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UNIT -1

THE MINIMUM WAGES ACT, 1948.

OBJECT AND SCOPE OF THE LEGISLATION

The Minimum Wages Act was passed in 1948 and it came into force on 15th March, 1948. The National Commission on Labour has described the passing of the Act as landmark in the history of labour legislation in the country. The philosophy of the Minimum Wages Act and its significance in the context of conditions in India, has been explained by the Supreme Court in India Unicoi v. State of Kerala (A.I.R. 1962 SC 12), as follows: “What the Minimum Wages Act purports to achieve is to prevent exploitation of labour and for that purpose empowers the appropriate Government to take steps to prescribe minimum rates of wages in the scheduled industries. In an underdeveloped country which faces the problem of unemployment on a very large scale, it is not unlikely that labour may offer to work even on starvation wages. The policy of the Act is to prevent the employment of such sweated labour in the interest of general public and so in prescribing the minimum rates, the capacity of the employer need not to be considered. What is being prescribed is minimum wage rates which a welfare State assumes every employer must pay before he employs labour”. According to its preamble the Minimum Wages Act, 1948, is an Act to provide for fixing minimum rates of wages in certain employments. The employments are those which are included in the schedule and are referred to as ‘Scheduled Employments’. The Act extends to whole of India.

➤ IMPORTANT DEFINITIONS

I. **Appropriate Government** [Section 2(b)] “Appropriate Government”

means – (i) in relation to any scheduled employment carried on by or under the authority of the Central or a railway administration, or in relation to a mine, oilfield or major part or any corporation established by a Central Act, the Central Government, and (ii) in relation to any other scheduled employment, the State Government.

II. **Employee** [Section 2(i)] “Employee” means any person who is employed for

hire or reward to do any work, skilled or unskilled, manual or clerical in a scheduled employment in respect of which minimum rates of wages have been fixed; and includes an outworker to whom any articles or materials are given out by another person to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale purpose of the trade or business of that other person where the process is to be carried out either in the home of the out-worker or in some other premises, net being premises under the control and management of that person; and also includes an employee declared to be an employee by the appropriate Government; but does not include any member of Armed Forces of the Union.

III. **Employer** [Section 2(e)] “Employer” means any person who employs,

whether directly or through another person, or whether on behalf of himself or any other person, one or more employees in any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, and includes, except, in sub-section (3) of Section 26 – (i) in a factory where there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, any person named under clause (f) of sub-section (1) of Section 7 of the Factories

Act, 1948, as manager of the factory; Lesson 2 Minimum Wages Act, 1948 (ii) in any scheduled employment under the control of any Government in India in respect of which minimum rates of wages have been fixed under this Act, the person or authority appointed by such Government for the supervision and control of employees or where no person of authority is so appointed, the Head of the Department; (iii) in any scheduled employment under any local authority in respect of which minimum rates of wages have been fixed under this Act the person appointed by such authority for the supervision and control of employees or where no person is so appointed, the Chief Executive Officer of the local authority; (iv) in any other case where there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, any person responsible to the owner of the supervision and control of the employees or for the payment of wages. The definitions of “employees” and “employer” are quite wide. Person who engages workers through another like a contractor would also be an employer (1998 LLJ I Bom. 629). It was held in Nathu Ram Shukla v. State of Madhya Pradesh A.I.R. 1960 M.P. 174 that if minimum wages have not been fixed for any branch of work of any scheduled employment, the person employing workers in such branch is not an employer with the meaning of the Act. Similarly, in case of Loknath Nathu Lal v. State of Madhya Pradesh A.I.R. 1960 M.P. 181 an out-worker who prepared goods at his residence, and then supplied them to his employer was held as employee for the purpose of this Act.

IV. **Scheduled employment** [Section 2(g)] “Scheduled employment” means an employment specified in the Schedule or any process or branch of work forming part of such employment. Note: The schedule is divided into two parts namely, Part I and

Part II. When originally enacted Part I of Schedule had 12 entries. Part II relates to employment in agriculture. It was realised that it would be necessary to fix minimum wages in many more employments to be identified in course of time. Accordingly, powers were given to appropriate Government to add employments to the Schedule by following the procedure laid down in Section 21 of the Act. As a result, the State Government and Central Government have made several additions to the Schedule and it differs from State to State.

- V. **Wages** [Section 2(h)] “Wages” means all remunerations capable of being expressed in terms of money, which would, if the terms of the contract of employment, express of implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment and includes house rent allowance but does not include: (i) the value of: (a) any house accommodation, supply of light, water medical; (b) any other amenity or any service excluded by general or social order of the appropriate Government; (ii) contribution by the employer to any Pension Fund or Provides Fund or under any scheme of social insurance; (iii) any traveling allowance or the value of any traveling concession; (iv) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; (v) any gratuity payable on discharge. 54 EP-IL&GL Test your knowledge Choose the correct answer What does ‘Appropriate Government’ mean in relation to any scheduled employment? (a) The Central Government (b) The railway administration (c) The municipal administration (d) The State Government Correct answer: (a), (b) and (d)

- VI. **FIXATION OF MINIMUM RATES OF WAGES** [Section 3(1)(a)] Section 3 lays down that the ‘appropriate Government’ shall fix the minimum

rates of wages, payable to employees in an employment specified in Part I and Part ii of the Schedule, and in an employment added to either part by notification under Section 27. In case of the employments specified in Part II of the Schedule, the minimum rates of wages may not be fixed for the entire State. Parts of the State may be left out altogether. In the case of an employment specified in Part I, the minimum rates of wages must be fixed for the entire State, no parts of the State being omitted. The rates to be fixed need not be uniform. Different rates can be fixed for different zones or localities: [Basti Ram v. State of A.P. A.I.R. 1969, (A.P.) 227]. The constitutional validity of Section 3 was challenged in Bijoy Cotton Mills v. State of Ajmer, 1955 S.C. 3. The Supreme Court held that the restrictions imposed upon the freedom of contract by the fixation of minimum rate of wages, though they interfere to some extent with freedom of trade or business guarantee under Article 19(1)(g) of the Constitution, are not unreasonable and being imposed and in the interest of general public and with a view to carrying out one of the Directive Principles of the State Policy as embodied in Article 43 of the Constitution, are protected by the terms of Clause (6) of Article 9. Notwithstanding the provisions of Section 3(1)(a), the “appropriate Government” may not fix minimum rates of wages in respect of any scheduled employment in which less than 1000 employees in the whole State are engaged. But when it comes to its knowledge after a finding that this number has increased to 1,000 or more in such employment, it shall fix minimum wage rate.

According to Section 3(1)(b), the ‘appropriate Government’ may review at such intervals as it may thing fit, such intervals not exceeding five years, and revise the

minimum rate of wages, if necessary. This means that minimum wages can be revised earlier than five years also.

MANNER OF FIXATION/REVISION OF MINIMUM

WAGES According to Section 3(2), the 'appropriate Government' may fix minimum rate of wages for:

- (a) Time work, known as a Minimum Time Rate;
- (b) Piece work, known as a Minimum Piece Rate;
- (c) a "Guaranteed Time Rate" for those employed in piece work for the purpose of securing to such employees a minimum rate of wages on a time work basis; (This is intended to meet a situation where operation of minimum piece rates fixed by the appropriate Government may result in a worker earning less than the minimum wage), and Lesson 2 Minimum Wages Act, 1948 55 (d) a "Over Time Rate" i.e. minimum rate whether a time rate or a piece rate to apply in substitution for the minimum rate which would otherwise be applicable in respect of overtime work done by employee. Section 3(3) provides that different minimum rates of wages may be fixed for –
 - (i) different scheduled employments;
 - (ii) different classes of work in the same scheduled employments;
 - (iii) adults, adolescents, children and apprentices; (iv) different localities Further, minimum rates of wages may be fixed by any one or more of the following wage periods, namely: (i) by the hour, (ii) by the day, (iii) by the month, or (iv) by such other large wage periods as may be prescribed; and where such rates are fixed by the day or by

the month, the manner of calculating wages for month or for a day as the case may be, may be indicated. However, where wage period has been fixed in accordance with the Payment of Wages Act, 1986 vide Section 4 thereof, minimum wages shall be fixed in accordance therewith [Section 3(3)].

MINIMUM RATE OF WAGES

(Section 4) According to Section 4 of the Act, any minimum rate of wages fixed or revised by the appropriate Government under Section 3 may consist of –

- (i) a basic rate of wages and a special allowance at a rate to be adjusted, at such intervals and in such manner as the appropriate Government may direct to accord as nearly as practicable with the variation in the cost of living index number applicable to such worker (hereinafter referred to as the cost of living allowance); or
- (ii) A basic rate of wages or without the cost of living allowance and the cash value of the concession in respect of supplies of essential commodities at concessional rates where so authorized; or
- (iii) An all-inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions, if any. The cost of living allowance and the cash value of the concessions in respect of supplies essential commodities at concessional rates shall be computed by the competent authority at such intervals and in accordance with such directions specified or given by the appropriate Government. Test your knowledge According to Section 3(2), what does the 'Appropriate Government' fix minimum rate of wages for

PROCEDURE FOR FIXING AND REVISING

MINIMUM WAGES (Section 5) In fixing minimum rates of wages in respect of

any scheduled employment for the first time or in revising minimum rates of wages, the appropriate Government can follow either of the two methods described below. First Method [Section 5(1)(a)] This method is known as the 'Committee Method'. The appropriate Government may appoint as many committees and sub-committees as it considers necessary to hold enquiries and advise it in respect of such fixation or revision as the case may be. After considering the advise of the committee or committees, the appropriate Government shall, by notification in the Official Gazette fix or revise the minimum rates of wages. The wage rates shall come into force from such date as may be specified in the notification. If no date is specified, wage rates shall come into force on the expiry of three months from the date of the issue of the notification. Note: It was held in Edward Mills Co. v. State of Ajmer (1955) A.I.R. SC, that Committee appointed under Section 5 is only an advisory body and that Government is not bound to accept its recommendations. As regards composition of the Committee, Section 9 of the Act lays down that it shall consist of persons to be nominated by the appropriate Government representing employers and employee in the scheduled employment, who shall be equal in number and independent persons not exceeding 1/3rd of its total number of members. One of such independent persons shall be appointed as the Chairman of the Committee by the appropriate Government. Second Method [Section 5(1)(b)] The method is known as the 'Notification Method'. When fixing minimum wages under Section 5(1)(b), the appropriate Government shall by notification, in the Official Gazette publish its proposals for the information of persons likely to be affected thereby and specify a date

not less than 2 months from the date of notification, on which the proposals will be taken into consideration. The representations received will be considered by the appropriate Government. It will also consult the Advisory Board constituted under Section 7 and thereafter fix or revise the minimum rates of wages by notification in the Official Gazette. The new wage rates shall come into force from such date as may be specified in the notification. However, if no date is specified, the notification shall come into force on expiry of three months from the date of its issue. Minimum wage rates can be revised with retrospective effect. [1996 II LLJ 267 Kar.].

ADVISORY BOARDThe advisory board is constituted under Section 7 of the Act by the appropriate Government for the purpose of coordinating the work of committees and sub-committees appointed under Section 5 of the Act and advising the appropriate Government generally in the matter of fixing and revising of minimum rates of wages. According to Section 9 of the Act, the advisory board shall consist of persons to be nominated by the appropriate Government representing employers and employees in the scheduled employment who shall be equal in number, and independent persons not exceeding 1/3rd of its total number of members, one of such independent persons shall be appointed as the Chairman by the appropriate Government. It is not necessary that the Board shall consist of representatives of any particular industry or of each and every scheduled employment; B.Y. Kashatriya v. S.A.T. Bidi Kamgar Union A.I.R. (1963) S.C. 806. An independent person in the context of Section 9 means a person who is neither an employer nor an employee in the employment for which the minimum wages are to be fixed. In the case of State of Rajasthan v. Hari Ram Nathwani, (1975)

SCC 356, it was held that the mere fact that a person happens to be a Government servant will not divert him of the character of the independent person.

CENTRAL ADVISORY BOARD Section 8 of the Act provides that the Central Government shall appoint a Central Advisory Board for the purpose of advising the Central Government and State Governments in the matters of fixation and revision of minimum rates of wages and other matters under the Minimum Wages Act and for coordinating work of the advisory boards. The Central Advisory Board shall consist of persons to be nominated by the Central Government representing employers and employees in the scheduled employment who shall be equal in number and independent persons not exceeding 1/3rd of its total number of members, one of such independent persons shall be appointed as the Chairman of the Board by Central Government. Test your knowledge State whether the following statement is 'True' or 'False' The first method used by the 'Appropriate Government' to fix minimum wages in respect of scheduled employment is called the 'Committee Method'.

MINIMUM WAGE – WHETHER TO BE PAID IN CASH OR KIND Section 11 of the Act provides that minimum wages payable under the Act shall be paid in cash. But where it has been the custom to pay wages wholly or partly in kind, the appropriate Government, on being satisfied, may approve and authorize such payments. Such Government can also authorize for supply of essential commodities at concessional rates. Where payment is to be made in kind, the cash value of the wages in kind or in the shape of essential commodities on concessions shall be estimated in the prescribed manner.

PAYMENT OF MINIMUM WAGES IS OBLIGATORY ON

EMPLOYER (Section 12) Payment of less than the minimum rates of wages

notified by the appropriate Government is an offence. Section 12 clearly lays down that the employer shall pay to every employee engaged in a scheduled employment under him such wages at a rate not less than the minimum rate of wages fixed by the appropriate Government under Section 5 for that class of employment without deduction except as may be authorized, within such time and subject to such conditions, as may be prescribed.

FIXING HOURS FOR A NORMAL WORKING DAY (Section 13)

Fixing of minimum rates of wages without reference to working hours may not achieve the purpose for which wages are fixed. Thus, by virtue of Section 13 the appropriate Government may –

- (a) Fix the number of work which shall constitute a normal working day, inclusive of one or more specified intervals;
- (b) Provide for a day of rest in every period of seven days which shall be allowed to all employees or to any specified class of employees and for the payment of remuneration in respect of such day of rest;
- (c) Provide for payment of work on a day of rest at a rate not less than the overtime rate.

