of an establishment. A permanent employee who during his employment can be placed at different establishments at the choice of the contractor cannot be called to be a contract labour because he is not hired

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in or in connection with the work of any particular establishment. The logic behind this conclusion is that where employment of a person is unrelated with any specific work of any establishment, he is not a contract labour, because his employment has no nexus with any particular work of any establishment.”

Object and Scope of the Act

The preamble of the Act states that it is an Act to regulate the employment of contract labour in certain establishments and to provide for its abolition in certain circumstances and for matters connected therewith.

Application of the Act to pending construction works does not amount to unreasonable restriction on the right under Act 19(1) (g). The whole statute is constitutional and valid. (*Gammon India Ltd. v. Union of India*, 1974 SCC (L & S) 252.)

Act does not violate Arts. 14 and 15. *Gammon India Ltd. v. Union of India*, (1974) 1 SCC 596,603: 1974 SCC (L & S) 252.

In *Gammon India Ltd. vs. Union of India*, (1974-I-LLJ-489) the Supreme Court while dealing with the object for which the Contract Labour (Regulation and Abolition) Act, 1970 was enacted observed that the Act was passed to prevent the exploitation of contract labour and also to introduce better conditions of work. The Act provides for regulation and abolition of contract labour. The underlying policy of the Act is to abolish contract labour, whenever possible and practicable, and where it cannot be abolished, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provisions of essential amenities.

In exercise of the powers conferred by section 35 of the Contract Labour (Regulation and Abolition) Act, 1970 the Central Government made the rules, “The Contract Labour (Regulation and Abolition) Central Rules, 1971.

According to section 1, the Act extends to the whole of India. It applies –

- (a) to every establishment in which twenty or more workmen, are employed or were employed on any day of the preceding twelve months as contract labour ;
- (b) to every contractor who employs or who employed on any day of the preceding twelve months twenty or more workmen.

However, the appropriate Government may, after giving not less than two months’ notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act to any establishment or contractor employing such number of workmen less than twenty as may be specified in the notification.

Where the dispute relates to service conditions of the workmen engaged in the factory canteen maintained by the company and there is no question of abolition of contract labour, the dispute can be referred to the industrial Tribunal for adjudication *Indian Explosives Ltd. v. State of u. P.*, (1981) 1 LLJ 423 (All H.C.)

According to section 1(5), the Act is not applicable to establishments in which work only of an intermittent or casual nature is performed. If a question arises whether work performed in an establishment is of an intermittent or casual nature, the appropriate Government shall decide that question after consultation with the Central Board or, as the case may be, a State Board, and its decision shall be final.

Explanation.-For the purpose of this sub-section, work performed in an establishment shall not be deemed to be of an intermittent nature-(i) if it was, performed for more than one hundred and twenty days in the preceding twelve months, or(ii) if it is of a seasonal character and is performed for more than sixty days in a year.

Definitions

According to section 2(1) – In this Act, unless the context otherwise requires, –

‘Appropriate Government’ means,-

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- (i) in relation to an establishment in respect of which the appropriate Government under the Industrial Disputes Act, 1947, is the Central Government;
- (ii) in relation to any other establishment, the Government of the State in which that other establishment is situated; .{Section 2(1)(a)}

“Contract Labour”

A workman shall be deemed to be employed as “contract labour” in or in connection with the work-of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer; .{Section 2(1)(b)}

“Contract labour” can be distinguished from employees in terms of employment relationship with the principal establishment and the method of wage payment. A workman is deemed to be a contract labour when he/she is hired in connection with the work or contract for service of an establishment by or through a contractor. They are indirect employees. Contract labour is neither borne on pay roll or muster roll or wages paid directly to the employer.

“Contractor”

Contractor in relation to an establishment, means- a person

- who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or
- who supplies contract labour for any work of the establishment and includes a sub-contractor ; .{Section 2(1)(c)}

S.2 (1)(c)-Contractor engaged for S. 2(1) (c) covers construction of building. *Gammon India Ltd. v. Union of India*, (1974) 1 SCC 596: 1971 SCC (L & S) 252.

Ss. 2(1)(c) & 12-Where a person undertook to collect and manufacture quarry products for and on behalf of railways by engaging workmen to carry out his contract works under the railway establishment, the workmen employed by him for such work are to be deemed as “contract labour” as provided under S.2 (1)(b). The supply of such quarry products would produce a given result for the establishment, thus he fulfils all requirements of a “contractor” under S. 2 (1)(c) and therefore, is obliged to take licence under S. 12(1). *H.C. Bathra v. Union of India*, 1976 Lab IC 1199 (Gauhati).

