

STUDY NOTES – 3 : INDUSTRIAL LAWS

3.1 FACTORIES ACT, 1948

Introduction

Factories Act is one of the earliest labour welfare legislations. The object of the act is to secure health, safety, welfare, proper working hours, and other benefits to workers. The Act requires that workers should work in healthy and sanitary conditions and for that purposes. It provides that precaution should be taken for safety of workers and prevention of accidents.

Meaning of Factory

Factory means any premises, including the precincts thereof, in any part of which manufacturing process is carried on with or without the aid of power, provided that at least 10 or 20 persons respectively are employed or were employed on any day of the preceding 12 months.

The Act is applicable to all the factories.

Meaning of occupier of factory

Occupier of factory means a person who has ultimate control over affairs of factory. It includes a partner in case of a firm and director in case of a company. It may be noted that if a factory is run by a company, then only the director of the company can be treated as occupier.

The occupier shall ensure, as far as possible health, safety, and welfare of workers while they are working in a factory. The name of the occupier of the factory is required to be informed to the Chief Inspector of Factories. The occupier will be held responsible if the provisions of the Factories Act, 1948 are not complied with.

Facilities and Conveniences

- 1) Factory should be kept clean.
- 2) There should be arrangement to dispose off wastes and effluents.
- 3) Ventilation should be adequate.
- 4) Reasonable temperature for comfort of employees should be maintained.
- 5) Dust and fumes should be controlled below permissible limits.
- 6) Artificial humidification should be at prescribed limits.
- 7) Over crowding should be avoided.
- 8) Adequate lighting, drinking water, toilets, and spittoons should be provided.

Additional facilities in case of large factories.

- 1) Ambulance room, if **500 or more** workers are employed.
- 2) Canteen, if **250 or more** workers are employed.
- 3) Rest rooms/ Centers with drinking facility, if **150 or more** workers are employed.
- 4) Cresses, if **30 or more** women workers are employed.
- 5) Full time Welfare Officer, if **500 or more** workers are employed.

- 6) Safety Officer, if **1000 or more** workers are employed.

Welfare Measures

- 1) All machines should be properly fenced to protect workers when machinery is in motion.
- 2) Hoist and lifts should be in good condition and tested periodically.
- 3) Pressure Plant should be checked as per the rules.
- 4) Floor, stairs and means of access should be of sound construction and free from obstructions.
- 5) Safety appliances for eyes, dangerous dust, gas, fumes should be provided.
- 6) In case of hazardous substance additional safety measures have to be taken.
- 7) Adequate firefighting equipment should be available.
- 8) Safety Officer should be appointed if number of workers in factory is 1000 or more.

Working Hours

A worker cannot be employed for more than 48 hours in a week. Weekly holiday is compulsory. If the worker is asked to work on weekly holiday, he should avail the holiday on one of the 3 days immediately after the normal day of holiday. A worker cannot be employed for more than 9 hours in a day. At least ½ hour rest should be provided after every 5 hours. Total period of work including rest interval cannot be more than 10 ½ hours.

Overtime Wages

If a worker works beyond 9 hours a day and 48 hours a week, overtime wages are paid at double the rate of normal wages. However, overtime wages are not payable on tour. Total working hours including overtime should not exceed 60 hours in a week and total overtime hours in a quarter should not exceed 50 hours.

Leave

Worker is entitled in every calendar year annual leave with wages at the rate of 1 day for every 20 days of work performed in the previous calendar year provided that he had worked for 240 days or more in the previous calendar year. Child worker (who is 14 years and above but less than 15 years) is entitled to 1 day leave with wages for every 15 days. While calculating 240 days earned leave, maternity leave up to 12 weeks and lay off days will be considered but leave shall not be earned on those days. Leave can be accumulated up to 30 days in the case of an adult and 40 days in the case of a child.

Leave admissible is exclusive of holidays occurring during or at either end of leave period. Leave cannot be taken for more than 3 times in a year.