The above stated provision shall apply to following classes of employees only to such extent and subject to such conditions as may be prescribed:

- (a) Employees engaged on urgent work, or in any emergency, which could not have been foreseen or prevented;
- (b) Employees 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 in the employment concerned; 58 EP-IL&GL
- (c) Employees whose employment is essentially intermittent;
- (d) Employees engaged in any work which for technical reasons, has to be completed before the duty is over;
- (e) Employees engaged in any work which could not be carried on except at times dependent on the irregular action of natural forces. For the purpose of clause (c) employment of an employee is essentially intermittent when it is declared to be so by the appropriate Government on ground that the daily hours of the employee, or if these be no daily hours of duty as such for the employee, the hours of duty, normally includes period of inaction during which the employee may be on duty but is not called upon to display either physical activity or sustained attention. There is correlation between minimum rates of wages and hours of work. Minimum wages are to be fixed on basis of standard normal working hours, namely 48 hours a week; Benode Bihari Shah v. State of W.B. 1976 Lab I.C. 523 (Cal).

PAYMENT OF OVERTIME (Section 14) Section 14 provides that when an employee, whose minimum rate of wages is fixed under this Act by the hours, the day or by such longer wage period as may be prescribed, works on any day in excess of the number of hours constituting a normal working day, the employer shall pay him for

every hour or part of an hour so worked in excess at the overtime rate fixed under this Act or under any other law of the appropriate Government for the time being in force whichever is higher. Payment for overtime work can be claimed only by the employees who are getting minimum rate of wages under the Act and not by those getting better wages. (1998 LLJ I SC 815).

WAGES OF A WORKER WHO WORKS LESS THAN

NORMAL WORKING DAY (Section 15) Where the rate of wages has been

fixed under the Act by the day for an employee and if he works on any day on which he employed for a period less than the requisite number of hours constituting a normal working day, he shall be entitled to receive wages for that day as if he had worked for a full working day. Provided that he shall not receive wages for full normal working day – (i) if his failure to work is caused by his unwillingness to work and not by omission of the employer to provide him with work, and (ii) such other cases and circumstances as may be prescribed.

MINIMUM TIME – RATE WAGES FOR PIECE WORK (Section

17) Where an employee is engaged in work on piece work for which minimum time rate and not a minimum piece rate has been fixed, wages shall be paid in terms of Section 17 of the Act at minimum time rate.

MAINTENANCE OF REGISTERS AND RECORD(Section 18)

Apart from the payment of the minimum wages, the employer is required under Section 18 to maintain registers and records giving such particulars of employees under his employment, the work performed by them, the receipts given by them and such other particulars as may be prescribed. Every employee is required also to exhibit notices, in the prescribed form containing particulars in the place of work. He is also required to maintain wage books or wage-slips as may be prescribed by the appropriate Government and the entries made therein will have to be authenticated by the employer or his agent in the manner prescribed by the appropriate Government.

AUTHORITY AND CLAIMS (Section 20-21) Under Section 20(1) of the

Act, the appropriate Government, may appoint any of the following as an authority to hear and decide for any specified area any claims arising out of payment of less than the minimum rate of wages or in respect of the payment of remuneration for the days of rest or of wages at the rate of overtime work:

(a) Any Commissioner for Workmen's Compensation; or

(b) Any officer of the Central Government exercising functions as Labour Commissioner for any region; or

(c) Any officer of the State Government not below the rank of Labour Commissioner;

or

(d) Any other officer with experience as a Judge of a Civil Court or as the Stipendiary Magistrate. The authority so appointed shall have jurisdiction to hear and decide claim arising out of payment of less than the minimum rates of wages or in respect of the payment remuneration for days of rest or for work done on such days or for payment of overtime. The provisions of Section 20(1) are attracted only if there exists a disputed between the employer and the employee as to the rates of wages. Where no such dispute exists between the employer and employees and the only question is whether a particular payment at the agreed rate in respect of minimum wages, overtime or work on off days is due to an employee or not, the appropriate remedy is provided by the Payment of Wages Act, 1936.

OFFENCES AND PENALTIES Section 22 of the Act provides that any employer who (a) pays to any employee less than the minimum rates of wages fixed for that employee's class of work or less than the amount due to him under the provisions of this Act or contravenes any rule or order made under Section 13, shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees or with both. While imposing any fine for an offence under this section the court shall take into consideration the amount of any compensation already awarded against the accused in any proceedings taken under section 20. It is further stipulated under Section 22A of the Act that any employer who contravenes any provision of this Act or of any rule or order made thereunder shall if no other penalty is provided for such contravention by this Act be punishable with fine which may extend to five hundred rupees.

UNIT –II

THE PAYMENT OF WAGES ACT.

➤ OBJECT AND SCOPE

The main the ceiling by notification in future. The Act extends to the whole of India. object of the Act is to eliminate all malpractices by laying down the time and mode of payment of wages as well as securing that the workers are paid their wages at regular intervals, without any unauthorised deductions. In order to enlarge its scope and provide for more effective enforcement the Act empowering the Government to enhance

Definitions

“Employed person” includes the legal representative of a deceased employed person.

{Section 2(ia)} “Employer” includes the legal representative of a deceased employer.

{Section 2(ib)} “Factory” means a factory as defined in clause (m) of section 2 of the Factories Act 1948 (63 of 1948) and includes any place to which the provisions of that Act have been applied under sub-section (1) of section 85 thereof.

{Section 2(ic)} “Industrial or other establishment” means any – (a) tramway service or motor transport service engaged in carrying passengers or goods or both by road for hire or reward;

(aa) air transport service other than such service belonging to or exclusively employed in the military naval or air forces of the Union or the Civil Aviation Department of the Government of India;

(b) dock wharf or jetty;

(c) inland vessel mechanically propelled;

(d) mine quarry or oil-field;

(e) plantation;

(f) workshop or other establishment in which articles are produced adapted or manufactured with a view to their use transport or sale;

(g) establishment in which any work relating to the construction development or maintenance of buildings roads bridges or canals or relating to operations connected with navigation irrigation or to the supply of water or relating to the generation transmission and distribution of electricity or any other form of power is being carried on;

(h) any other establishment or class of establishments which the Appropriate Government may having regard to the nature thereof the need for protection of persons employed therein and other relevant circumstances specify by notification in the Official Gazette.

{Section 2(ii)} “Wages” means all remuneration (whether by way of salary allowances or otherwise) expressed in terms of money or capable of being so expressed which would if the terms of employment express or implied were fulfilled be payable to a person employed in respect of his employment or of work done in such employment and includes –

(a) any remuneration payable under any award or settlement between the parties or order of a court;

(b) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period;

(c) any additional remuneration payable under the terms of employment (whether called a bonus or by any other name);

(d) any sum which by reason of the termination of employment of the person employed is payable under any law contract or instrument which provides for the payment of such sum whether with or without deductions but does not provide for the time within which the payment is to be made;

(e) any sum to which the person employed is entitled under any scheme framed under any law for the time being in force, but does not include –

(1) any bonus (whether under a scheme of profit sharing or otherwise) which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a court;

- (2) the value of any house-accommodation or of the supply of light water medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of Appropriate Government;
- (3) any contribution paid by the employer to any pension or provident fund and the interest which may have accrued thereon;
- (4) any travelling allowance or the value of any travelling concession;
- (5) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment; or
- (6) any gratuity payable on the termination of employment in cases other than those specified in sub-clause (d).

{Section 2(vi)} Responsibility for payment of wages Section 3 provides that every employer shall be responsible for the payment to persons employed by him of all wages required to be paid under the Act.

However, persons employed in factories if a person has been named as the manager of the factory; in the case of persons employed in industrial or other establishments if there is a person responsible to the employer for the supervision and control of the industrial or other establishments; in the case of persons employed upon railways if the employer is the railway administration and the railway administration has nominated a person in this behalf for the local area concerned; in the case of persons employed in the work of contractor, a person designated by such contractor who is directly under his charge; and in any other case, a person designated by the employer as a person responsible for

complying with the provisions of the Act, the person so named, the person responsible to the employer, the person so nominated or the person so designated, as the case may be, shall be responsible for such payment.

It may be noted that as per section 2(ia) “employer” includes the legal representative of a deceased employer.

Fixation of wage period As per section 4 of the Act every person responsible for the payment of wages shall fix wage-periods in respect of which such wages shall be payable. No wage-period shall exceed one month.

Time of payment of wages Section 5 specifies the time payment of wages. The wages of every person employed upon or in any railway factory or industrial or other establishment upon or in which less than one thousand persons are employed, shall be paid before the expiry of the seventh day.

The wages of every person employed upon or in any other railway factory or industrial or other establishment shall be paid before the expiry of the tenth day, after the last day of the wage-period in respect of which the wages are payable.

However, in the case of persons employed on a dock wharf or jetty or in a mine the balance of wages found due on completion of the final tonnage account of the ship or wagons loaded or unloaded as the case may be shall be paid before the expiry of the seventh day from the day of such completion. Where the employment of any person is terminated by or on behalf of the employer the wages earned by him shall be paid before the expiry of the second working day from the day on which his employment is terminated.

However, the employment of any person in an establishment is terminated due to the closure of the establishment for any reason other than a weekly or other recognised holiday the wages earned by him shall be paid before the expiry of the second day from the day on which his employment is so terminated.

The Appropriate Government may by general or special order exempt to such extent and subject to such conditions as may be specified in the order the person responsible for the payment of wages to persons employed upon any railway or to persons employed as daily-rated workers in the Public Works Department of the Appropriate Government from the operation of this section in respect of wages of any such persons or class of such persons. All payments of wages shall be made on a working day. Wages to be paid in current coin or currency notes.

As per section 6 of the Act, all wages shall be paid in current coin or currency notes or in both. However, the employer may, after obtaining the written authorisation of the employed person, pay him the wages either by cheque or by crediting the wages in his bank account.

Deductions from the wages of an employee Section 7 of the Act allows deductions from the wages of an employee on the account of the following:-

- (i) fines;
- (ii) absence from duty;
- (iii) damage to or loss of goods expressly entrusted to the employee;
- (iv) housing accommodation and amenities provided by the employer;
- (v) recovery of advances or adjustment of overpayments of wages;

- (vi) recovery of loans made from any fund constituted for the welfare of labour in accordance with the rules approved by the State Government, and the interest due in respect thereof;
- (vii) subscriptions to and for repayment of advances from any provident fund;
- (viii) income-tax;
- (ix) payments to co-operative societies approved by the State Government or to a scheme of insurance maintained by the Indian Post Office;
- (x) Deductions made with the written authorisation of the employee for payment of any premium on his life insurance policy or purchase of securities. Fines Section 8 deals with fines. It provides that :

(1) No fine shall be imposed on any employed person save in respect of such acts and omissions on his part as the employer with the previous approval of the State Government or of the prescribed authority may have specified by notice under subsection (2).

(2) A notice specifying such acts and omissions shall be exhibited in the prescribed manner on the premises in which the employment carried on or in the case of persons employed upon a railway (otherwise than in a factory) at the prescribed place or places.

(3) No fine shall be imposed on any employed person until he has been given an opportunity of showing cause against the fine or otherwise than in accordance with such procedure as may be prescribed for the imposition of fines.

(4) The total amount of fine which may be imposed in any one wage-period on any employed person shall not exceed an amount equal to three per cent of the wages payable to him in respect of that wageperiod.

(5) No fine shall be imposed on any employed person who is under the age of fifteen years. Lesson 3 Payment of Wages Act, 1936.

(6) No fine imposed on any employed person shall be recovered from him by installments or after the expiry of ninety days from the day on which it was imposed.

(7) Every fine shall be deemed to have been imposed on the day of the act or omission in respect of which it was imposed.

(8) All fines and all realisations thereof shall be recorded in a register to be kept by the person responsible for the payment of wages under section 3 in such form as may be prescribed; and all such realisations shall be applied only to such purposes beneficial to the persons employed in the factory or establishment as are approved by the prescribed authority.

It may be noted that when the persons employed upon or in any railway, factory or industrial or other establishment are part only of a staff employed under the same management all such realisations may be credited to a common fund maintained for the

staff as a whole provided that the fund shall be applied only to such purposes as are approved by the prescribed authority.

Maintenance of registers and records Section 13A provides that every employer shall maintain such registers and records giving such particulars of persons employed by him, the work performed by them, the wages paid to them, the deductions made from their wages, the receipts given by them and such other particulars in prescribed form.

Every register and record required to be maintained shall be preserved for a period of three years after the date of the last entry made therein. Claims arising out of deductions from wages or delay in payment of wages and penalty for malicious or vexatious claims Section 15 deals with claims arising out of deductions from wages or delay in payment of wages and penalty for malicious or vexatious claims.

It provides that the appropriate Government may, by notification in the Official Gazette, appoint-

- (a) any Commissioner for Workmen's Compensation; or
- (b) any officer of the Central Government exercising functions as,- (i) Regional Labour Commissioner; or (ii) Assistant Labour Commissioner with at least two years' experience; or

(c) any officer of the State Government not below the rank of Assistant Labour Commissioner with at least two years' experience; or

(d) a presiding officer of any Labour Court or Industrial Tribunal, constituted under the Industrial Disputes Act, 1947 or under any corresponding law relating to the investigation and settlement of industrial disputes in force in the State; or

(e) any other officer with experience as a Judge of a Civil Court or a Judicial Magistrate, as the authority to hear and decide for any specified area all claims arising out of deductions from the wages, or delay in payment of the wages, of persons employed or paid in that area, including all matters incidental to such claims.

Provided that where the appropriate Government considers it necessary so to do, it may appoint more than one authority for any specified area and may, by general or special order, provide for the distribution or allocation of work to be performed by them under this Act. Sub-section (2) of section 15 provides that where contrary to the provisions of the Act any deduction has been made from the wages of an employed person or any payment of wages has been delayed such person himself or any legal practitioner or any official of a registered trade union authorised in writing to act on his behalf or any Inspector under this Act or any other person acting with the permission of the authority appointed under subsection (1) may apply to such authority for a direction under subsection (3) :

However, every such application shall be presented within twelve months from the date on which the deduction from the wages was made or from the date on which the payment of the wages was due to be made as the case may be. Any application may be admitted after the said period of twelve months when the applicant satisfies the authority that he had sufficient cause for not making the application within such period. As per sub-section (3) when any application under sub-section (2) is entertained, the authority shall hear the applicant and the employer or other person responsible for the payment of wages under section 3, or give them an opportunity of being heard, and, after such further enquiry, if any, as may be necessary, may, without prejudice to any other penalty to which such employer or other person is liable under this Act, direct the refund to the employed person of the amount deducted, or the payment of the delayed wages, together with the payment of such compensation as the authority may think fit, not exceeding ten times the amount deducted in the former case and not exceeding three thousand rupees but not less than one thousand five hundred rupees in the latter, and even if the amount deducted or delayed wages are paid before the disposal of the application, direct the payment of such compensation, as the authority may think fit, not exceeding two thousand rupees.