S.2 (1)(c)-‘Contractor’ is one who supplies contract labour to an establishment undertaking to produce a given result for it. He hires labour in connection with the work of an establishment. *State of Gujarat v. Vogue Garments*, (1983) 1 LLJ 255: 1983 Lab IC 129 (Guj HC).

S. 2 (1) (c)-Sub-contractors or ‘piece wagers’, are contractors (*Labourers Working on Salal Hydro Project v. State of J & K*, (1983)/2 SCG 181).

“Controlled Industry”

Controlled industry means any industry the control of which by the Union has been declared by any Central Act to be expedient in the public interest; .{Section 2(1)(d)}

“Establishment”

Establishment means-

- (i) any office or department of the Government or a local authority, or -
- (ii) any place where any industries, trade, business, manufacture or occupation is carried on;

{Section 2(1)(e)}

S.2 (1)(e)(ii)-A ship or vessel in which repair work is carried on is a place and an “establishment” within the

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meaning of S. 2 (1) (e) (ii). The work site or place may or may not belong to the principal employer, but that will not stand in the way of application of the Act or in holding that a particular place or work site where industry, trade, business, manufacture or occupation is carried on is not an establishment. *Lionel Edwards Led. v. Labour Enforcement Officer, (1977) 51 FJR 199 (Cal)*.

S.2(1)(e)(ii)-Any object for the time being covering the surface and where industry, trade, business, manufacture or occupation is carried on would be a place and an “establishment” within the meaning of S. 2 (1) (e) (ii).

S.2(1)(e)(ii). A ship anchored or berthed in a port would be a work site and the workmen employed for loading and unloading of the cargo, security, repairs to the ship would be all in connection with the business or trade. The Docks in which a ship may be berthed is controlled by the Port Authorities and the ship owners' agents would be unable to provide facilities for canteens, rest rooms etc. But these defects cannot be ground for totally excluding a ship in a port from the ambit of “establishment”. *Lionel Edwards Ltd. v, Labour Enforcement Officer, (1978) 53 FJR 116 (Cal DB)*.

“Principal Employer”

Principal employer means –

- (i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as “the Government or the local authority, as the case may be, may specify in this behalf,
- (ii) in a factory, the owner or occupier of the factory and where a person has been named as the manager of the factory under the Factories Act, 1948 ,the person so named.
- (iii) in a mine, the owner or agent of the mine and where a person has been named as the manager of the mine, the person so named,
- (iv) in any other establishment, any person responsible for the supervision and control of the establishment.

{Section 2(1)(g)}

Explanation.-For the purpose of sub-clause (iii) of this clause expressions mine”, “owner” and “agent” shall have the meanings respectively assigned clause (j), clause (1) and clause (c) of sub-section (1) of Section 2 of the ‘Mines Act, 1952;

“Occupier” of a factory under section 2(n) of the Factories Act; 1948 means the person who has ultimate control over the affairs of the factory, and where the said affairs are entrusted to a managing agent, such agent shall be deemed to be the occupier of the factory.

“Wages”

Wages shall have the meaning assigned to it in clause (vi) of Section 2 of the Payment of Wages Act, 1936;

{Section 2(1)(h)}

“Workman”

Workman means any person employed in or in connection with the work of any establishment to do any skilled, semi-skilled or un-skilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied, but does not include any such person-

- (A) who is employed mainly in a managerial or administrative capacity; or
- (B) who, being employed in a supervisory capacity draws wages exceeding five hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him functions mainly of a managerial nature; or
- (C) who is an out worker, that is to say, a person to whom any articles and materials are given out by or

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on behalf of the principal employer to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for the purposes of the trade or business of the principal employer and the process is to be carried out either in the home of the out-worker or in some other premises, not being premises under the control and management of the principal employer.

{Section 2(1)(i)}

The Advisory Boards

(1) Central Advisory Board.

Constitution of Central Board: In pursuance to the provisions of section 3, the Central Government shall constitute a board to be called the Central Advisory Contract Labour Board (hereinafter referred to as the Central Board) .

Function of the Central Board: The Central Board shall perform function of advising the Central Government on such matters arising out of the administration of this Act as may be referred to it and to carry out other functions assigned to it under this Act.

Composition of the Central Board: The Central Board shall consist of--

- (a) a Chairman to be appointed by the Central Government ;
- (b) the Chief Labour Commissioner (Central) , *ex officio*;
- (c) such number of members, not exceeding seventeen but not less than eleven, as the Central Government may nominate to represent that Government, the Railways, the coal industry, the mining industry, the contractors, the workmen an any other interests which, in the opinion of the Central Government ought to be represented on the Central Board.