It may be noted that above – mentioned benefits are the minimum benefits. Employer can of course provide additional or higher benefits.

Employment of Women

A women worker cannot be employed beyond **6 a.m. to 7 p.m.** State Government can grant exemption to any factory from such provisions but in no case a woman can be permitted to work **during 10 p.m. to 5 a.m.** Shift change can be done only after weekly or other holiday and not in between.

Employment of Children

Children below 14 years of age cannot be employed. A child of age 14 years but below 15 years can be employed for **only 4.5 hours per day**. He should be certified fit by certifying surgeon. He cannot be employed during night from **10 p.m. to 6 a.m.**

A person of 15 years of age but below 18 years of age is termed as **adolescent**. He can be employed as an adult if he certificate of fitness for a full day's work from a certifying surgeon. An adolescent is not permitted to work between 7 p.m. to 6 a.m.

Display on Notice Board.

A Notice containing an abstract of the Factories Act, 1948 and the rules made there under in English and local language shall be displayed by employer.

The name and address of Inspector of factories and Certifying Surgeon shall also be displayed on the Notice Board.

Punishment to Welfare Officer

No punishment can be imposed on Welfare Officer without prior sanction of Chief Commissioner of Factories. However, simple order of termination as per terms of appointment is not punishment and such termination order is valid. [Arun Kumar Bali v. Government, NCT of Delhi]

It means any process for—

Manufacturing process [Sec.2 (k)].

- (i) Making, altering, repairing, ornamenting, finishing, packing, online, washing, cleaning. Breaking, up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or
- (ii) Pumping oil, water. Sewage, or any other substance, or
- (iii) Generating, transforming or transmitting power, or
- (iv) composing types for printing, printing by letter press, lithography, photogravure or other similar process or book-binding, or
- (v) Constructing, reconstructing, repairing, refitting, finishing, breaking-up ship or “vessels, or
- (vi) Preserving or storing any article in cold storage.

Some of the processes which have been held to be manufacturing processes are as follows:

- (a) Bidi making [Chintaman Rao v.State of M.P.,(1962) S.C.J.388].
- (b) Molding and transformation of raw cinematography films into a finished product [Gemini Studio v. State, (1952-53) 4 F.J.R. 329].
- (c) Work done in a salt work which consists of converting sea-water into salt [Ardeshir H. Bhiwandiwalla v.State of Bombay, A.I.R. (1962) S.C.29.]
- (d) Use of a refrigerator for treating or adapting any article with a view to its sale [New Taj Mahal café Ltd. V. Inspector of Factories, (1956) 1 L.L.J.273].
- (e) Work of compositions in printing business [V.K. Press v. Authority, A.I.R. (1955) all. 702].

- (f) Use of electric motor for the purpose of lifting or pumping water [Syed Moosa Kazimi v. K.M. Sheriff, A.I.R. (1959) Mad. 542].
- (g) Process of moistening, stripping and packing of tobacco leaves [V.P. Gopala Rao v. Public Prosecutor, A.I.R. (1970) S.C. 66].
- (h) Activities of a petrol pump [Gateway Auto services v. Regional director, E.S.I. Corpn., (1981) Lab. I.C. 49].

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., the article must become commercially known as something different from which it acquires its existence

General duties of the occupier (Sec. 7-A)

A new Sec. 7-A has been introduced by the Amendment Act of 1987, prescribing the general duties of the occupier in regard to the health, safety and welfare of the workers in his factory. According to it, 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 [Sec. 7-A (1)]. Sec. 7-A (2) enumerates the matters in regard to health, safety and welfare of the workers. These matters 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 arrangements in the factory for ensuring safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances;
- (c) the provision of such information, instruction, training and supervision as are necessary to ensure the health and safety of all workers at work;
- (d) (i) the maintenance of all places of work in the factory in a condition that is safe and without risks to health, and
(II) the provision and maintenance of such means of access to and egress from such places as are safe and without such risks;
- (e) the provision, maintenance or monitoring of such working environment in the factory for the workers that is
 - (i) safe,
 - (ii) without risks to health, and
 - (iii) adequate as regards facilities and arrangements for their welfare at work [Sec. 7-A (2)].