A claim under the Act shall be disposed of as far as practicable within a period of three months from the date of registration of the claim by the authority. It may be noted that the period of three months may be extended if both parties to the dispute agree for any bona fide reason to be recorded by the authority that the said period of three months may be extended to such period as may be necessary to dispose of the application in a just

manner. No direction for the payment of compensation shall be made in the case of delayed wages if the authority is satisfied that the delay was due to-

- (a) a bona fide error or bona fide dispute as to the amount payable to the employed person; or
- (b) the occurrence of an emergency, or the existence of exceptional circumstances, the person responsible for the payment of the wages was unable, in spite of exercising reasonable diligence; or
- (c) the failure of the employed person to apply for or accept payment.

As per sub-section (4) if the authority hearing an application under this section is satisfied that the application was either malicious or vexatious the authority may direct that a penalty not exceeding three hundred seventy five Rupees be paid to the employer or other person responsible for the payment of wages by the person presenting the application; or in any case in which compensation is directed to be paid under sub-section (3) the applicant ought not to have been compelled to seek redress under this section the authority may direct that a penalty not exceeding three hundred seventy five Rupees be paid to the State Government by the employer or other person responsible for the payment of wages.



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UNIT- III

THE FACTORIES ACT, 1948

OBJECT AND SCOPE OF THE ACT

The main object of the Factories Act, 1948 is to ensure adequate safety measures and to promote the health and welfare of the workers employed in factories. The Act also makes provisions regarding employment of women and young persons (including children and adolescents), annual leave with wages etc. The Act extends to whole of India including Jammu & Kashmir and covers all manufacturing processes and establishments falling within the definition of 'factory' as defined under Section 2(m) of

the Act. Unless otherwise provided it is also applicable to factories belonging to Central/State Governments. (Section 116)

IMPORTANT DEFINITIONS

Adult “Adult” means a person who has completed his eighteenth year of age.

[Section 2(a)] Adolescent “Adolescent” means a person who has completed his fifteenth year of age but has not completed his eighteenth year.

[Section 2(b)] Calendar Year “Calendar Year” means the period of twelve months beginning with the first day of January in any year.

[Section 2(bb)] Child “Child” means a person who has not completed his fifteenth year of age.

Section 2(c)] Competent Person “Competent Person” in relation to any provision of this Act, means a person or an institution recognised as such by the Chief Inspector for the purposes of carrying out tests, examinations and inspections required to be done in a factory under the provisions of this Act having regard to (i) the qualifications and experience of the person and facilities available at his disposal; or (ii) the qualifications and experience of the persons employed in such institution and facilities available therein. With regard to the conduct of such tests, examinations and inspections and more than one person or institution can be recognised as a competent person in relation to a factory.

Hazardous Process “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.

[Section 2(cb)] Young Person “Young Person” means a person who is either a child or an adolescent.

[Section 2(d)] Day “Day” means under Section 2(e), a period of twenty-four hours beginning at mid-night.

[Section 2(e)] Week “Week” means a period of seven days beginning at mid-night on Saturday night or such other night as may be approved in writing for a particular area by the Chief Inspector of Factories.

[Section 2(f)] Power “Power” means electrical energy or any other form of energy which is mechanically transmitted and is not generated by human or animal agency.

[Section 2(g)] Prime Mover “Prime” Mover means any engine, motor or other appliance which generates or otherwise provides power.

[Section 2(h)] Transmission Machinery “Transmission” Machinery means any shaft, wheel, drum, pulley, system of pulleys, coupling, clutch, driving belt or other appliance or device by which the motion of a prime-mover is transmitted to or received

by any machinery or appliance. [Section 2(i)] Machinery The term includes prime-movers, transmission machinery and all other appliances whereby power is generated, transformed, transmitted or applied.

[Section 2(j)] Factory “Factory” includes 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 a 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 or a mobile unit belonging to the armed forces of the Union or a railway running shed, or a hotel, restaurant or eating place.

[Section 2(m)]: 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.

(i) **Essential elements of a factory:** (1) There must be a premises. (2) There must be a manufacturing process which is being carried on or is so ordinarily carried on in any part of such a premises. (3) There must be ten or more workers who are/were working in such a premises on any day of the last 12 months where the said manufacturing process

is carried on with the aid of power. But where the manufacturing process is carried on without the aid of power, the required number of workers working should be twenty or more.

(ii) **The following are not covered by the definition of factory:** (i) Railway running sheds, (ii) mines, (iii) mobile units of armed forces, (iv) hotels, eating places or restaurants. (ii) Meaning of words “premises and precincts” The word “premises” is a generic term meaning open land or land with building or building alone. The term ‘precincts’ is usually understood as a space enclosed by walls. Expression ‘premises’ including precincts does not necessarily mean that the premises must always have precincts. It merely shows that there may be some premises with precincts and some premises without precincts. The word ‘including is not a term’ restricting the meaning of the word ‘premises’, but is a term which enlarges its scope. All the length of railway line would be phase wise factories (LAB IC 1999 SC 407). Company engaged in construction of railway line is factory. (LAB IC 1999 SC 407). The Supreme Court in *Ardeshir H. Bhiwandiwalla v. State of Bombay*, AIR 1962 S.C. 29, observed that the legislature had no intention to discriminate between workers engaged in a manufacturing process in a building and those engaged in such a process on an open land and held that the salt works, in which the work done is of conversion of sea water into crystals of salt, come within the meaning of the word ‘premises’. (iii) Manufacturing process is being carried on or ordinarily so carried on The word ordinarily came up for interpretation in the case of *Employers Association of Northern India v. Secretary for Labour U.P. Govt.* The question was whether a sugar factory ceases to be a factory when no manufacturing process is carried on during the off-season. It was observed that the word ‘ordinarily’

used in the definition of factory cannot be interpreted in the sense in which it is used in common parlance. It must be interpreted with reference to the intention and purposes of the Act. Therefore, seasonal factories or factories carrying on intermittent manufacturing process, do not cease to be factories within the meaning of the Act. (iv) Ten or twenty workers.

(iii) The third essential content of 'factory' is that ten or more workers are employed in the premises using power and twenty or more workers are employed in the premises not using power. Where seven workers were employed in a premises where the process of converting paddy into rice by mechanical power was carried on and in the same premises, three persons were temporarily employed for repairs of part of the machinery which had gone out of order but the manufacturing was going on, it was held that since Factories Act, 1948 temporary persons were workers, consequently there were ten workers working in the 'premises' and the premises is a factory (AIR 1959, AII. 794). According to explanation to Section 2(m), all the workers in different relays in a day shall be taken into account while computing the number of workers. Bombay High Court held that the fact that manufacturing activity is carried on in one part of the premises and the rest of the work is carried on in the other part of the premises cannot take the case out of the definition of the word 'factory' which says that manufacturing process can be carried on in any part. The cutting of the woods or converting the wood into planks is essentially a part of the manufacturing activity (BharatiUdyog v. Regional Director ESI Corpn., 1982 Lab. I.C. 1644). A workshop of Polytechnic Institution registered under the Factories Act imparting technical education and having power generating machines, was carrying on a trade in a systematic and organised manner Held,

it will come under the definition of factory as defined under Section 2(m) read with Section 2(k) process being carried on at the premises (c) There must be ten or more workers where the manufacturing process is being carried on with the aid of power (d) There electronic data processing units are installed Correct answer: (a), (b) and (c)

Manufacturing Process It 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 or sewage or any other substance; or (iii) generating, transforming, 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.

[Section 2(k)] The definition is quite important and it has been the subject of judicial interpretation in large number of cases: (i) What is manufacturing process The definition of manufacturing process is exhaustive. Under the present definition even transporting, washing, cleaning, oiling and packing which do not involve any transformation as such which is necessary to constitute manufacturing process in its generic sense, are nonetheless treated as manufacturing process. The definition is artificially projected beyond the scope of natural meaning of what the words might convey thus covering very wide range of activities. Madras High Court in the case of In re. SeshadrinathaSarma, 1966 (2) LLJ 235, held that to constitute a manufacture there should not be essentially some kind of transformation of substance and the article need not become commercially as another and different article from that at which it begins its existence so long as there

has been an indisputable transformation of substance by the use of machinery and transformed substance is commercially marketable. Division Bench of A.P. High Court held that to determine where certain premises is factory, it is necessary that it should carry on manufacturing process and it does not require that the process should end in a substance being manufactured (Alkali Metals (P) Ltd. v. ESI Corpn., 1976 Lab.I.C.186). In another case it was observed that manufacturing process merely refers to particular business carried on and does not necessarily refer to the production of some article. The works of laundry and carpet beating were held to involve manufacturing process. A process employed for purpose of pumping water is manufacturing process. Each of the words in the definition has got independent meaning which itself constitutes manufacturing process. Following processes have been held to be manufacturing processes: (1) Sun-cured tobacco leaves subjected to processes of moistening, stripping, breaking up, adaption, packing, with a view to transport to companys main factory for their use in manufacturing cigarette (V.P. Gopala Rao v. Public Prosecutor, AIR 1970 S.C. 66). (2) The operation of peeling, washing etc., of prawns for putting them in cold storage is a process with a view to the sale or use or disposal of the prawns (R.E.DSouza v. Krishnan Nair, 1968 F.J.R. 469). (3) Stitching old gunny bags and making them fit for use. (4) In paper factory, bankas grass packed into bundles manually and despatched to the factory. (5) Work of garbling of pepper or curing ginger. (6) Process carried out in salt works in converting sea water into salt. (7) Conversion of latex into sheet rubber. (8) A process employed for the purpose of pumping water. (9) The work done on the bangles of cutting grooves in them which later would be filled with colouring, is clearly a stage in ornamentation of the bangle with view to its subsequent use for sale. (10)

Preparation of soap in soap works. (11) The making of bidies. (12) The raw film used in the preparation of movies is an article or a substance and when by the process of tracing or adapting, after the sound are absorbed and the photos imprinted, it is rendered fit to be screened in a cinema theatre, then such a change would come within the meaning of the term treating or adapting any article or substance with a view to its use. (13) Composing is a necessary part of printing process and hence it is a manufacturing process. It cannot be said that the definition should be confined to the process by which impression is created on the paper and to no other process preceding or succeeding the marking of the impression on the paper to be printed. Everything that is necessary before or after complete process, would be included within the definition of the word 'manufacturing process'. The definition takes in all acts which bring in not only some change in the article or substance but also the act done for the protection and maintenance of such article by packing, oiling, washing, cleaning, etc. (P.Natrajan v. E.S.I. Corporation (1973) 26 FLR 19). (14) Preparation of food and beverages and its sale to members of a club (CCI v. ESIC, 1992 LAB IC 2029 Bom.). (15) Receiving products in bulk, in packing and packing as per clients requirements (LLJ I 1998 Mad. 406). Lesson 1 Factories Act, 1948 7 (16) Construction of railway - use of raw materials like sleepers, bolts, loose rails etc. to adaptation of their use for ultimately for laying down railway line (LAB IC 1999 SC 407; Lal Mohmd. v. Indian Railway Construction Co. Ltd.). (ii) What is not a manufacturing process No definite or precise test can be prescribed for determining the question whether a particular process is a manufacturing process. Each case must be judged on its own facts regard being had to the nature of the process employed, the eventual result achieved and the prevailing business and commercial

notions of the people. In deciding whether a particular business is a manufacturing process or not, regard must be had to the circumstances of each particular case. To constitute a manufacturing process, there must be some transformation i.e. article must become commercially known as something different from which it acquired its existence.

Following processes are not manufacturing processes:

(1) Exhibition of films process.

(2) Industrial school or Institute imparting training, producing cloth, not with a view to its sale. (3) Receiving of news from various sources on a reel in a teleprinter of a newspaper office, is not a manufacturing process in as much as news is not the article or substance to which Section 2(k)(i) has referred.

(4) Any preliminary packing of raw material for delivering it to the factory (AIR 1969 Mad. 155).

(5) Finished goods and packing thereof: F. Hare v. State AIR 1955, 2710. Supreme Court has held that the process undertaken in zonal and sub-stations and electricity generating stations, transforming and transmitting electricity generated at the power station does not fall within the definition of manufacturing process and could not be said to be factories ... (Workmen of Delhi Electric Supply Undertaking v. Management of D.E.S.U., AIR 1973 S.C. 365). Worker "Worker" means a person employed directly or by or through any agency (including a contractor) with or without knowledge of the principal employer, whether for remuneration or not, in any manufacturing process, or in any other kind or 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.

[Section 2(1)] The definition contains following ingredients : (i) There should be an 'employed person'

(a) Meaning of the word "employed": The concept of "employment" involves three ingredients, viz. employer, employee, and contract of employment. The 'employer' is one who employs, i.e., one who engages the services of other persons. The 'employee' is one who works for another for hire. The employment is the contract of service between employer and employee where under the employee agrees to serve the employer subject to his control and supervision. The prima facie test for determination of the relationship between the employer and employee is the existence of the right of the employer to supervise and control the work done by the employee not only in the matter of directing what work the employee is to do but also the manner in which he shall do his work (Chintaman Rao v. State of M.P. AIR 1958 S.C. 388). 8 EP-IL&GL Therefore, 'supervision and control' is the natural outcome when a person is employed by another person. Moreover, the 'employment' referred to in the section is in connection with a manufacturing process that is carried on in the factory which process normally calls for a large measure of coordination between various sections inside a factory and between various individuals even within a section. The persons will have to be guided by those placed in supervisory capacity. A certain amount of control is thus necessarily present in such a case. In Shankar BalajiWaje v. State of Maharashtra, AIR 1963 Bom. 236, the question arose whether bidi roller is a worker or not. The management simply says that the labourer is to produce bidies rolled in a certain form. How the labourer carried out

the work is his own concern and is not controlled by the management, which is concerned only with getting bidders rolled in a particular style with certain contents. The Supreme Court held that the bidi roller is not a worker. The whole conception of service does not fit in well with a servant who has full liberty to attend to his work according to his pleasure and not according to the orders of his master. Where the employer did retain direction and control over the workers both in manner of the nature of the work as 'also its details they will be held as workers. A day labourer, where there was no evidence to show that he was free to work for such period as he likes, free to come and go whenever he chose and free to absent himself at his own sweet will, was held to be a worker. Similarly, women and girls employed in peeling, washing etc., of consignment of prawns brought on the premises at any time of the day or night, without any specified hours of work and without any control over their attendance or the nature, manner or quantum of their work and who after finishing the work go to other premises in the locality where similar consignment of prawns are received, are not Workers (State of Kerala v. R.E.DSouza).