The number of persons to be appointed and members from each of the categories specified above, the term of office and other conditions of service of, the procedure to be followed in the discharge of their functions by, and the manner of filling vacancies among, the members of the Central Board shall be such as may be prescribed .

Provided that the number of members nominated to represent the workmen shall not be less than the number of members nominated to represent the principal employers and the contractors.

Ss. 3 & 10- A member of the Central Board does not cease to be a member as soon as he ceases to represent the interest which he purports to represent on the board. *J.P. Gupta v; Union of India, 1981 Lab IC 641 (Pat HC).*

(2) State Advisory Board

Constitution of the State Board: Section 4 empowers the State Government to constitute a board to be called the State Advisory Contract-Labour Board (hereinafter referred to as the State Board).

Note: It is mandatory for the Central Government to constitute the Central Board u/s 3 of the Act while it is discretionary for the State Government to constitute the State Board u/s 4 of the Act.

Function of State Board: The State Board is constituted to advise the State Government on such matters arising out of the administration of this Act as may be referred to it and to carry out other functions assigned to it under this Act.

Composition of the State Board: The State Board shall consist of –

- (a) a Chairman to be appointed by the State Government ;
- (b) the Labour Commissioner, *ex officio*, or in his absence any other officer nominated by the State. Government in that behalf ;

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- (c) such numbers, not exceeding eleven but not less than nine, as the State Government may nominate to represent that Government, the industry, the contractors, the workmen and any other interests which, in the opinion of the State Government, ought to be represented on the State Board.

The number of persons to be appointed as members from each of the specified categories, the term of office and other conditions of service of, the procedure to be followed in the discharge of their functions by, and the manner of filling vacancies among, the members of the State Board shall be such as may be prescribed. However, it is provided that the number of members nominated to represent the workmen shall not be less than the number of members nominated to represent the principal employers and the contractors.

(3) Power to constitute committees

According to section 5, the Central Board or the State Board, as the case may be, may constitute such committees and for such purpose or purposes as it may think fit. The committee shall meet at such time and places and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be prescribed. The members of a committee shall be paid such fees and allowances for attending its meetings as may be prescribed:

Provided that no fees shall be payable to a member who is an officer of Government or of any corporation established by any law for the time being in force.

Registration of Establishments Employing Contract Labour

(1) Appointment of Registering Officers: According to section 6, the Appropriate Government may, by an order notified in the Official Gazette-(a) appoint such persons, being Gazetted Officers of Government, as it thinks fit to be registering officers for the purposes of this Chapter; and (b) define the limits, within which a registering officer shall exercise the powers conferred on him by or under this Act.

(2) Registration of certain establishment: Section 7 makes it mandatory for every principal employer of an establishment to which this Act applies to make an application to the registering office in the prescribed manner for registration of the establishment. The appropriate G Government may, by notification in the Official Gazette, fix time period for making such application with respect to establishments generally or with respect to any class of them. It is provided that the registering officer may entertain any such application for registration after expiry of the period fixed in this behalf, if the registering officer is satisfied that the applicant was prevented by sufficient cause from making the application in time.

If the application for registration is complete in all respects, the registering officer shall register the establishment and issue to the principal employer of the establishment a certificate of registration containing such particulars as may be prescribed.

Section 7 (1) of the Act read with Rule 17 (1) of The Contract Labour (Regulation and Abolition) Central Rules, 1971 (Rules) mandates that every principal employer of an establishment to which this Act applies shall, in the time limit so fixed, make an application in triplicate, in Form I, to the registering office in the prescribed manner for registration of the establishment accompanied by treasury receipt showing payment of the fees for the registration of the establishment (Rule 17(2)). Such application shall be either personally delivered to the registering officer or sent to him by registered post. (Rule 17(3))

The Registering Officer may at his discretion entertain any such application for registration after expiry of the period fixed in this behalf upon being satisfied that there is sufficient cause for delay. The Registering authority under Rule 18 of The Contract Labour (Regulation and Abolition) Central Rules, 1971 shall issue a Certificate of Registration in Form I annexed to the Rationalisation of Forms and Reports under Certain Labour Laws Rules, 2017. Further, Rule 18(4) of the Act mandates that, if there is any change, in the particulars specified in the certificate of registration, the principal employer of the establishment shall intimate to the registering officer, within 30 (Thirty) days from the date when such change takes place, the particulars of, and the reasons for,