In addition to the above duties, every occupier shall also—

- (a) prepare, and, as often as may be appropriate, revise, a written statement of his general policy with respect to
 - (i) the health and safety of the workers at work, and
 - (ii) the organisation and arrangements for the time being in force for carrying out that policy, and
- (b) bring the statement and any revision thereof to the notice of all the workers. In some cases as may be prescribed an occupier may be exempted from this duty [Sec. 7-A (3)].

Powers of inspectors (Sec. 9).

An Inspector may, within the local limits for which he is appointed,--

- (a) enter, with assistant who are in the service of the Government or any local or other public authority or with an expert, the premises of a factory;
- (b) make examination of the premises, plant, machinery, article or substance;

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

The above powers of an inspector are subject to any rules which may be made by the State Government in this behalf.

Certifying surgeons (Sec. 10.) Appointment.

- The State Government may appoint qualified medical practitioners to be certifying surgeons for specified local limits or factories [sec. 10 (1)].
- A certifying surgeon may, with the approval of the State Government, authorise any qualified medical practitioner to exercise any of his powers [sec.10. (2)] But no person shall be appointed a certifying surgeon who is or becomes the occupier of a factory or is or becomes directly or indirectly interested therein [sec. 10(3)].
- The State Government may exempt any person or class of persons from the provisions of Sec. 10(3) in respect of any factory or class or description of factories (Proviso to Sec 10(3)).
- The exemption shall however be made by order in writing and subject to such conditions as may be specified in the order.

Duties of certifying surgeons.

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

- (a) the examination and certification of young person's ;
- (b) the examination of persons engaged in factories in dangerous occupations or processes; and
- (c) the exercising of such medical supervision as may be prescribed for any factory where—
 - (i) cases of illness have occurred which it is reasonable to believe are due to the nature of the manufacturing process carried on, or other conditions of work prevailing, therein;
 - (ii) by reason of any change in the manufacturing process carried on or in the substances used therein, there is a likelihood of injury to health of worker employed in that manufacturing process;
 - (iii) young persons are, or about to be, employed in any work which is likely to cause injury to their health [Sec. 10 (4)].

Cleanliness (Sec.11).**(1) Factory to be kept clean and free from effluvia and dirt.**

- Every factory shall be kept clean and free from effluvia arising from any drain, privy, or other nuisance.
- Accumulation of dirt and refuse shall be removed daily by some effective method.
- The floor of every work-room shall be cleaned at least once in every week by washing, using disinfectants, where necessary, or by some effective method.

(2) Effective means of drainage.

Where a floor is liable to become wet in the course of any manufacturing process to such an extent as is capable of being drained, effective means of drainage shall be provided.

(3) Use of disinfectants, etc., painting and varnishing.

Use of disinfectants, detergents, painting, repainting and varnishing, revarnishing, whitewashing or colourwashing shall be restored to.

2. Disposal of wastes and effluents (sec.12).**(1) Treatment of wastes and effluents and their disposal.**

Effective arrangements shall be made in every factory for the treatment of wastes and effluents due to the manufacturing process carried on therein, so as to render them innocuous, and for their disposal [Sec. 12 (1)].

(2) Rules by the state Government prescribing arrangements.

The state government may make rules prescribing the arrangements to be made in this regard. It may also require that such arrangements shall be approved by such authority as may be prescribed [Sec. 12 (2)].

3. Ventilation and temperature (Sec. 13.)**(1) Maintenance of adequate ventilation and temperature.**

Effective and suitable provision shall be made in every factory for securing and maintaining in every workroom—

- (a) Adequate ventilation by the circulation of fresh air, and
- (b) Such a temperature as will secure to workers therein reasonable conditions of comfort and prevent injury to health.