(b) Whether relationship of master and servant necessary: The expression "employed" does not necessarily involve the relationship of master and servant. There are conceivable cases in which where no such relationship exists and yet such persons would be workers. The expression a person employed, according to Justice Vyas, means a person who is actually engaged or occupied in a manufacturing process, a person whose work is actually utilised in that process. The definition of worker is clearly enacted in terms of a person who is employed in and not in terms of person who is

employed by. It is immaterial how or by whom he is employed so long as he is actually employed in a manufacturing process.

(c) Piece-rate workers—Whether workers: Piece-rate workers can be workers within the definition of ‘worker in the Act, but they must be regular workers and not workers who come and work according to their sweet will (Shankar BalajiWaje v. State of Maharashtra, AIR 1967 S.C. 517). In another case workmen had to work at bidi factory when they liked. The payment was made on piece-rate according to the amount of work done. Within the factory, they were free to work. But the control of the manner in which bides were ready, by the method of rejecting those which did not come up to the proper standards. In such a case it was exercised which was important (Birdhi Chand Sharma v. First Civil Judge, Nagpur, AIR 1961 SC 644). Therefore, whatever method may be adopted for the payment of wages , the important thing to see is whether the workers work under supervision and control of the employer. It makes no difference whether the worker employed in the manufacturing process is paid time rate wages or piece rate wages.

(d) The partners of a concern, even though they work on premises in the factory cannot be considered to be workers within Section 2(1): (1958 (2) LLJ 252 SC).

(e) An independent contractor: He is a person who is charged with work and has to produce a particular result but the manner in which the result is to achieve is left to him and as there is no control or supervision as to the manner in which he has to achieve the work, he is not a worker. (ii) Employment should be direct or through some agency. The words directly or by or through any agency in the definition indicate that the employment is by the management or by or through some kind of employment agency.

In either case there is a contract of employment between the management and the person employed. There should be a privity of contract between them and the management. Only such person can be classified as worker who works either directly or indirectly or through some agency employed for doing his works of any manufacturing process or cleaning, etc., with which the factory is concerned. It does not contemplate the case of a person who comes and that too without his intervention either directly, or indirectly, and does some work on the premises of factory. (iii) Employment should be in any manufacturing process etc. The definition of “worker” is fairly wide. It takes within its sweep not only persons employed in manufacturing process but also in cleaning any part of the machinery and premises used for manufacturing process. It goes far beyond the direct connection with the manufacturing process by extending it to other kinds of work which may either be incidental to or connected with not only the manufacturing process itself but also the subject of the manufacturing process (Works Manager, Central Rly. Workshop Jhansi v. Vishwanath and others), the concept of manufacturing process has already been discussed.

The meaning of the expression employed in cleaning any part of machinery, etc.” and employed in work incidental to..... process, are discussed below:

(a) Employed in cleaning any part of machinery etc.: If a person is employed in cleaning any part of the machinery premises which is used for manufacturing process, he will be held as worker.

(b) Employed in work incidental to process: This clause is very important because it enlarges the scope of the term, manufacturing process. Following illustrative cases will clarify the meaning of this clause:

- (1) In *Shinde v. Bombay Telephones*, 1968 (11) LLJ 74, it was held that whether the workman stands outside the factory premises or inside it, if his duties are connected with the business of the factory or connected with the factory, he is really employed in the factory and in connection with the factory.
- (2) In *Works Manager, Central Rly. Workshop Jhansi v. Vishwanath and others*, it was held that the definition of worker does not exclude those employees who are entrusted solely with clerical duties, if they otherwise fall within the definition of 'worker. Timekeepers employed to maintain attendance of the staff, job cards particularly of the various jobs under operation, and time- sheets of the staff engaged in production of spare parts, repairs, etc.; and head time-keeper who supervise the work of the timekeepers, perform work which is incidental to or connected with the manufacturing process carried on in the factory and would therefore, fall within the definition of the worker in the Act.
- (3) Munim in a factory is a worker.
- (4) Workmen in canteen attached to a factory are employees.
- (5) A person employed by a gas manufacturing works as a coolie for excavating and digging trenches outside the factory for laying pipes for transporting gas to consumers, cannot be held to be a worker (AIR 1961 Bomb. 184).
- (6) Person employed to supply material to a mason engaged in construction of furnace will be deemed to be employed by the factory to a work incidental to or connected with manufacturing process.

(7) In a soap-works, a carpenter preparing the packing cases is a worker because he might legitimately be considered to be engaged in a kind of work incidental to or connected with the subject of the manufacturing process, viz., packaging of soap for being sent out for sale.

(8) In the case of Rohtas Industries Ltd. v. Ramlakhan Singh and others, A.I.R. 1971 SC 849, a person was employed in a paper factory. He was engaged in supervising and checking quality and weighment of waste papers and rags which are the basic raw material for the manufacture of paper. He used to deal with receipts and maintain records of stock and pass the bill of the supplier of waste paper and rags. He used to work in the precincts of the factory and in case of necessities had to work inside the factory. The Supreme Court held that he was working in the factory premises or its precincts in connection with the work of the subject of the manufacturing process, namely the raw material. (iv) Employment may be for remuneration or not A person who receives wages as remuneration for his services, a person who receives remuneration on piecework basis, a person may be working as an apprentice, and a person who is a honorary worker, all come within the definition of a worker. Therefore to be a worker, it is immaterial whether a person is employed for wages or for no wages.

(v) Any member of the armed forces of the Union is excluded from the definition of worker (vi) Whether all employees are workers? Since the word employee has not been defined in the Act it follows that all the workers within the ambit of the definition under the Act would be employees, while all employees would not be workers (Harbanslal v. State of Karnataka, (1976)1 Karnt.J.111). All persons employed in or in connection with a factory whether or not employed as workers are entitled to the benefits of the Act

(Union of India v. G.M. Kokil, 1984 SCC (L&S) 631). Once it is established prima facie that premises in question is a factory within the meaning of the Act, the provisions of Section 103 as to the presumption of employment are immediately attracted and onus to prove the contrary shifts to the accused (PrafulbhaiPatadia v. The State, 1976 (12) E.L.R. 329).

Occupier Section 2(n) of the Act defines the term “occupier” as a 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) Sections 6, 7, 7A, 7B, 11 or 12;
 - (b) Section 17 in so far as it relates to the providing the maintenance of sufficient and suitable lighting in or around the dock;
 - (c) Sections 18, 19, 42, 46, 47 or 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-



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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 occupier for the purposes of any matter provided for by or under Sections 13, 14, 16 or 17 (save as otherwise provided in this proviso) or Chapter IV (except Section 27) or Sections 43, 44, or 45, Chapter VI, VII, VIII or IX or Sections 108, 109 or 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. The important test whether a person is an occupier or not is the possession or vesting in of the ultimate control of the factory. The control should be an ultimate one, though it may be remote. There was a lot of controversy regarding 'Occupier in case of a company, as the Section 2(n)(ii), provides that any one of the directors of the company shall be deemed to be occupier of the factory. However, the Supreme Court in the case of J.K. Industries Ltd. v. Chief Inspector of Factories (1997) I-L.L.J. SC722, has held that only a member of Board of Directors of the Company can be occupier of the factory of the Company. The ultimate control of factory owned by company vests in Board of Directors. Ultimate control which vests in Board of Directors cannot be vested in any one else. Company owning factory cannot nominate its employees or officers except Director of the company as occupier of its factory. Therefore an employee of company or factory cannot be occupier. Proviso (ii) to Section 2(n) does not travel beyond scope of main provision and is not violative of Article 14 of Constitution of India. Proviso (ii) is not ultra vires main provisions of Section 2(n). No conflict exists between main provisions of Section 2(n) and proviso (ii). Further, proviso (ii) to Section 2(n) read with

Section 92, does not offend Article 21. Under Section 2(n)(iii), for the purpose of deciding who is an occupier of the factory, the test to be applied is who has ultimate control over its affairs in a government company, in fact the ultimate control lies with government though the company is separate legal entity by having right to manage its affairs. Persons appointed by central government to manage its affairs of factories (of government companies) were therefore deemed to be appointed as occupiers under the Act (IOC v. CIF, LLJ II SC 1998 604). Exemption of occupier or manager from liability in certain cases Section 101 provides exemptions from liability of occupier or manager. It permits an occupier or manager of a factory who is charged with an offence punishable under the Act to bring into the Court any other person whom he charges actual offender and also proves to the satisfaction of the Court that: (a) he has used due diligence to enforce the execution of this Act; and (b) that the offence in question was committed without his knowledge, consent or connivance, by the said other person. The other person shall be convicted of the offence and shall be liable to the like punishment as if he were the occupier or manager of the factory. In such a case occupier or manager of the factory is discharged from liability. The Section is an exception to principles of strict liability, but benefit of this would be available only when the requirements of this section are fully complied with and the court is fully satisfied about the proof of facts contemplated in (a) and (b) above.

STATUTORY AGENCIES AND THEIR POWERS FOR ENFORCEMENT OF THE ACT-The State Governments assume the main responsibility for administration of the Act and its various provisions by utilising the powers vested in them. Section 3

empowers the State Government to make rules for references to time of day where Indian Standard Time, being 5-1/2 hours ahead of Greenwich Mean-Time is not ordinarily observed. These rules may specify the area, define the local mean time ordinarily observed therein, and permit such time to be observed in all or any of the factories situated in the area. The State Government assumes power under Section 4 of the Act to declare different departments to be separate factories or two or more factories to be single factory for the purposes of this Act. This power will be utilised by the State Government either on its own or on an application made to it by the occupier. But no order could be made on its own motion unless occupier is heard in this regard. In case of public emergency, Section 5 further empowers the State Government to exempt by notification any factory or class or description of factories from all or any of the provisions of this Act except Section 67 for such period and subject to such conditions as it may think fit, however no such notification shall be made exceeding a period of three months at a time. Explanation to Section 5 defines public emergency as a situation whereby the security of India or of any part of the territory thereof is threatened whether by war or external aggression or internal disturbance.

The State Governments carry out the administration of the Act through:

- (i) Inspecting Staff
 - (ii) Certifying Surgeons
 - (iii) Welfare Officers
 - (iv) Safety Officers.
- (i) The Inspecting Staff Appointment: Section 8 empowers the State Government to appoint Inspectors, Additional Inspectors and Chief Inspectors, such persons who

possess prescribed qualifications. Section 8(2) empowers the State Government to appoint any person to be a Chief Inspector. To assist him, the government may appoint Additional, Joint or Deputy Chief Inspectors and such other officers as it thinks fit [Section 8(2A)]. Every District Magistrate shall be an Inspector for his district. The State Government may appoint certain public officers, to be the Additional Inspectors for certain areas assigned to them [Section 8(5)]. The appointment of Inspectors, Additional Inspectors and Chief Inspector can be made only by issuing a notification in the Official Gazette. 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. Which authorities carry out the administration of the Factories Act, 1948.

Powers of Inspectors Section 9 describes the powers of the Inspectors subject to any rules made in this behalf for the purpose of the Act. An Inspector may exercise any of the following powers within the local limits for which he is appointed:

1. He can enter any place which is used or which, he has reasons to believe, is used as a factory.
2. He can make examination of the premises, plant, machinery, article or substance. 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.
3. Require the production of any prescribed register or any other document relating to the factory. Seize, or take copies of any register, record of other document or any portion thereof.
4. Take measurement and photographs and make such recordings as he considers necessary for the purpose of any examination.
5. 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.

The Factories Act requires the maintenance of certain registers and records. Inspectors have been empowered to ask for the production of any such documents maintained under law, and the non-compliance of this has been made an offence.

(ii) Certifying Surgeons Section 10 provides for the appointment of the Certifying Surgeons by the State Government for the purpose of this Act to perform such duties as given below within such local limits or for such factory or class or description of factories as may be assigned to Certifying Surgeon: (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.

(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.

APPROVAL, LICENSING AND REGISTRATION OF FACTORIES Section 6

empowers the State Government to make rules with regard to licensing and registration of factories under the Act on following matters:

- (i) submission of plans of any class or description of factories to the Chief Inspector or the State Government;
- (ii) obtaining previous permission of the State Government or the Chief Inspector, for the site on which factory is to be situated and for construction or extension of any factory or class or description of factories. However, replacement or addition of any plant or machinery within prescribed limits, shall not amount to extension of the factory, if it does not reduce the minimum safe working space or adversely affect the environmental conditions which is injurious to health;
- (iii) considering applications for permission for the submission of plans and specifications;
- (iv) nature of plans and specifications and the authority certifying them;
- (v) registration and licensing of factories;
- (vi) fees payable for registration and licensing and for the renewal of licences;
- (vii) licence not to be granted or renewed unless notice specified under Section 7 has been given. Automatic approval If an application is made for the approval of site for construction or extension of the factory and required plans and specifications have been submitted by registered post to the State Government or the Chief Inspector and if no reply is received within three months from the date on which it is sent the application stands automatically approved [Section 6(2)]. Where the rules require the licensing authority to issue a licence on satisfaction of all legal requirements/record reasons for

refusal. Licence could not be refused only on a direction from Government (S. Kunju v. Kerala, (1985) 2 LLJ 106). Appeal against refusal to grant permission, If the State Government or Chief Inspector do not grant permission to the site, construction or extension of a factory, or to the registration and licensing of a factory, the applicant may within 30 days of the date of such refusal appeal to:

- (i) the Central Government against the order of the State Government;
- (ii) the State Government against the order of any other authority.

NOTICE BY OCCUPIER –

Section 7 imposes an obligation on the occupier of a factory to send a written notice, containing prescribed particulars, to the Chief Inspector at least 15 days before an occupier begins to occupy or use a premises as a factory and at least 30 days before the date of resumption of work in case of seasonal factories, i.e. factories working for less than 180 days in a year. Contents of notice A notice must contain following particulars:

- (1) The name and situation of the factory.
- (2) The name and address of the occupier.
- (3) The name and address of the owner of the premises or building (including the precincts, etc., thereof referred to in Section 93).
- (4) The address at which communication relating to the factory should be sent.
- (5) The nature of manufacturing process to be carried on in the factory during next 12 months.

- (6) The total rated horse power installed or to be installed in the factory which shall not include the rated horse power of any separate standby plant.
- (7) The name of the Manager of the factory for the purpose of this Act.
- (8) the number of workers likely to be employed in the factory.
- (9) Such other particulars as may be prescribed. Notice where new manager is appointed 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. When there is no manager – occupier deemed as manager During a 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, will be the manager for the purposes of the Act. Where no such person is found the occupier should be deemed to be the manager of the factory.

