

THE FACTORIES ACT 1948

There has been rise of large scale factory/ industry in India in the later half of nineteenth century. Major Moore, Inspector-in- Chief of the Bombay Cotton Department, in his Report in 1872-73 first of all raised the question for the provision of legislation to regulate the working condition in factories; the first Factories act was enacted in 1881.

Since then the act has been amended on many occasions. The Factories Act 1934 was passed replacing all the previous legislation in regard to factories. This act was drafted in the light of the recommendations of the Royal Commission on Labour. This Act has also been amended suitably from time to time.

The experience of working of the Factories Act, 1934 had revealed a number of defects and weakness which have hampered effective administration of the Act, and the need for wholesale revision of the act to extend its protective provisions to the large number of smaller industrial establishments was felt.

Therefore, the Factories Act, 1948 consolidating and amending the law relating to labour in factories, was passed by the Constituent Assembly on August 28, 1948. The Act received the assent of Governor General of India on 23 September 1948 and came into force on April 1, 1949.

Objective of Factories Act ,1948

The main objectives of the Indian Factories Act, 1948 are to regulate the working conditions in factories, to regulate health, safety welfare, and annual leave and enact special provision in respect of young persons, women and children who work in the factories.

1. Working Hours:

According to the provision of working hours of adults, no adult worker shall be required or allowed to work in a factory for more than 48 hours in a week. There should be a weekly holiday.

2. Health:

For protecting the health of workers, the Act lays down that every factory shall be kept clean and all necessary precautions shall be taken in this regard. The factories should have proper drainage system, adequate lighting, ventilation, temperature etc.

Adequate arrangements for drinking water should be made. Sufficient latrine and urinals should be provided at convenient places. These should be easily accessible to workers and must be kept cleaned.

3. Safety:

In order to provide safety to the workers, the Act provides that the machinery should be fenced, no young person shall work at any dangerous machine, in confined spaces, there should be provision for manholes of adequate size so that in case of emergency the workers can escape.

4. Welfare:

For the welfare of the workers, the Act provides that in every factory adequate and suitable facilities for washing should be provided and maintained for the use of workers.

Facilities for storing and drying clothing, facilities for sitting, first-aid appliances, shelters, rest rooms' and lunch rooms, crèches, should be there.

5. Penalties:-

The provisions of The Factories Act, 1948, or any rules made under the Act, or any order given in writing under the Act is violated, it is treated as an offence. The following penalties can be imposed:-

- (a) Imprisonment for a term which may extend to one year;
- (b) Fine which may extend to one lakh rupees; or
- (c) Both fine and imprisonment.

If a worker misuses an appliance related to welfare, safety and health of workers, or in relation to discharge of his duties, he can be imposed a penalty of Rs. 500/-.

Applicability of Factories Act, 1948

The Act is applicable to any factory 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 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, or a mobile unit belonging to the armed forces of the union, a railway running shed or a hotel, restaurant or eating place.

Importance of Factories Act, 1948

The Factories Act, 1948 is a beneficial legislation. The aim and object of the Act is essentially to safeguard the interests of workers, stop their exploitation and take care of their safety, hygiene and welfare at their places of work. It casts various obligations, duties and responsibilities on the occupier of a factory and also on the factory manager. Amendments to the Act and court decisions have further extended the nature and scope of the concept of occupier, especially vis-a-vis hazardous processes in factories.

Definitions

1. Who is an Occupier?

According to section 2(n) "occupier" of a factory means the person, who has ultimate control over the affairs of the factory,

Provided that-

(i) in the case of a firm or other association of individuals, any one of the individual partners or members thereof shall be deemed to be the occupier;

(ii) in the case of a company, any one of the directors, shall be deemed to be the occupier:

(iii) in the case of a factory owned or controlled by the Central Government or any State Government, or any local authority, the person or persons appointed to manage the affairs of the factory by the Central Government, the State Government or the local authority, as the case may be, shall be deemed to be the occupier:

Provided further that in the case of a ship which is being repaired, or on which maintenance work is being carried out, in a dry dock which is available for hire,

(1) the owner of the dock shall be deemed to be the occupier for the purposes of any matter provided for by or under-

(a) section 6, section 7, section 7A, section 7B, section 11 or section 12;

(b) section 17, in so far as it relates to the providing and maintenance of sufficient and suitable lighting in or around the dock;

(e) section 18, section 19, section 42, section 46, section 47 or section 49, in relation to the workers employed on such repair or maintenance;

(2) the owner of the ship or his agent or master or other officer-in-charge of the ship or any person who contracts with such owner, agent or master or other officer-in-charge to carry out the repair or maintenance work shall be deemed to be the occupier for the purposes of any matter provided for by or under section 13, section 14, section 16 or section 17 (save as otherwise provided in this proviso) or Chapter IV (except section 27) or section 43, section 44 or section 45, Chapter VI, Chapter VII, Chapter VIII or Chapter IX or section 108, section 109 or section 110, in relation to-

(a) the workers employed directly by him or by or through any agency; and

(b) the machinery, plant or premises in use for the purpose of carrying out such repair or maintenance work by such owner, agent, master or other officer-in-charge or person.