(2) Process producing high temperature to be separated.

The walls and roofs shall be of such materials and so designed that the temperature shall not be exceeded but kept as low as practicable. The process which produces high temperatures shall be separated from the workroom, by insulating the hot parts or by other effective means [Sec. 13 (1)].

4. Dust and fume (Sec. 14).**(1) Measures for prevention of inhalation or accumulation of dust and fume.**

- Where dust or fume or impurity of such a nature as is likely to be injurious or offensive to the workers is given off as a result of the manufacturing process being carried on in a factory, effective measures shall be taken in the factory for prevention of inhalation or accumulation of dust and fumes in workrooms.
- If for such a purpose any exhaust appliance is necessary, it shall be applied as near as possible to the point of origin of the dust, fume or other impurity and such point shall be enclosed so far as possible [Sec. 14 (1)].

(2) Exhaust for internal combustion engine.

A stationary internal combustion engine shall not be operated unless the exhaust is conducted into the open air. Other internal combustion engines shall not be operated in any room unless effective measures have been taken to prevent accumulation of fumes therefrom which are injurious [Sec. 14 (2)].

5. Artificial humidification (Sec. 15).**(1) Prescription of standards of humidification—ventilation and cooling of air.**

In respect of all factories in which the humidity of the air is artificially increased, the State Government may make rules prescribing standards of humidification. It may also make rules regulating the methods used for artificially increasing the humidity of the air. It may further make rules prescribing methods to be adopted for securing adequate ventilation and cooling of the air in the workrooms [Sec. 15 (1)].

(2) Water used for artificial humidification to be clean.

In any factory in which the humidity of the air is artificially increased, the water used for the purpose shall be taken from a public supply or other source of drinking water, or shall be effectively purified before it is so used [Sec. 15 (2)].

6. Overcrowding (Sec. 16).**(1) Overcrowding injurious to health of workers to be avoided.**

There shall not be overcrowding in any room of the factory so as to be injurious to the health of the workers employed therein [Sec. 16 (1)].

(2) 9.9/14.2 cubic meters of space per worker.

- There shall be at least 9.9 cubic meters (for the factories in existence at the time of the commencement of the Act) and 14.2 cubic meters (for the factories built after the commencement of the Act) of space for every worker.
- In calculating the space of 9.9 or 14.2 cubic meters, no account shall be taken of any space which is more than 4.2 meters above the level of the floor of the room [Sec. 16 (2)].

(3) Notice of maximum of workers to be employed in a workroom.

If the Chief Inspector by order in writing so requires, there shall be posted in each workroom of the factory a notice specifying the maximum number of workers who may be employed in the workroom [Sec. 16 (3)].

7. Lighting (Sec. 17).**(1) Sufficient and suitable lighting in every part of factory.**

In every part of a factory where workers are working or passing there shall be provided and maintained sufficient and suitable lighting, natural or artificial, or both [Sec. 17 (1)].

(2) Glazed windows and skylights to be kept clean.

All glazed windows and skylights used for the lighting of the workrooms shall be kept clean on both the inner and outer surfaces and free from obstruction [Sec. 17 (2)].

(3) Measures for prevention of glare and formation of shadows.

Effective provision shall also be made for the prevention of (a) glare, either directly from a source of light or by reflection from a smooth or polished surface; and (b) the formation of shadows to such an extent as to cause eye strain or the risk of accident to any worker [Sec. 17 (3)].

(4) Prescription of standards of sufficient and suitable lighting.

The State Government may prescribe standards of sufficient and suitable lighting for factories or for any class or description of factories or for any manufacturing process [Sec. 17 (4)].