GENERAL DUTIES OF THE OCCUPIER-

Section 7A is inserted by the Factories (Amendment) Act, 1987, as under:

- (1) 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.
- (2) Without prejudice to the generality of the provisions of Sub-section (1) the matters to which such duty extends shall include:
 - (a) The provision and maintenance of plant and systems of work in the factory that are safe and without risks to health;

- (b) the arrangement 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 provisions of such information, instruction, training and supervision as are necessary to ensure the health and safety of all workers at work;
- (d) the maintenance of all places of work in the factory in a condition that is safe and without risks to health and provisions 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. (3) 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 organisation 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.

GENERAL DUTIES OF MANUFACTURERS-

Section 7B provides that every person who designs, manufactures, imports or supplies any article (including plant and machinery) or use in any factory, shall observe the following:

(a) ensure, that the article is so designed and constructed as to be safe and without risks to the health of the workers when properly used; Lesson 1 Factories Act, 1948

(b) carry out 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 condition necessary to ensure that the article, when put to such use, will be safe, and without risks to the health of the workers. The Section further provides 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 (including plant and machinery) 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. For the above purpose, the concerned person 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 minimisation of any risk to the health or safety of workers to which design or article (including plant and machinery) may give rise. The section further provides that if research, testing, etc. has already been exercised or carried out, then no

such research is required again. The above duties relate only to things done in the course of the business carried out by him, and to matters within his control. However, the person may get relief from the exercise of above duties if he gets an undertaking in writing by the user of such article to take necessary steps that the article will be safe and without risk to the health of the workers.

MEASURES TO BE TAKEN BY FACTORIES FOR HEALTH, SAFETY AND WELFARE OF WORKERS-

(i) Cleanliness Section 11 ensures the cleanliness in the factory. It must be seen that a factory is kept clean and it is free from effluvia arising from any drain, privy or other nuisance.

The Act has laid down following provisions in this respect:

(1) All the accumulated dirt and refuse on floors, staircases and passages in the factory shall be removed daily by sweeping or by any other effective method. Suitable arrangements should also be made for the disposal of such dirt or refuse.

(2) Once in every week, the floor should be thoroughly cleaned by washing with disinfectant or by some other effective method [Section 11(1)(b)].

(3) Effective method of drainage shall be made and maintained for removing water, to the extent possible, which may collect on the floor due to some manufacturing process.

(4) To ensure that interior walls and roofs, etc. are kept clean, it is laid down that: (i) white wash or colour wash should be carried at least once in every period of 14 months;

(ii) where surface has been painted or varnished, repair or revarnish should be carried out once in every five years, if washable then once in every period of six months; (iii)

where they are painted or varnished or where they have smooth impervious surface, it should be cleaned once in every period of 14 months by such method as may be prescribed.

(5) All doors, windows and other framework which are of wooden or metallic shall be kept painted or varnished at least once in every period of five years.

(6) The dates on which such processes are carried out shall be entered in the prescribed register. 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. [Section 11(2)] (ii) Disposal of waste and effluent. 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. (Section 12) (iii) Ventilation and temperature 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 materials and so designed that reasonable temperature does not exceed but kept as low as possible. (ii) Where the nature of work carried on in the factory generates excessively high temperature, following measures should be adopted to protect the workers: (a) by separating such process from the workroom; or (b) insulating the hot parts; or (c) adopting any other effective method which will protect the workers. 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. (Section 13) (iv) Dust and fume 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.

Following measures should be adopted in this respect:

- (1) Effective measures should be taken to prevent the inhalation and accumulation of dust, fumes etc., in the work-rooms.
- (2) 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.

(3) In stationery internal combustion engine and exhaust should be connected into the open air.

(4) In cases of other internal combustion engine, effective measures should be taken to prevent the accumulation of fumes therefrom. (Section 14) 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.

Lastly 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 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. Section 15(1) empowers the State Government to make rules (i) prescribing the standards of humidification, (ii) regulating methods to be adopted for artificially increasing the humidity of the air, (iii) directing prescribed tests for determining the humidity of the air to be correctly carried out, and recorded, and (iv) prescribing methods to be adopted for securing adequate ventilation and cooling of the air in the work-room. Section 15(2) lays down that water used for artificial humidification should be either purified before use or obtained from a public supply or other source of drinking water. Where the water is not purified as stated above. Section 15(3) empowers the Inspector to order, in writing, the manager of the factory to carry out specified measures, before a specified date, for purification of the water. (vi)

Overcrowding in the work-room 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. (1) Section 16(1) prohibits the overcrowding in the work-rooms to the extent it is injurious to the health of the workers. (2) Apart from this general prohibition Section 16(2) 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: Section 16(3) empowers the Chief Inspector who may direct in writing the display of a notice in the work-room, specifying the maximum number of workers which can be employed in that 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.

Section 17 of the Factories Act makes following provisions in this respect:

- (1) every factory must provide and maintain sufficient and suitable lighting, natural, artificial or both, in every part of the factory where workers are working or passing;
- (2) all the glazed windows and sky lights should be kept clean on both sides;

(3) effective provisions should be made for the prevention of glare from a source of light or by reflection from a smooth or polished surface;

(4) formation of shadows to such an extent causing eye-strain or the risk of accident to any worker, should be prevented; and

(5) the state government is empowered to lay down standard of sufficient and suitable lighting for factories for any class or description of factories or for any manufacturing process.

(viii) Drinking water Section 18 makes following provisions with regard to drinking water.

(1) every factory should make effective arrangements for sufficient supply of drinking water for all workers in the factory;

(2) water should be wholesome, i.e., free from impurities;

(3) water should be supplied at suitable points convenient for all workers;

(4) no such points should be situated within six metres of any washing place, urinals, latrine, spittoon, open drain carrying sullage or effluent or any other source of contamination, unless otherwise approved in writing by the Chief Inspector;

(5) all such points should be legible marked Drinking Water in a language understood by majority of the workers;

(6) in case where more than 250 workers are ordinarily employed, effective arrangements should be made for cooling drinking water during hot weather. In such cases, arrangements should also be made for the distribution of water to the workers; and

(7) the State Government is empowered to make rules for the compliance of above stated provisions and for the examination, by prescribed authorities, of the supply and distribution of drinking water in factories.:

(ix) Latrines and urinals Every factory shall make suitable arrangement for the provision of latrines and urinals for the workers. These points as stated below, are subject to the provisions of Section 19 and the rules laid down by the State Government in this behalf.

(1) every factory shall make provision for sufficient number of latrines and urinals of prescribed standard. These should be conveniently situated and accessible to all workers during working hours;

(2) separate arrangement shall be made for male and female workers; (3) all these places shall have suitable provisions for lighting and ventilation;

(4) no latrine or urinal shall communicate with any work-room unless in between them there is provision of open space or ventilated passage;

(5) all latrines and urinals shall be kept in a clean and sanitary conditions at all times;

(6) a sweeper shall be employed whose exclusive job will be to keep clean all latrines and urinals;

(7) where more than 250 workers are ordinarily employed in a factory, following additional measures shall be taken under Section 19(2): (i) all latrines and urinals accomodation shall be of prescribed sanitary type. (ii) all internal walls upto ninety centimetres, and the floors and the sanitary blocks shall be laid in glazed tiles or otherwise furnished to provide a smooth polished impervious surface; (iii) the floors, walls, sanitary pan, etc., of latrines and urinals shall be washed and cleaned with suitable detergents and/or disinfectants, at least once in every seven days.

- (8) the State Government is empowered to make rules in respect of following:
- (i) prescribing the number of latrines and urinals to be provided to proportion to the number of male and female workers ordinarily employed in the factory.
 - (ii) any additional matters in respect of sanitation in factories;
 - (ii) responsibility of the workers in these matters. These are discussed below:
 - (i) Fencing of machinery Fencing of machinery in use or in motion is obligatory under Section 21. 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: (1) every moving parts of a prime-mover and flywheel connected to a prime-mover. It is immaterial whether the prime-mover or fly-wheel is in the engine house or not; (2) head-race and tail-race of water wheel and water turbine; (3) any part of stock-bar which projects beyond the head stock of a lathe; (4) every part of an electric generator, a motor or rotary converter or transmission machinery unless they are in the safe position; (5) every dangerous part of any other machinery unless they are in safe position.
 - (ii) Safety measures in case of work on or near machinery in motion 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 clause (i) or (ii) of the proviso to Section 21(1). 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 [Section 22(2)]. (iii) Employment of young persons on dangerous machines Section 23 provides that no young person shall be required or allowed to work at any machine to which this section applies unless he has been fully instructed as to 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. (iv) Striking gear and devices for cutting off power Section 24 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 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 provides further



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safeguard for workers from being injured by self-acting machines. It provides that no traverse part of 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 centimetres from any fixed structure which is not part of the machines. However, Chief Inspector may permit the continued use of a machine installed before the commencement of this Act, which does not comply with the requirement of this section, on such conditions for ensuring safety, as he may think fit to impose. (vi) Casing of new machinery Section 26 provides further safeguards for casing of new machinery of dangerous nature. In all machinery driven by power and installed in any factory (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 so safe as it would be if it were completely encased. The section places statutory obligation on all persons who sell or let on hire or as agent of seller or hire to comply with the section and in default shall be liable to punishment with imprisonment for a term which may extend to 3 months or with fine which may extend to Rs. 500 or with both.

According to Section 27, no child or woman shall be employed in any part of factory for pressing cotton in which a cotton opener is at work. However, 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 partition where the feed-end is situated.

Section 28 provides that in every factory:

- (i) every hoist and lift shall be of good mechanical construction, sound material and adequate strength. It shall be properly maintained and 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,
- (ii) 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,
- (iii) the maximum safe working load shall be marked on every hoist or lift and no load greater, than such load shall be marked on every hoist or lift and no load greater than such load shall be carried thereon,
- (iv) the cage of every hoist and lift shall be fitted with a gate on each side from which access is afforded to a landing
- (v) such gates of the hoist and lift 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.

In terms of Section 29, in any factory the following provisions shall be complied with 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, shall be (i) of good construction, sound material and adequate strength and free from defects; (ii) properly maintained; (iii) thoroughly examined by a competent person at least once in every period of 12 months or at such intervals as Chief Inspector may specify in writing and a register shall be kept containing the prescribed particulars of every such examination;

(b) no lifting machine or 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 it 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 that premises;

(c) while any person is employed or working on or near the wheel track of a travelling 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 6 metres of that place.

Section 30 of the Act 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.

Section 31 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.

Section 32 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, openings in floors etc.

Section 33 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.

Section 34 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.

Section 35 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.dangerous fumes, gases etc.

Section 36 provides (1) that 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 persons being overcome thereby, unless it is provided with a manhole of adequate size or other effective means of egress. (2) No person shall be required or allowed to enter any confined space as is referred to in sub-section (1), until all practicable measures have been taken to remove any gas, fume, vapour 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 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 36A of the Act provides that in any factory (1) no portable electric light or any other electric appliance of voltage exceeding 24 volts shall be permitted for use inside any chamber, tank, vat, pit, pipe, flue or other confined space unless adequate safety devices are provided; and (2) if any inflammable gas, fume or dust is likely to be present

in such chamber, tank, vat, pit, pipe, flue or other confined space unless adequate safety devices are provided, no lamp or light other than that of flame proof construction shall be permitted to be used therein.

Explosive or inflammable dust gas, etc. Sub-section (1) of section 37 of the Act provides that 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, all practicable measures shall be taken to prevent any such explosion by (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.

Section 38 provides that 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.

Section 39 states that when the inspector feels that the conditions in the factory are dangerous to human life or safety he may serve on the occupier or manager or both notice in writing requiring him before the specified date to furnish such drawings, specifications and other particulars as may be necessary to determine whether such building, machinery or plant can be used with safety or to carry out such test in such a

manner as may be specified in the order and to inform the inspector of the results thereof.

Section 40 provides that the inspectors in case of dangerous conditions of building or any part of ways, machinery or plant requires the manager or occupier or both to take such measures which in his opinion should be adopted and require them to be carried out before a specified date. In case the danger to human life is immediate and imminent from such usage of building, ways of machinery he may order prohibiting the use of the same unless it is repaired or altered.

Section 40-A provides that if it appears to the inspector that any building or part of it is in such a state of disrepair which may lead to conditions detrimental to the health and welfare of workers he may serve on the manager or occupier or both, an order in writing specifying the measures to be carried out before a specified date.

Section 40-B provides that in every factory (i) where 1,000 or more workers are ordinarily employed or (ii) the manufacturing process or operation involves risk of bodily injury, poisoning or disease or any other hazard to health of the persons employed therein, the occupier shall employ such number of safety officers as may be specified in the notification with such duties and qualifications and conditions of service as may be prescribed by State Government.

Section 41 for such devices and measures to secure the safety of the workers employed in the factory

Following provisions under Chapter (v) of the Act, relate to the measures to be taken for the welfare of workers.

Section 42 provides that every factory should provide and maintain adequate and suitable washing facilities for its workers. For the use of male and female, such facilities should be separate and adequately screened. Such facilities should be conveniently accessible for all workers and be kept in a state of cleanliness. The State Government is empowered to make rules prescribing standards of adequate and suitable washing facilities.

Section 43 empowers the State Government in respect of any factory or class or description of factories to make rules requiring the provision, therein of (i) suitable places for keeping clothing not worn during working hours, and (ii) for drying of wet clothing. (iii) Facilities for sitting There are certain operations which can be performed by the workers only in a standing position.

Section 44(1), every factory shall provide and maintain suitable facilities for sitting, for those who work in standing position so that they may make use of them as an when any opportunity comes in the course of their work. If, in the opinion of the Chief Inspector, any work can be efficiently performed in a sitting position, he may direct, in writing, the occupier of the factory, to provide before a specified date such seating arrangements as may be practicable, for all workers so engaged. The State Government, may by a notification in the Official Gazette, declare that above provisions shall not apply to any specified factory or any manufacturing process.