ION Exchange India Ltd. V. Deputy Chief Inspector of factories, Salem (1996). It was held that owner can nominate any person to be in ultimate control over the affairs of a factory. If no one else has been nominated to be in ultimate control over the affairs of the company, Director of a company or any partner of partnership is deemed to be the occupier.

2. What is a factory?

According to section 2(m) "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 does not include a mine subject to the operation of the Mines Act, 1952 (XXXV of 1952) or a mobile unit belonging to the armed forces of the Union, a railway running shed or a hotel, restaurant or eating place;

Explanation I--- For computing the number of workers for the purposes of this clause all the workers in different groups and relays in a day shall be taken into account;

Explanation II.---For the purposes of this clause, the mere fact that an Electronic Data Processing Unit or a Computer Unit is installed in any premises or part thereof, shall not be construed to make it a factory if no manufacturing process is being carried on in such premises or part thereof;

3. Who is a Worker?

According to section 2(l) "worker" means a person employed directly or by or through any agency (including a contractor) with or without the knowledge of the principal employer whether for remuneration or not in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with the manufacturing process, or the subject of the manufacturing process but does not include any member of the armed forces of the Union;

4. What is a Manufacturing Process?

According to section 2(k) "manufacturing process" means any process for-

(i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing or otherwise treating or adopting any article or substance with a view to its use, sale, transport, delivery or disposal; or

(ii) Pumping oil, water, sewage, or any other substance; or

(iii) Generating, transforming or transmitting power; or

(iv) composing types for printing, printing by letter press, lithography, photogravure or other similar process or book-binding; or

(v) Constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or

(vi) Preserving or storing any article in cold storage;

5. What is hazardous process?

According to section 2(cb) "hazardous process" means any process or activity in relation to an industry

specified in the 'First Schedule where, unless special care is taken, raw materials used therein or the intermediate or finished products, bye-products, wastes or effluents thereof would-

(i) cause material impairment to the health of the persons engaged in or connected therewith, or (ii) result in the pollution of the general environment:- Provided that the State Government may, by notification in the official Gazette, amend the First Schedule by way of addition, omission or variation of any industry specified in the said Schedule;

Duties of Occupier

The Duties of Occupier have been clearly mentioned in the following sections of Factories Act, 1948: -

1. Notice by Occupier (Section 7)

The occupier shall, send to the Chief Inspector a written notice in respect of all establishments which come within the scope of the Act for the first time, before 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, whenever a new manager is appointed. 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 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.

2. General Duties of the Occupier(Section7A)

To ensure the health, safety and welfare of all workers while they are at work in the factory.

To provide and maintain the plant and systems of work in the factory that are safe and without risk to health of the workers.

To provide arrangements in the factory for ensuring safety and absence of risk to health in connection with the use, handling, storage and transport of articles and substances

To provide such information, instruction, training and supervision as are necessary to ensure the health and safety of all workers at work.

To maintain all places of work in the factory in a condition that is safe and without risks to health and to provide and maintain such means of access to, and egress from, such places as are safe and without such risks.

To provide, maintain or monitor such working environment in the factory for the workers that is safe, without risk to health and adequate as regards facilities and arrangements for their welfare at work.

To prepare a written statement of his general policy with respect to the health and safety of the workers at work and the organization and arrangements in force for carrying out that policy.

3. Appointment of Safety officers. (Section 40-B)

It shall be the duty of the of the Occupier to Appoint a Safety officer in a 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 persons employed in the factory, if so required by the State Government by notification in the official Gazette.

4. Compulsory Disclosure of Information by the Occupier. (Section 41-B)

Compulsory disclosure of information by the occupier -

The occupier of every factory involving a hazardous process shall disclose in the manner prescribed to the Chief Inspector and the local authority.

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 intimates such policy to the Chief Inspector and the local authority.

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.

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.

5. Specific Responsibility of the occupier in relation to Hazardous Process. (Section 41-C)

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

appoint persons who possess qualifications and experience in handling hazardous substances

Provide for medical examination of every worker.

6. Worker's Participation in safety management. (Section 41-G)

The occupier shall, in every factory where a hazardous process takes place, or where hazardous substances are used or handled, set up a Safety Committee consisting of equal number of representatives of workers and management 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.

7. Right of Workers to be warned about imminent dangers. (Section 41-H)

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 forthwith of the action taken to the nearest Inspector.

8. Facilities for sitting and Canteens. (Section 42 to 49)

It is the duty of occupier to provide welfare facilities like Lunch rooms, Canteen, Crèche, Washing facilities, first-aid appliances etc. to all workers and to appoint a welfare officer.

9. Annual Leave with Wage.(Section 79)

For the purpose of ensuring the continuity of work, the occupier or manager of the factory, in agreement with the Works Committee of the factory constituted under section 3 of the Industrial Disputes Act, 1947 (14 of 1947), or a similar Committee constituted under any other Act or if there is no such Works Committee or a similar Committee in the factory, in agreement with the representatives of the workers therein chosen in the prescribed manner, may lodge with the Chief Inspector a scheme in writing whereby the grant of leave allowable under this section may be regulated.

10. Safety and Occupational Health Survey. (Section 91-A)

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 every, including facilities for the examination and testing of plant and machinery and collection of samples and other data relevant to the survey.