8. Drinking water (Sec. 18).**(1) Suitable points for wholesome drinking water.**

In every factory, effective arrangements shall be made to provide and maintain at suitable points conveniently situated for all workers employed therein a sufficient supply of wholesome drinking water [sec. 18 (1)].

(2) *Cooling of drinking water where more than 250 workers employed.*

In every factory wherein more than 250 workers are ordinarily employed, provision shall be made for cooling drinking water during hot weather by effective means and for distribution thereof [Sec. 18(3)].

9. Hoists and lifts (Sec. 28).

- *Hoists and lifts to be of good mechanical construction and to be properly maintained and examined once in every 6 months.* In every factory every hoists and lift shall be of good mechanical construction, sound material, and adequate strength.
- Further it shall be sufficiently protected by enclosures fitted with gates. It shall also be properly maintained and shall be thoroughly examined by a competent person at least once in every 6 months.
- A register containing the prescribed particulars of every such examination shall be kept. The maximum safe working load shall also be plainly marked on every hoist or lift, and no load greater than such load shall be carried thereon.
- The cage of every hoist or lift used for carrying persons shall be fitted with a gate on each side from which access is afforded to a landing.
- The gate shall be fitted with interlocking or other efficient device to secure that the cage cannot be moved unless the gate is closed.

For the purposes of Sec. 28, no lifting machine or appliance shall be deemed to be a hoist or lift unless it has a platform or cage, the direction or movement of which is restricted by a guide or guides (Expl. to Sec. 28 added by the Amendment Act of 1987).

12. Floors, stairs and means of access (Sec. 32). In every factory—

- (a) all floors, steps, stairs, passages and gangways shall be of sound construction and properly maintained. Further they shall be kept free from obstructions and substances likely to cause persons to slip and handrails shall be provided where necessary;
- (b) there shall, so far as is reasonably practicable, be provided and maintained safe means of access to every place at which any person is at any time required to work; and
- (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. This restriction is not applicable if the place provides secure foothold and, where necessary, secure handhold.

13. Safety Officers (Sec. 40-B). In every factory

- (i) wherein 1,000 or more workers are ordinarily employed, or
- (ii) wherein, in the opinion of the State Government, any manufacturing process or operation is carried on, which process or operation involves any risk of bodily injury, poisoning or disease, or any other hazard to health, to the persons employed in the factory, the occupier shall, if so required by the State Government by notification in the Official *Gazette*, employ such number of Safety Officers as may be specified in that notification [Sec. 40-B (1)]. The duties, qualifications and conditions of service of Safety Offices shall be such as may be prescribed by the State Government [Sec. 40-B (2)].

WELFARE

Chapter V (Secs. 42 to 50) of the Act deals with facilities for the welfare of workers. The various provisions in this regard are as follows:

- 1. Washing facilities (Sec. 42).** In every factory (a) adequate and suitable facilities (separately and adequately screened for the use of male and female workers) shall be

provided and maintained for the use of the workers therein; and (b) such facilities shall be conveniently accessibly and shall be kept clean.

2. Facilities for storing and drying clothing (Sec. 43). The State Government may make rules requiring the provision of suitable places for keeping clothing of workers not worn during working hours and for the drying of wet clothing in respect of any factory or class of factories.

3. Facilities for sitting (Sec. 44).

(1) **Provision of sitting arrangement for workers obliged to work in a standing position.** In every factory, suitable arrangements for sitting shall be provided and maintained for all workers who are obliged to work in a standing position. This has been done in order that the workers may take advantage of any opportunities for rest which may occur in the course of their work [Sec. 44 (1)].

(2) **Provision of seating arrangement for workers doing work which can be done in a sitting position.** If the workers in any factory engaged in a particular manufacturing process or working in a particular room are able to do their work efficiently in a sitting position, the Chief Inspector may require the occupier of the factory to provide such seating arrangements as may be practicable [Sec. 44 (2)].