As per Section 45, the following arrangements should be made in every factory in respect of first-aid facilities. (1) Provision of at least one first-aid box or cup-board, subject to following conditions, for every 150 workers ordinarily employed at any one time in the factory. (2) It should be equipped with prescribed contents and nothing else

should be stored in it. (3) It should be properly maintained and readily accessible during all working hours. (4) A responsible person who holds a certificate in first-aid treatment, recognised by the State Government should be made the in-charge of such first-aid box or cup-board. Such a person should be readily available during working hours of the factory. Where there are different shifts in the factory, a separate person may be appointed for each shifts provided he is a responsible person and trained in first-aid treatment. (5) Where more than 500 workers are ordinarily employed in a factory, an ambulance room should be provided and maintained by every such factory. Such room should be of prescribed size containing prescribed equipments and is in charge of such medical and nursing staff as may be prescribed.

The State Government may make rules requiring that in any specified factory wherein more than 250 workers are ordinarily employed, a canteen shall be provided and maintained by the occupier for the use of workers. Such rules may relate to any of the following matter;

- (i) the date by which canteen shall be provided;
- (ii) the standards in respect of construction, accommodation, furniture and other equipment of the canteen;
- (iii) the foodstuffs to be served and the prices to be charged;
- (iv) 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;
- (v) the constitution of a Managing Committee for the canteen and the representation of the workers in the management of the canteen;

(vi) the delegation, to the chief inspector, subject to such conditions as may be prescribed, of the power to make rules under clause (iii). (Section 46) Employees working in canteens in industrial establishments run by Managing Committee are not employees of the Managing Committee, but are employees of occupier (Kanpur Suraksha Karmachari Union v. Union of India, AIR 1988 SC). Where the statute casts an obligation to own a canteen in the factory, and the establishment runs a canteen through a contractor who brings the workers for the canteen would be part and parcel of the establishment and the canteen workers would be deemed to be regular employees of the establishment entitled to arrears of salary and other monetary benefits (Tamil Manila ThozilalarSangam v. Chairman TNEB, 1994 CLA 34 Mad. 63.) (vi) Shelters, rest rooms and lunch rooms The provision of some sort of shelter is a must, where the workers can take their meals brought by them during rest interval.

The following provisions under Section 47 of the Act have been made in this respect:

(1) In every factory where more than 150 workers are ordinarily employed, the occupier should make adequate and suitable arrangements for shelters or rest rooms and lunch-room with provision of drinking water where the workers can take rest of or eat meals brought by them. However any canteen which is maintained in accordance with provisions of Section 45 shall be regarded as part of the requirements of this sub-section. Where a lunch room exists no worker shall eat any food in the workroom. (2) Such places should be equipped with the facility of drinking water. (3) Such places should be sufficiently lighted, ventilated and kept in cool and clean conditions. (4) The construction and accommodation, furniture and equipment of such place should conform to the standards, if any, laid down by the State Government. By a notification in the

Official Gazette, the State Government may exempt any factory from the compliance of these provisions. Further, where any canteen is maintained under Section 45, then provision of such shelter room, etc., is not necessary. 28 EP-IL&GL (vii) Creches Following provisions have been made in respect of creches in the factories: (1) In every factory wherein more than 30 women workers are ordinarily employed, the facility of suitable room or rooms should be provided and maintained for the use of children under the age of six years of such women. (2) There should be adequate accommodation in such rooms. (3) These places should be sufficiently lighted and ventilated and kept in clean and sanitary conditions. (4) Women trained in the case of children and infants should be made incharge of such rooms.

The State Government is empowered to make rules in respect following matters:

- (1) Location and standards in respect of construction, accommodation, furniture and other equipment of such places.
- (2) Provisions of facilities for washing and changing clothing of children or any other additional facility for their care.
- (3) Provisions of free-milk or refreshment or both for children.
- (4) Facilities for the mothers of such children to feed them at suitable intervals in the factory.

The provisions of Section 49 also apply to seasonal factories like sugar factories etc. The State Government is empowered to lay down rules as to the conditions of service of welfare officers. The conditions of service may include matters in respect of pay grades, period of probation and confirmation, dismissal or termination or retirement etc. 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.

(ix) Powers to make rules to supplement this chapter The State Government is empowered to make rules exempting factory or class or description of factories from Factories Act, 1948 the compliance of provisions of this chapter, provided alternative arrangements for workers welfare have been made to the satisfaction of the authorities. Such rules may require that workers representatives shall be associated with the management of the welfare arrangements of the workers.

Section 50 SPECIAL PROVISIONS RELATING TO HAZARDOUS

PROCESSES Section 41A. Constitution of Site Appraisal Committees:

(1) The State Government may, for purpose 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 consisting of

(a) the Chief Inspector of the State who shall be its Chairman;

(b) a representative of the Central Board for the prevention and control of water pollution appointed by the Central Government under Section 3 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);

(c) a representative of the Central Board for the Prevention and Control of Air Pollution referred to in Section 3 of the Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981);

- (d) a representative of the state board appointed under Section 4 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974); (e) a representative of the state board for the prevention and control of air pollution referred to in Section 5 of the Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981);
- (f) a representative of the Department of Environment in the State;
- (g) a representative of the Meteorological Department of the Government of India;
- (h) an expert in the field of occupational health; and
- (i) a representative of the Town Planning Department of the State Government. and not more than five other members who may be co-opted by the State Government who shall be
- (i) a scientist having specialised knowledge of the hazardous process which will be involved in the factory,
- (ii) a representative of the local authority within whose jurisdiction the factory is to be established, and
- (iii) not more than other person as deemed fit by the State Government. (2) The Site Appraisal 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.
- (3) Where any process relates to a factory owned or controlled by the Central Government or to a corporation or 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 the Committee. (4) The Site Appraisal 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. (5) 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 (6 of 1974), and the Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981). Section 41B. Compulsory disclosure of information by the occupier:

(1) 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 situated and the general public in the vicinity.

(2) 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.

(3) The information furnished under Sub-section (1) shall include accurate information as to the quantity, specifications and other characteristics of wastes and the manner of their disposal.

(4) 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.

(5) Every occupier of a factory shall, (a) if such factory 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 proposes to engage in a hazardous process at any time after such commencement, within a period of thirty days before the commencement of such process, inform the Chief Inspector of the nature and details of the process in such form and in such manner as may be prescribed.

(6) Where any occupier of a factory contravenes the provisions of Sub-section (5), the licence issued under Section 6 to such factory shall, notwithstanding any penalty to which the occupier or factory shall be subjected to under the provisions of the this Act, be liable for cancellation.

(7) 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.

Section 41C. Specific responsibility of the occupier in relation to hazardous processes:

Every occupier of a factory involving any hazardous process shall

(a) 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;

(b) appoint persons who possess qualifications and experience in handling hazardous substances and 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; 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;

(c) provide for medical examination of every worker (a) before such worker is assigned to a job involving the handling of, a working with, a hazardous substance, and (b) 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.

Section 41D. Power of Central Government to appoint Inquiry Committee: (1) The Central Government may, in 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 any 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 recurrence of such extraordinary situations in future in such factory or elsewhere.

(2) The Committee appointed under sub-section (1) 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.

(3) The recommendations of the Committee shall be advisory in nature.

Section 41E. Emergency standards: (1) 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 in-adequate, it may direct the Director-General of Factory Advice Service and Labour Institutes or any institution specialised in matter relating to standards of safety in hazardous processes, to lay down emergency standards for enforcement of suitable standards in respect of such hazardous processes.

(2) The emergency standards laid down under sub-section (1) 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: (1) 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 (may refer to the bare Act). (2) The Central Government may, at any time, for the purpose of giving effect to any scientific proof obtained from specialised institutions or expert in the field, by notification in the Official Gazette, make suitable changes in the said Schedule. (Section 41F) Workers participation in safety management: (1) 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; 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.

(2) 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.

(Section 41G) Right of workers to warn about imminent danger: (1) 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. (2) 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. (3) If the occupier, agent, manager or the person in charge referred to in sub-section (2) is not satisfied about the existence of any imminent danger as apprehended by the workers, he shall, nevertheless, refer the matter forthwith to the nearest inspector whose decision on the question of the existence of such imminent danger shall be final.

(Section 41H) WORKING HOURS OF ADULTS contains provision for regulating working hours for the adult workers and the same are explained below: (i) Weekly hours
An adult worker shall be allowed to work only for forty eight hours in any week.

(Section 51) (ii) Weekly holidays Section 52 provides that 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.

(iii) Compensatory holidays When a worker is deprived of any of the weekly holiday as result of passing of an order or making of a rule exempting a factory or worker from the provisions of Section 52, he is entitled to compensatory holidays of equal number of the holidays so lost. These holidays should be allowed either in the same month in which the holidays became due or within next two months immediately following that month.

(Section 53)(iv) Daily hours According to 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. (v) Intervals for rest No adult worker shall work continuously for more than 5 hours unless a rest interval of at least half an hour is given to him.

[Section 55(1)] The State Government or subject to the control of the State Government the Chief Inspector may, by written order for the reasons specified therein, exempt any factory, from the compliance of above provisions to the extent that the total number of hours worked without rest interval does not exceed six.

[Section 55(2)] (vi) Spreadover Section 56 provides that the daily working hours should be adjusted in such a manner, that inclusive of rest interval under Section 55, they are not spreadover more than 10-1/2 hours on any day. Thus, we see this Section restricts the practice of forcing the stay of workers in the factory for unduly long periods without contravening the provision of Section 54 relating to daily hours of work. Proviso to Section 56 provides that the limit may be extended upto 12 hours by the Chief Inspector for reasons to be specified in writing. (vii) Night shifts Where a worker in a factory works in night shifts, i.e., shift extending beyond mid-night: (i) the weekly or compensatory holiday shall be a period of 24 consecutive hours beginning when his shift ends; (ii) the following day shall be deemed to the period of 24 hours beginning when shift ends, and the hours he has worked after mid-night shall be counted in the previous day.

(Section 57) (viii) Prohibition of overlapping shifts According to Section 58(1), where the work in any factory is carried on by means of multiple shifts, the period of shifts

should be arranged in such a manner that not more than one relay of workers is engaged in work of the same kind at the same time. In case of any factory or class or description of factories or any department or section of a factory or any category or description of workers, the State Government or subject to the control of the State Government, the Chief Inspector may, by written order and for specified reasons, grant exemption from the compliance of the provisions of Section 58(1) on such condition as may be deemed expedient.

[Section 58(2)] following provisions have been made in respect of overtime wages: Where a worker works in a factory for more than 9 hours in any day or more than 48 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.

[Section 59(1)] Meaning of ordinary rate of wages According to Section 59(2) ordinary rate of wages means: (i) basic wages; plus, (ii) allowances which include 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 it 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 (GovindBapu Salve v. VishwanathJanardhan 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). Rate of wages for piece rate workers Where the workers in a factory are paid on 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 month during which the over-time work was done and such time rates shall be deemed to be the ordinary rates of wages of those workers. However, in 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. [Section 59(3)] (x)
Restriction on double employment.

According to Section 60, no adult worker shall be required or allowed to work in any factory on any day if he has already been working in any other factory on that day. However, in certain exceptional circumstances as may be prescribed, the double employment may be permitted.

Notice of period of work for adults As per Section 61(1), a notice of period of work, showing clearly for everyday the periods during which adult workers may be required to work, shall be displayed and correctly maintained in every factory.

The display of notice should be in accordance with the provisions of Section 108(2). (2)

The periods shown in the notice shall not contravene the provisions of the Factories Act regarding: (a) Weekly hours,

Section 51. (b) Weekly holidays,

Section 52. (c) Compensatory holidays,

Section 53. (d) Daily Hours,

Section 54. (e) Intervals of rest,

Section 55. (f) Spread over of working hours,

Section 56 and (g) Prohibition of overlapping shifts,

Section 58. (3) The periods of work shall be fixed before hand in any of the following ways: (i) where all the adult workers work during the same periods, the manager of the factory shall fix those periods for such workers generally;

[Section 61(3)] (ii) where all the adult workers are not working during the same period, the manager of the factory shall classify them into groups according to the nature of their work indicating the number of workers in each group;

[Section 61(4)] (iii) the manager shall fix periods of work for each such group provided they are not working on shift basis;

[Section 61(5)] (iv) where any group is working on a system of shifts, periods shall be fixed, by the manager, during which each relay of the group may work provided such relays are not subject to predetermined periodical changes of shift;

[Section 61(6)] (v) where the relays are subject to predetermined periodical changes of shifts, the manager shall draw up a scheme of shifts, whereunder the periods during which any relay of the 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.

[Section 61(7)] (4) The form of such notice and the manner in which it shall be maintained, may be prescribed by the State Government. [Section 61(8)] (5) Any proposed change in the system of work in the factory, which necessitates a change in the notice, shall be notified to the Inspector in duplicate before the change is made. No such change shall be made except with the previous sanction of the Inspector and that too until one week has elapsed since the last change,

[Section 61(10)]. This provision intends to prevent sudden variations or casual alterations in the periods of work. (xii) Register of adult workers The manager of every factory shall maintain a register of adult workers to be available to the Inspector at all times during working hours containing the following particulars: (i) the name of worker; (ii) the nature of his work; (iii) the group, if any, in which he is included;(iv) where his group works on shifts, the relay to which he is allotted; and (v) other particulars as may be prescribed. Where any factory is maintaining a muster roll or a register which contains the abovementioned particulars, the Inspector may, by order in writing, direct that such muster roll or register shall be maintained in place of and be treated as the register of adult workers in that factory

(Section 62). Further, an adult worker shall not be required or allowed to work in the factory unless his particulars have been entered in this register.

[Section 62(IA)] Inspection of the register Section 62(1) empowers the Inspector to demand the production of register of adult workers at all times during working hours or when any work is being carried on in the factory. It is the duty of the manager to produce the register when demanded at the time of inspection. If the manager does not happen to be on the premises at the time of inspection he should make arrangement that the register is made available to the inspector. The evident intention of the legislature is that the register should be at the place where the work is going on. Thus, where a manager is absent at the time of inspection of the factory by the inspector and the assistant manager, who is present at that time fails to produce register on demand, the manager has committed breach of Section 62.

Effect of entry in the register If the name of any person is entered in the register of adult workers, it is a conclusive evidence that the person is employed in the factory. In other words, there is a presumption that the person whose name appears in the attendance register, is employed in the factory. Liability to maintain register The liability to maintain register of adult workers has been imposed on the manager of the factory. The occupier cannot be held liable for failure of the manager to maintain the register. But if somebody else has been made responsible for maintaining such register, manager can plead under Section 101 that the offence was committed by another person including the occupier.

Hours of work to correspond with notice under Section 61 and register under Section 62 No adult worker shall be required or allowed to work in any factory otherwise than in accordance with the notice of period of work for adults displayed in the factory and the entries made before had against his name in the register of adult workers of the factory.