(3) **Exemption.** The State Government may, by notification in the Official Gazette, exempt any factory or class of factories or manufacturing process from the application of the provisions of Sec. 44 [Sec. 44 (3)].

4. First-aid appliances (Sec. 45).

(1) **At least one first-aid box with prescribed contents for every 150 workers.**

There shall in every factory be provided and maintained so as to be readily accessible during all working hours, first-aid boxes or cupboards with the prescribed contents. There shall be at least one such box for every 150 workers ordinarily employed at any one time in the factory [Sec. 45 (1)].

(2) **First-aid box to have prescribed contents.**

Only the prescribed contents shall be kept in a first-aid box or cupboard [Sec. 45 (2)].

(3) **First-aid box to be in the charge of responsible person.**

Each first-aid box or cupboard shall be kept in the charge of a separate responsible person who holds a certificate in the first-aid treatment recognized by the State Government. Further, such person shall always be readily available during the working hours of the factory [Sec. 45 (3)].

(4) **Ambulance room in a factory employing more than 500 workers.**

In every factory wherein more than 500 workers are ordinarily employed there shall be provided and maintained an ambulance room containing the prescribed equipment.

The room shall be in the charge of such medical and nursing staff as may be prescribed and those facilities shall always be made readily available during the working hours of the factory [Sec. 45 (4)].

5. Canteens (Sec. 46)

(1) **Canteen in factory employing more than 250 workers—the State Government may make rules.**

The State Government may make rules requiring that in any specified factory wherein more than 250 workers are ordinarily employed, a canteen or canteens shall be provided and maintained by the occupier for the use of the workers [Sec. 46 (1)].

(2) **Provisions in rules.**

The rules made by the State Government as to canteens may provide for

- (a) The date by which canteen shall be provided,
- (b) The standards in respect of construction, accommodation, furniture and other equipment of the canteen,
- (c) The foodstuffs to be served therein and the charges which may be made thereof,
- (d) The constitution of a managing committee for the canteen and representation of the workers in the management of the canteen,
- (e) 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, and
- (f) The delegation to the Chief Inspector, subject to such conditions as may be prescribed, of the power to make rules under Clause (c) [Sec. 46 (2)].

6. Shelters, rest rooms and lunch rooms (Sec. 47).

(1) *Provision for shelters, rest rooms, lunch rooms in factories employing more than 150 workers.*

- In every factory wherein more than 150 workers are ordinarily employed, there shall be a provision for shelters, rest rooms and a suitable lunch room where workers can eat meals brought by them with provision for drinking water.
- However, any canteen maintained in accordance with the provisions of Sec. 46 shall be regarded as part of this requirement. Where a lunch room exists, no worker shall eat any food in the workroom [Sec. 47 (1)].

(2) *Shelters, etc. to be sufficiently lighted, ventilated and cooled.*

The shelters or rest rooms or lunch rooms shall be sufficiently lighted and ventilated and shall be maintained in a cool and clean condition [Sec. 47 (2)].

7. Crèches (Sec. 48).

(1) *Provision of crèches in factories employing more than 30 women workers.*

In every factory wherein more than 30 women workers are ordinarily employed, there shall be provided and maintained a suitable room or rooms for use of children under the age of 6 years of such women [Sec. 48 (1)].

(2) *Crèches to be adequately lighted and ventilated and to be under the charge of trained women.*

Rooms for use of children shall provide adequate accommodation, shall be adequately lighted and ventilated. Further they shall be maintained in a clean and sanitary condition and shall be under the charge of women trained in the care of children and infants [Sec. 48 (2)].

(3) *Prescription of rules by the State Government.*

The State Government may make rules prescribing the location and the standards in respect of construction, accommodation, furniture and other equipment of rooms for use of children. It may also make rules for the provision of additional facilities for the care of children belonging to women workers, including suitable provision of facilities

- (a) For washing and changing their clothing,
- (b) Of free milk or refreshment or both for the children, and
- (c) For the mothers of children to feed them at the necessary intervals. [Sec. 48 (3)].

8. Welfare officers (Sec. 49).

(1) *Employment of welfare officers in factories employing 500 or more workers.*

In every factory wherein 500 or more workers are ordinarily employed the occupier shall employ in the factory such number of welfare officers as may be prescribed [Sec. 49 (1)].

(2) Duties, qualifications and conditions of service to be prescribed by the State Government.

The State Government may prescribe the duties, qualifications and conditions of service of welfare officers [Sec. 49 (2)].

Even if a factory (say, a sugar factory) employs over 500 workers only for a few months in the year and not continuously, the occupier shall employ the prescribed number of welfare officers [Employers' Assn. of Northern India v. Secretary of Labour, A.I.R. (1952) All. 109].

Restriction on double employment (sec. 60)

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

Working hours and notice of periods of work for children (Secs. 71 and 72).**(1) Working hours limited to 4-1/2.**

No child shall be employed or permitted to work in any factory—

- (a) for more than 4-1/2 hours in any day;
- (b) during the night [Sec. 71 (1)].

'Night' means a period of at least 12 consecutive hours which shall include the interval between 10 P.M. and A.M. [Expl. to Sec. 71 (1)].

(2) Period of work of children limited to 2 shifts.

The period of work of all children employed in a factory shall be limited to 2 shifts. These shifts shall not overlap or spread over more than 5 hours each. Each child shall be employed in only one of the relays which shall not, except with the previous permission in writing of the Chief Inspector, be changed more frequently than once in a period of 30 days [Sec. 71 (2)].

(3) Child workers entitled to weekly holidays.

The provisions of weekly holidays [(Sec. 52) shall apply also to child workers and no exemption from these provisions may be granted in respect of any child [Sec. 71 (3)].

(4) Prohibition if the child worker has already been working in another factory.

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 [Sec. 71 (4)].

(5) Female child to work only between 8 A.M. to 7 P.M.

No female child shall be required or allowed to work in any factory except between 8 A.M. and 7 P.M. [Sec. 71 (5) as introduced by the Amendment Act of 1987].

(6) Display of notice of work of child-workers.

There shall be displayed and correctly maintained in every factory in which children are employed a notice of periods of work for children showing clearly for every day the periods during which children may be required or allowed to work [Sec. 72 (1)]. The provisions of Sec. 61(8), (9) and (10) (discussed earlier) also apply to the notice required under Sec. 72 (1) [Sec. 72 (3)].

(7) Fixation of periods of work beforehand.

The periods shown in the notice shall be fixed beforehand in accordance with the method laid down for adult workers [Sec. 72 (2)].

5. Restriction on employment of women (Se3c. 66).

A woman shall be required or allowed to work in a factory only between the hours of 6 A.M. and 7 P.M. The State Government may, by notification in the Official *Gazette* in respect of any factory or group or class or description of factories, vary these limits. But no such variation shall authorise the employment of any woman between the hours of 10 P.M. and 5 P.M. Again there shall be no change of shifts in the case of women workers in a factory except after a weekly or any other holiday [Sec. 66 (1)].

The State Government may make rules providing for the exemption from the restrictions imposed by Sec. 66 (1) in case of women working in fish-curing or fish-canning factories, where the employment of women beyond the specified hours is necessary to prevent damage to, or deterioration in, any raw material [Sec. 66 (3)].

Wages during leave period (Sec. 80).

For the leave allowed to a worker 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. The full time earnings shall be 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 worker of foodgrains and other articles [Sec. 80 (1)].