(Section 63) Presence of worker during rest period Where a worker is merely present during the rest period as notified or is found working during that period, there is no contravention of Section 63 and hence not punishable. (xiv) Power to make exempting rules (1) The State Government is empowered under Section 64, to make rules defining certain persons holding supervisory or managerial or confidential positions and granting exemptions to them from the provisions of this chapter except Section 66(1)(b) and proviso to Section 66(1) provided that such person shall be entitled for extra wages in respect of overtime under Section 59 if his ordinary rate of wages is not more than Rs. 750 per month.

ADDITIONAL PROVISIONS REGULATING EMPLOYMENT OF WOMEN IN A FACTORY–

We have discussed the provisions relating to working hours of adult workers, both male and female. However, certain additional restrictions have been found necessary on the working hours of female workers. Section 66 makes following provisions in this respect.

(1) No exemption may be granted to female worker, from the provisions of Section 54 relating to daily hours of work.

(2) Women workers shall not be employed except between the hours of 6 a.m. and 7 p.m. However, the State Government may by a notification in the Official Gazette, vary these limits to the extent that no woman shall be employed between the hours of 10 p.m.

(3) There shall be no change of shifts except after a weekly holiday or any other holiday. Exemptions from the above restriction The State Government has been empowered to make rules granting exemptions from above stated restriction in respect of women working in fish-curing or fish canning factories. This has been done with a view to prevent damage to or deterioration in any raw material. However, before granting any exemption, the State Government may lay down any condition as it thinks necessary. Such rules made by the State Government shall remain in force for not more than three years at a time.

[Section 66(3)] EMPLOYMENT OF YOUNG PERSONS AND CHILDREN Most of the civilised nations restrict the employment of children in the factories. The Royal Commission on Labour observed that this is based on the principle that the supreme right of the State to the guardianship of children controls the natural rights of the parent when the welfare of society or of the children themselves conflicts with parental rights.

Workers as young as five years of age may be found in some of these places working without adequate meal, intervals or weekly rest days at as low as 2 annas in the case of those tenderest years. Therefore, to curb these and other evil practices of employing children, following legislative measures have been adopted. (i) General prohibition as to employment of children According to Section 67, a child who has not completed his fourteenth year of age, shall not be employed in any factory. (ii) Employment of children and Adolescents—

Conditions According to Section 68, children completing their fourteenth year or an adolescent, shall not be required to work in any factory, unless following conditions are fulfilled:

- (i) the manager of the factory has obtained a certificate of fitness granted to such young person under Section 69;
- (ii) while at work, such child or adolescent carries a token giving reference to such certificate.
- (iii) What is a certificate of fitness Under Section 69 of the Act, before a young person is employed in the factory, a Certifying Surgeon has to certify that such person is fit for that work in the factory.

To get this certificate, an application to a Certifying Surgeon has to made either:

- (i) by the young person himself; or
- (ii) by his parent or guardian; or
- (iii) by the manager of the factory. If the application is made by a person other than the manager, it must be accompanied by a document, signed by the manager, that such

young person will be employed in the factory if a certificate of fitness is granted in his favour. [Section 69(1)]

(iv) Certificate of fitness to work as a child The Certifying Surgeon may grant or renew to any such young person, a certificate of fitness, in the prescribed form to work as a child, if, after examination, he is satisfied that (i) such young person has completed his 14th year; (ii) has attained the prescribed physical standards; and (iii) is fit for such work.

[Section 69(2)(a)] (v) Certificate of fitness to work as an adult If the Certifying Surgeon, after examination is satisfied that such a young person has completed his 15th year and is fit for a full days work in the factory, he may grant or renew a certificate of fitness, in the prescribed form, to such young person, to work as an adult.

[Section 69(2)(b)] Proviso to Section 69(2) provides that before granting or renewing a certificate of fitness, the Certifying Surgeon must have personal knowledge of the place of the work and manufacturing process wherein such young person will be employed. If he has no personal knowledge, he must examine such place personally. Other features of certificate of fitness (i) Validity: The certificate is valid for a period of 12 months from the date of issue [Section 69(3)(a)]. (ii) Conditions of Issue: It may be issued subject to conditions in respect to (i) the nature of work in which a young person may be employed, or (ii) the re-examination of such young person before the expiry of 12 months.

[Section 69(3)(b)]. Such young person shall not be required or allowed to work except in accordance with these conditions.

[Section 69(6)] (iii) Revocation of the certificate: The certificate can be revoked by the certifying surgeon, at any time if, in his opinion, the worker is no longer fit to work as such in the factory.

[Section 69(4)] (iv) Certifying Surgeon to state reasons for refusal or revocation: Where a Certifying Surgeon refuses to grant or renew a certificate or revokes a certificate he shall state his reasons in writing if requested by any person, for doing so.

[Section 69(5)] (v) Fee for the certificate: Any fee payable for a certificate shall be paid by the occupier and it cannot be recovered from the young person, his parents, or guardian.

[Section 69(7)] adolescent and who while at work in a factory carries a Lesson 1 Factories Act, 1948 39 token giving reference to such certificate is that he is deemed to be an adult for the purpose of Chapter VI relating to working hours, and Chapter VIII relating to annual leave with wages. [Section 70(1)] (2) No female adolescent or a male adolescent who has not attained the age of seventeen years but who has been granted a certificate of fitness to work in a factory as an adult, shall be required or allowed to work in any factory except between 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:

- (i) vary the limits laid down in this sub-section, so, however, that no such section shall authorisethe employment of any female adolescent between 10 p.m. and 5 a.m.
- (ii) grant exemption from the provisions of this sub-section in case of serious emergency where national interest is involved.

(Section 70 IA) (3) Where an adolescent has not been granted this certificate, he shall notwithstanding his age, be deemed to be a child for all the purposes of this Act.

[Section 70(2)] (v) Penalty for using false certificate of fitness If a certificate of fitness is granted to any person, no other person can use it or attempt to use it. The person granting the certificate, cannot allow its use or attempt to be used by another person. In other words, where a person knowingly uses or attempts to use a false certificate and thus, contravenes above provisions, can be punished with imprisonment extending up to two months or with fine upto Rs. 1000 or with both.

(Section 98) Working hours for children Section 71, lays down further restrictions on the employment of children in the factories.

These restrictions as stated below relate to working hours for children.

(1) A child shall not be employed or permitted to work for more than 4-1/2 hours in any day. [Section 71(1)(a)]

(2) He is not permitted to work during night, i.e., during a period of at least 12 consecutive hours, including intervals, between 10 p.m. and 6 a.m.

(3) The period of work shall be limited to two shifts only. [Section 71(2)]

(4) These shifts shall not overlap.

(5) Shifts should not spreadover more than 5 hours each.

(6) Each child shall be employed in only one of the relays.

(7) The relays should not be changed more frequently than once in a period of 30 days, otherwise previous permission of the Chief Inspector should be sought in writing.

(8) The provision relating to weekly holiday under Section 52, also apply to child workers. But Section 7(3) does not permit any exemption in respect of these provisions.

(9) No child shall be required or allowed to work in any factory on any day on which he has already been working in another factory. [Section 71(4)] (10) No female child shall be required or allowed to work in any factory except between 8 a.m. and 7 p.m. The Act not only prohibits the double employment of a child by the occupier or manager, but also prohibits under Section 99 his parent or guardian or person having custody of or control over him or obtaining any direct benefit from his wages, from allowing him to go for double employment. If they contravene this provision, they can be punished with a fine extending upto one thousand rupees unless the child works without the consent or connivance of his parent or guardian or such other person.

Notice of periods of work for children (1) A notice, showing clearly for every day the period during which children may be required or allowed to work, shall be displayed and correctly maintained as per Section 108(2) in every factory which employs children.

(2) The periods of work shall be fixed beforehand according to the method prescribed for adult workers under Section 61.

(3) The periods of work so fixed shall not contravene the provisions of Section 71 relating to working hours for children. [Section 72(2)] (4) The provisions of sub-sections

(8), (9) and (10) of Section 61 shall apply to such a notice. (Section 72) Register of child workers According to Section 73(1), in every factory, in which children are employed, a register of child workers should be maintained and should be available for inspection by the inspector at all times during working hours or when any work is being carried on in the factory. Hours of work to correspond with notice under Section 72 and register under Section 73 According to Section 74, the employment of any child shall be in accordance with the notice of periods of work for children to be displayed under Section 72 and the

entries made beforehand against his name in the register of child workers of the factory maintained under Section 73.

Power to require medical examination Section 75 empowers the inspector to serve on the manager of a factory, a notice requiring medical examination of a person by a surgeon, if in his opinion, such person is a young person and is working without a certificate of fitness or, such person, though in possession of certificate of fitness, is no longer fit to work in the capacity stated therein. The inspector may further direct that such person shall not be employed or permitted to work in any factory until he has been examined and also granted a certificate of fitness or fresh certificate of fitness or has been certified by the Certifying Surgeon not to be a young person. Certain other provisions of law not barred The provisions relating to the employment of young persons in factories shall be in addition to, and not in derogation of the provisions of the Employment of Children Act, 1938. (Section 77)

ANNUAL LEAVE WITH WAGES This aspect has been dealt with Application of the Chapter

(1) According to Section 78(1), the provisions contained in this chapter shall not operate to the 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.

(2) Where such award, agreement including settlement or contract of service provides for a longer annual leave with wages than provided in this Chapter, the worker shall be entitled to such longer annual leave but if those provisions are less favourable, then this Chapter shall apply [proviso to Section 78(1)].

(3) The provisions of this chapter do not apply to workers in any factory of any railway administration by the Government, who are governed by leave rules approved by the Central Government. Annual leave with wages Under Section 79, the following provisions have been made with regard to annual leave with wages. Basis of leave (a) According to Section 79(1), 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. (b) 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 part of the calendar year. (c) These leaves are exclusive of all holidays whether occurring during or at either end of the period of leave. (d) 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. (e) 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 sub-section (1) or (2) 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. [Explanation to Section 79(1)] 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 Sections 79(8) and (9), or in contravention of Section 79(10), he can carry forward the leave refused, without any limit. [Section 79(5)] How to apply for leave with wages (i) 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. [Section 79(6)] (ii) 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. (iii) The annual leave with wages cannot be availed for more than three times during any year. (iv) The application to avail annual leave with wages for illness purposes can be made at any time. [Section 79(7)] (v) An application for leave which

does not contravene the provisions of Section 79(6) shall not be refused unless the refusal is in accordance with the scheme for the time being in operation under sub-sections (8) and (9) of Section 79. [Section 79(10)] 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 (ii) Such other Committee formed under any other Act, or (iii) In the absence of any of the above Committee, the representatives of the workers chosen in the prescribed manner [Section 79(8)].

(b) 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 [Section 79(9)]. A notice of renewal shall be sent to the Chief Inspector.

(c) The Scheme shall be displayed at some conspicuous and convenient places in the factory. [Section 79(9)] Wages during leave period According to Section 80(1), for the leave allowed to a worker under Section 78 or 79, he shall be entitled to wages at a rate equal to the daily average of his total full time earnings for the days on which he actually worked during the month immediately preceding his leave. Such full time earning will also include the dearness allowance and cash equivalent of the advantage accruing through the concessional sale to the workers of foodgrains and other articles. But will exclude any overtime wages and bonus. 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 workers 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.

[Section 80(2)] "Standard family" means a family consisting of a worker, his/her spouse and two children below the age of 14 years requiring in all three adult consumption units. [Expl. I to Section 80(2)] "Adult consumption unit" means the consumption unit of a male above the age of 14 years, and the consumption unit of a female above the age of 14 years, and that of a child below the age of 14 years, shall be calculated at the rates of 0.8 and 0.6 respectively of one adult consumption unit. [Expl. II to Section 80(2)]

Payment in advance in certain cases Section 81 provides that where an adult worker has been allowed leave for not less than 4 days and a child worker for not less than 5 days, wages due for the leave period should be paid in advance, i.e., before his leave begins. Mode of recovery of unpaid wages Any unpaid wages due to the workers under this Chapter, can be recovered as delayed wages under the provisions of the Payment of Wages Act, 1936.

PENALTIES AND PROCEDURES (1) General penalties for offences:

If there is any contravention of any of the provisions of this Act or any rules or order made thereunder, the occupier and manager shall each be guilty of an offence and punishable with imprisonment for a term which may extend to two years or with fine which may extend to Rs. one lakh or with both and if the contravention is continued after conviction, with a further fine of Rs. one thousand for each, day till contravention continues.

The provisions of Section 92 further provides penalty for contravention of any of the provisions of or any rule made thereunder or under Section 87 which has resulted in an accident causing death or serious bodily injury, the fine shall not be less than Rs. 25,000 in the case of an accident causing death and Rs. 5,000 in case of serious bodily injury.

Explanation to this Section defines serious bodily injury, which involves the permanent loss of the use of or permanent injury to any limb or sight or hearing or the fracture of any bone excluding the fracture (not being fracture of more than one) bone or joint of any phalanges of the hand or foot.

Section 94 stipulates for enhanced penalty for any person who has already been convicted under Section 92 of the Act, and is again guilty of an offence involving contravention of the same provisions. Punishment for subsequent conviction includes imprisonment for a term which may extend to three years or with fine which may not be less than Rs. 10,000 but which may extend to Rs. two lakhs or with both. Provided that the Court may, for any adequate and special reasons to to be mentioned in the judgement impose a fine of less than Rs. 10,000. Provided further, that where contravention of any of the provisions or any rule made thereunder or under Section 87 has resulted in an accident causing death or serious bodily injury, 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.

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. (2)

Liabilities of owner of premises in certain circumstances:

Section 93 provides that where in any premises separate building are being leased out by the owner to different occupiers for use as separate factories, the owner of the premises shall be responsible for the provision and maintenance of common facilities and services such as approach roads, drainage, water-supply, lighting and sanitation. [Section 93(1)]

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;
 - (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;
 - (v) maintenance of hoists and lifts; and
 - (vi) maintenance of any other common facilities provided in the premises. [Section 93(3)]
- But the liability of the owner [under Section 93(3) 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.

(Section 93(5)] For the purposes of sub-sections (5) and (7) computing the total number of workers employed, the whole of the premises shall be deemed to be single factory.

[Section 93(3)] 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: 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. (3) Penalty for obstructing Inspector:

Section 95 lays down penalty of imprisonment for six months or fine of Rs. 10,000 or with both for wilfully obstructing an inspector in the exercise of any power conferred on him by or under this Act or fails to produce any registers or other documents to him on demand or concealing or preventing any worker from appearing before or being examined by an Inspector. (4) Penalty for wrongfully disclosing of results of analysis under Section 91: Section 96 provides imprisonment extending up to a term of six months and fine uptoRs. 10,000 or both for the wrongful disclosure of results of analysts of the analysis done under Section 91 of the Act.