Important Points

- 1) The Supreme Court held that salt manufacture from sea water by employing different processes is a manufacturing process and the workers engaged in this work are workers within the meaning of Factories Act. [Ardehir H. Bhiwandiwalla v. State of Bombay]
- 2) The Supreme Court held that sun cured tobacco leaves subjected to processes of moistening, stripping, breaking up, packing with the view to transport them to Company's main Factory for their use in manufacturing Cigarette is a manufacturing process under the Factories Act. [Ardehir H. Bhiwandiwalla v. State of Bombay]
3. The cutting of the woods or converting the wood into planks is a part of the manufacturing activity. [Bharati Udyog v. Regional Director ESI Corpn.]
- 4) Construction of railway, use of materials like sleepers, bolts, loose rails etc, to adaptation their use for ultimately for laying down railways line amounts to manufacturing process. [Lal Mohmd. v. Indian Railway Construction Co. Ltd.]
- 5) 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 definitions of manufacturing process. [Workmen of Delhi Electric Supply Undertaking v. Management of DESU]
- 6) 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 will, [Shankar Balaji Wale v. State of Maharashtra]
- 7) 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]
- 8) If a factory is being run by a Company, then only a director of that Company can be the occupier for the purpose of the Act.[J.K. Industries Ltd. v. Chief Inspector of Factories]

9. Employees working in canteens in industrial establishment runs by Managing Committee are not employers of the Managing Committee, but are employees of occupier. [Kanpur Suraksha karamchari Union v. Union of India]
- 10) Preparation of food and beverage and its sale to members of a club is a manufacturing process. [CCI v. ESIC]
11. Receiving products in bulk and packing as per clients requirements amounts to manufacture.
12. A person is said to be employed in the factory if his duties are connected with the business of the factory, no matter whether he stands outside the factory premises or inside it. [Shinde v. Bombay Telephones]
13. It was held the definition of worker includes employees who are entrusted solely with the clerical duties. [Works Manager, Central Rly. Workshop Jhansi v. Vishwanath and others]

Powers of Inspectors

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 factory.
2. He can make examination of the premises, plant, machinery etc.
3. He can require the production of any prescribed register or any other document relating to the factory.
4. Take measurement and photographs and make such recordings as the considers necessary for the purpose of any examination.

Processes Special Provisions relating to Hazardous

Special provisions relating to hazardous processes have been envisaged under Chapter IV. A of the Factories Act, 1948. This chapter was inserted by the Factories (Amendment) Act, 1987 and Consists of Sections 41 A to 41 H. These sections are as follows:

Constitution of Site Appraisal Committees [Section 41A]: A Committee under the name Site Appraisal Committee shall be constituted by the State Government to advise the Government in the matter of examination of application for establishment of factories involving hazardous processes. The constitution of the site appraisal committee consisting of committee has been specified therein.

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 in the prescribed form.**

Compulsory disclosure of information by the occupier [Section 41B]: It is compulsory on the part of the occupier of every factory involving a hazardous process to disclose all information regarding dangers, including health hazards 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.

Specified responsibility of the occupier in relation to hazardous processes [Section 41C]:

Accurate and up to date health records or medical records of the workers of 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 maintained by the occupier of a factory involving any hazardous process.

Inquiry Committee [Section 41D]: In the event of occurrence of an extraordinary situation, the Central Government may 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 prescribed for the health and safety of the workers or the general public.

Emergency standards [Section 41E]: The director – General of Factory Advice Service and Labour Institutes may be directed by the Central Government to lay down emergency standards in respect of hazardous process.

Permissible limits of exposure of chemical and toxic substances (Section 41F): The second Schedule added to the Act, indicates maximum permissible threshold limits of exposure of chemical and toxic substances in manufacturing processes in any factory.

Workers Participation in safety management (Section 41G): The occupier in every factory shall set up a safety committee consisting of equal number of representatives of workers and management to promote co – operating between the workers and the management in maintaining proper safety and health at work and to review periodically the measure taken in that behalf where hazardous process is involved.

Warning about imminent danger (Section 41H): If there is reasonable apprehension regarding likelihood of imminent danger to the lives or health of the workers employed in a factory, they may bring the same to the notice of the occupier, agent, manager, etc.