(41A) Penalty for contravention of Sections 41B, 41C and 41H: Section 96A provides punishment of 7 years imprisonment or fine which may extend to Rs. two lakhs for the

non-compliance with or contravention of any of the provisions of Section 41B, 41C, or 41H or rules made thereunder by any person.

In case the failure or contravention continues, 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. If such failure, contravention continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which may extend to ten years. (5) Offences by workers and penalties therefor:

(i) Section 97 lays down that if any worker contravenes the provision of this Act or any rules or orders made thereunder imposing any duty or liability on workers he will be punishable with fine which may extend to Rs. 500/-

Section 98 imposes penalty for using false certificate of fitness. Such punishment involves imprisonment for such a term which may not extend to two months or with fine which may extend to Rs. 1,000/- or with both. (6) Penalty for permitting double employment of child by parents or guardians is stipulated under Section 99. Such an act is punishable with fine extending up to Rs. 1,000 unless it appears to the Court that the child so worked without consent and connivance of such parents, guardian or person. (7) Onus of providing limits of what is practicable etc.: Onus of proving is on the person who is alleged to have failed to comply with such duty etc. to prove that he has taken all measures or it was not reasonable practicable.

UNIT-IV

THE EMPLOYEES COMPENSATION ACT.

OBJECT AND SCOPE

The Employees' Compensation Act is social security legislation. It imposes statutory liability upon an employer to discharge his moral obligation towards his employees when they suffer from physical disabilities and diseases during the course of employment in hazardous working conditions.

The Act also seeks to help the dependents of the employee rendered destitute by the 'accidents' and from the hardship arising out from such accidents.

The Act provides for cheaper and quicker mode of disposal of disputes relating to compensation through special proceedings than possible under the civil law.

The Act extends to the whole of India.

DEFINITIONS-Some important definitions are given below:

(i) Dependant Section 2(1)(d) of the Act defines “dependant” as to mean any of the following relatives of a deceased employee, namely:

(i) a widow, a minor legitimate or adopted son, an unmarried legitimate or adopted daughter, or a widowed mother, and

(ii) if wholly dependent on the earnings of the employee at the time of his death, a son or a daughter who has attained the age of 18 years and who is infirm; and

(iii) if wholly or in part dependent on the earnings of the employee at the time of his death:

(a) a widower,

(b) a parent other than a widowed mother,

(c) a minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or illegitimate or adopted if married and a minor, or if widowed and a minor,

(d) a minor brother or an unmarried sister, or a widowed sister if a minor,

(e) a widowed daughter-in-law,

(f) a minor child of a pre-deceased son,

(g) a minor child of a pre-deceased daughter where no parent of the child is alive or

(h) a paternal grandparent, if no parent of the employee is alive. Explanation – For the purpose of sub-clause (ii) and items (f) and (g) of sub-clause (iii) references to a son, daughter or child include an adopted son, daughter or child respectively.

(ii) Employee The definition of workmen has been replaced by the definition of employee. The term “employee” has been inserted by the Workmen’s Compensation (Amendment) Act, 2009 under a new clause (dd) in Section 2 of the Act.

Clause (n) defining “workman” has been omitted.

Under Section 2(dd) “employee” has been defined as follows: “Employee” means a person, who is –

(i) a railway servant as defined in clause (34) of section 2 of the Railways Act, 1989 (24 of 1989), not permanently employed in any administrative district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II; or Lesson 9 Employees’ Compensation Act, 1923.

(ii) (a) a master, seaman or other members of the crew of a ship,

- (b) a captain or other member of the crew of an aircraft,
- (c) a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle.
- (d) a person recruited for work abroad by a company, and who is employed outside India in any such capacity as is specified in Schedule II and the ship, aircraft or motor vehicle, or company, as the case may be, is registered in India; or
- (iii) employed in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of the Armed Forces of the Union; and any reference to any employee who has been” injured shall, where the employee is dead, include a reference to his dependants or any of them;

Employer The following persons are included in the definition of “employer”:

- (a) any body of persons incorporated or not;
- (b) any managing agent of the employer;
- (c) legal representative of a deceased employer. Thus, one who inherits the estate of the deceased, is made liable for the payment of compensation under the Act. However, he is liable only upto the value of the estate inherited by him;
- (d) any person to whom the services of a employee are temporarily lent or let on hire by a person with whom the employee has entered into a contract of service or apprenticeship. [Section 2(1)(e)] A contractor falls within the above definition of the employer. Similarly, a General Manager of a Railway is an employer (Bajinath Singh v. O.T. Railway, A.I.R. 1960 All 362).
- (iii) Seaman “Seaman” under Section 2(1)(k) means any person forming part of the crew of any ship but does not include the master of the ship.
- (iv) Wages According to Section 2(1)(m), the term “wages” include any privilege or benefit which is capable of being estimated in money, other than a travelling allowance or the value of any travelling concession or a contribution paid by the employer to an employee towards any pension or provident fund or a sum paid to employee to cover any special expenses entailed on him by the nature of his employment. Wages include dearness allowance, free accommodation, overtime pay, etc. (Godawari Sugar Mills Ltd. v. Shakuntala; Chitru Tanti v. TISCO; and Badri Prasad v. TrijugiSitaram). The driver

of a bus died in an accident. On a claim for compensation made by widow it was held that line allowance and night out allowance came under the privilege or benefit which is capable of being estimated in money and can be taken into consideration in computing compensation as part of wages (KSRTC Bangalore v. Smt. Sundari, 1982 Lab. I.C. 230).

The claim of bonus being a right of the workman is a benefit forming part of wages and the same can be included in wages, not define the word Disablement. It only defines the partial and total disablement. After reading the partial or total disablement as defined under the Act one may presume that disablement is loss of earning capacity by an injury which depending upon the nature of injury and percentage of loss of earning capacity will be partial or total.

The Act has classified disablement into two categories, viz.

- (i) Partial disablement, and
- (ii) Total disablement. (i) Partial disablement Partial disablement can be classified as temporary partial disablement and permanent partial disablement.
 - (a) Where the disablement is of a temporary nature: Such disablement as reduces the earning capacity of an employee in the employment in which he was engaged at the time of the accident resulting in the disablement; and
 - (b) Where the disablement is of a permanent nature: Such disablement as reduces for all time his earning capacity in every employment which he was capable of undertaking at the time.

[Section 2(1)(g)] But every injury specified in Part II of Schedule I shall be deemed to result in permanent partial disablement. Schedule I contains list of injuries deemed to result in Permanent Total/Partial disablement. In case of temporary partial disablement, the disablement results in reduction of earning capacity in respect of only that employment in which he was engaged at the time of accident.

This means the employee's earning capacity in relation to other employment is not affected. But in case of permanent partial disablement, the disablement results in reduction in his earning capacity in not only the employment in which he was engaged at the time of accident but in all other employments.

Whether the disablement is temporary or permanent and whether it results in reduction of earning capacity, the answer will depend upon the fact of each case, except when the injury is clearly included in Part II of Schedule I. In the case of Sukhai v. Hukam Chand Jute Mills Ltd., A.I.R. 1957 Cal. 601, it was observed:

“If a workman suffers as a result of an injury from a physical defect which does not in fact reduce his capacity to work but at the same time makes his labour unsaleable in any market reasonably accessible to him, there will be either total incapacity for work when no work is available to him at all or there will be a partial incapacity when such defect makes his labour saleable for less than it would otherwise fetch.

The capacity of a workman may remain quite unimpaired, but at the same time his eligibility as an employee may be diminished or lost if such a result ensue by the Lesson 9 Employees' Compensation Act, 1923 137 reason of the results of an accident, although the accident has not really reduced the capacity of the workman to work. He can establish a right to compensation, provided he proves by satisfactory evidence that he has applied to a reasonable number of likely employers for employment, but had been turned away on account of the results of the accident visible on his person.” If after the accident a worker has become disabled, and cannot do a particular job but the employer offers him another kind of job, the worker is entitled to compensation for partial disablement (General Manager, G.I.P. Rly. v. Shankar, A.I.R. 1950 Nag. 307). Deemed to be permanent partial disablement: Part II of Schedule I contains the list of injuries which shall be deemed to result in permanent partial disablement. Complete and permanent loss of the use of any limb or member referred to in this Schedule shall be deemed to be the equivalent to the loss of that limb or member.

Note to Schedule I – On the question whether eye is a member or limb as used in the note to Schedule I it was held that considering the meaning as stated in the Oxford Dictionary as also in the Medical Dictionary, it could be said that the words limb or member include any organ of a person and in any case it includes the eye (Lipton (India) Ltd. v. GokulChandran Mandal; 1981 Lab. I.C. 1300).

“Total disablement” means, such disablement whether of a temporary or permanent nature, which incapacitates an employee for all work which he was capable of performing at the time of accident resulting in such disablement.

Provided further that permanent total disablement shall be deemed to result from every injury specified in Part I of Schedule I or similarly total disablement shall result from any combination of injuries specified in Part II of Schedule I, where the aggregate percentage of loss of earning capacity, as specified in the said Part II against these injuries amount to one hundred per cent or more.

[Section 2(1)(l)] Some judicial interpretations on the subject are as follows: The expression incapacitates a workman for all work does not mean capacity to work or physical incapacity. If due to any physical defect, a workman is unable to get any work which a workman of his class ordinarily performs, and has thus lost the power to earn he is entitled to compensation for total disablement (Ball v. William Hunt & Sons Ltd.,

1912 A.C. 496). It is immaterial that the workman is physically fit to perform some work.

Thus, where a workman, though physically capable of doing the work cannot get employment in spite of his best efforts, he becomes incapacitated for all work and hence entitled to compensation for total disablement. Loss of physical capacity is co-extensive with loss of earning capacity but loss of earning is not so co-extensive with loss of physical capacity as he may be getting the same wages even though there may be loss of physical capacity. In a case permanent partial disability caused to a workman in accident while working on ship, e.g. getting pain in his left hand and experiencing difficulty in lifting weights, it was held that workman can be said to have lost his earning capacity even though getting same amount of wages as before *MangruPalji v. Robinsons*, 1978 Lab. I.C. 1567 (Bom.). Where it is not a scheduled injury the loss of earning capacity must be proved by evidence. Where the worker lost his vision of one eye permanently in an accident in course of his employment in colliery, the compensation should be assessed in accordance with item 26 Part II in Schedule I (*KatrasJherriah Coal Co. Ltd. v. Kamakhya Paul*, 1976 Lab.I.C.751).

In an injury the workman, had amputated his left arm from elbow, who was a carpenter. It was held by the Supreme Court in *PratapNarain Singh Deo v. Srinivas Sabata*, 1976 I Lab.L.J.235, that it is a total disablement as the carpenter cannot carry his work with one hand and not a partial permanent disablement.

Where the workman, a driver of bus belonging to the employer was involved in an accident which resulted in an impairment of the free movement of his left hand disabling him from driving vehicles, it was held that this is not one of the injuries mentioned in the 1st Schedule which are accepted to result in permanent total disablement. In the present case the workman was also capable of performing duties and executing works other than driving vehicles. Nature of injury to be determined not on the basis of the work he was doing at the time of accident (*Divisional Manager KSRTC v. Bhimaiah*, 1977 II L.L.J.

EMPLOYER'S LIABILITY FOR COMPENSATION-

Section 3 of the Act provides for employers liability for compensation in case of occupational disease or personal injuries and prescribes the manner in which his liability can be ascertained.

(a) In cases of occupational disease (i) Where an employee employed in any employment specified in Part A of Schedule III contracts any disease specified therein, as an occupational disease, peculiar to that employment, the contracting of disease shall be deemed to be an injury by accident arising out of and in the course of employment.

(b) Where the employee employed in any employment specified in Part B of Schedule III, for a continuous period of not less than six months under the same employer, and whilst in the service contracts any disease specified in the Part B of Schedule III, the contracting of disease shall be deemed to be an Lesson 9 Employees' Compensation Act, 1923 139 injury by accident arising out of and in the course of employment. The employer shall be liable even when the disease was contracted after the employee ceased to be in the service of the employer, if such disease arose out of the employment.

(iii) If an employee whilst in service of one or more employers (not necessarily the same employer) in any employment specified in Part C of Schedule III for such continuous period as the Central Government may specify, contracts any disease, even after he ceased to be in the service of any employer and disease arose out of such employment, specified in the Schedule, the contracting of disease shall be deemed to be an injury by accident arising out of and in the course of employment.

However, where the employment was under more than one employer, all such employers shall be liable for the payment of the compensation in such proportion as the Commissioner may in circumstances deem just.

[Section 3(2A)] (iv) If it is proved: (a) that the employee whilst in the service of one or more employers in any employment specified in Part C of Schedule III has contracted a disease specified therein as an occupational disease peculiar to that employment during a continuous period which is less than the period specified under this sub-section for that employment, and

(c) That the disease has arisen out of and in the course of the employment; the contracting of such disease shall be deemed to be an injury by accident within the meaning of this section.

(iv) The Central Government or the State Government after giving, by notification in the Official Gazette, not less than three months notice of its intention so to do, may, by a like notification, add any description of employment to the employments specified in Schedule III, and shall specify in the case of employments so added the diseases which shall be deemed for the purposes of this section to be occupational diseases peculiar to those employments respectively, and thereupon the provisions of Sub-section (2) shall apply in the case of a notification by the Central Government, within the territories to which this Act extends or, in case of a notification by the State Government, within the State as if such diseases had been declared by this Act to be occupational diseases peculiar to those employments.

(v) Except as mentioned above no compensation shall be payable to an employee in respect of any disease unless the disease is directly attributable to a specific injury by

accident arising out of and in the course of his employment. (b) In case of personal injury As regards personal injury, the employer becomes liable if the injury is caused to an employee by accident arising out of and in the course of his employment. (i) Personal injury There must be personal injury caused to an employee. Normally, Injury implies physical or bodily injury caused by an accident. However, such personal injury will also include nervous shock or break-down or mental strain. In the case of Indian News Chronicle v. Mrs. Lazarus, A.I.R. 1961, Punj. 102, an electrician who had to go frequently to a heating room from a cooling plant, contracted pneumonia which resulted in his death. It was held that the injury caused by an accident is not confined to physical injury and the injury in the instant case was due to his working and going from a heating room to a cooling plant as it was his indispensable duty.

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