



RAMA UNIVERSITY

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FACULTY OF COMMERCE & MANAGEMENT

COURSE: MBA 3rd SEMESTER

SUBJECT: LABOUR LEGISLATIONS

SUBJECT CODE: MBAHR01

LECTURE: 7

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Lecture-7



5. What is hazardous process?

According to section 2(cb) "hazardous process" means any process or activity in relation to an industry specified in the 'First Schedule where, unless special care is taken, raw materials used therein or the intermediate or finished products, bye-products, wastes or effluents thereof would-

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

Duties of Occupier

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

1. Notice by Occupier (Section 7)

The occupier shall, send to the Chief Inspector a written notice in respect of all establishments which come within the scope of the Act for the first time, before a factory engaged in a manufacturing process which is ordinarily carried on for less than one hundred and eighty working days in the year resumes working, whenever a new manager is appointed. During any period for which no person has been designated as manager of a factory or during which the person designated does not manage the factory, any person found acting as manager, or if no such person is found, the occupier himself, shall be deemed to be the manager of the factory for the purposes of this Act.

2. General Duties of the Occupier(Section7A)

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

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

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

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

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

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

To prepare a written statement of his general policy with respect to the health and safety of the

workers at work and the organization and arrangements in force for carrying out that policy.

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

It shall be the duty of the of the Occupier to Appoint a Safety officer in a factory:-

(i) Wherein one thousand or more workers are ordinarily employed, or

(ii) Wherein, in the opinion of the State Government, any manufacturing process or operation is carried on, which process or operation involves any risk of bodily injury, poisoning or disease, or any other hazard to health, to the persons employed in the factory, if so required by the State Government by notification in the official Gazette.

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

Compulsory disclosure of information by the occupier -

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

The occupier shall, at the time of registering the factory involving a hazardous process, lay down a detailed policy with respect to the health and safety of the workers employed therein and intimates such policy to the Chief Inspector and the local authority.

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

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

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

Every occupier of a factory involving any hazardous process shall-

maintain accurate and up-to-date health records or, as the case may be, medical records, of the workers in the factory

appoint persons who possess qualifications and experience in handling hazardous substances

Provide for medical examination of every worker.

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

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

representatives of workers and management to promote co-operation between the workers and the management in maintaining proper safety and health at work and to review periodically the measures taken in that behalf.

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

It shall be the duty of such occupier, agent, manager or the person in charge of the factory or process to take immediate remedial action if he is satisfied about the existence of such imminent danger and send a report forthwith of the action taken to the nearest Inspector.

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

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

9. Annual Leave with Wage.(Section 79)

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

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

The occupier or manager of the factory or any other person who for the time being purports to be in charge of the factory, undertake safety and occupational health surveys, and such occupier or manager or other person shall afford all facilities for such every, including facilities for the examination and testing of plant and machinery and collection of samples and other data relevant to the survey.

Duties of Factory Manager

The Duties of Factory Manager are mentioned in the following Sections of Factory Act, 1948: -

1. Right of Workers to be warned about imminent danger. (Section 41-H)

It shall be the duty of such occupier, agent, manager or the person in charge of the factory or process to take immediate remedial action if he is satisfied about the existence of such imminent danger in the factory where the worker is engaged in any hazardous process and send a report forthwith of the action taken to the nearest Inspector.

2. Notice of periods of work for adults. (Section 61)

The manager of the factory shall display correctly and maintained in every factory in accordance with the provisions of sub-section (2) of section 108, a notice of periods of work for adults, showing clearly for every day the periods during which adult workers may be required to work, fix the periods during which each relay of the group may be required to work, classify them into groups according to the nature of their work indicating the number of workers in each group, shall draw up a scheme of shifts where under the periods during which any relay of the group may be required to work.

3. Register of Adult Workers. (Section 62)

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

In [State of Maharashtra v. Sampat Lal Mensukh Bothra](#) (1992), it was held that the obligation to maintain registers is imposed on the manager and

4. Annual Leave with Wage. (Section 79)

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

5. Notice of Certain Dangerous Occurrences. (Section 88A)

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

6. Notice of Certain Disease. (Section 89)

Where any worker in a factory contracts any disease specified in 1[the Third Schedule], the manager of the factory shall send notice thereof to such authorities, and in such form and within such time, as may be prescribed.

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

The occupier or manager of the factory or any other person who for the time being purports to be in charge of the factory, undertake safety and occupational health surveys, and such occupier or manager or other person shall afford all facilities for such every, including facilities for the examination and testing of plant and machinery and collection of samples and other data relevant to the survey.

8. Notice of Certain Accidents. (Section 88)

Where in any factory an accident occurs which causes death, or which causes any bodily injury by reason of which the person injured is prevented from working for a period of forty-eight hours or more immediately following the accident, or which is of such nature as may be prescribed in this behalf, the manager of the factory shall send notice thereof to such authorities, and in such form and within such time, as may be prescribed to the Chief Inspector.

General Procedure As To Filing of Cases In Case of Factory Accidents

Whenever an accident takes place in a factory the Occupier or Factory Manager shall inform the Chief Inspector within a period of forty eight hours or so (Section 88) and shall send Form No. 22 containing all the information regarding the said accident to Labour Department, Industrial

Health And Safety, which shall inquire into the matter by factory inspector who shall inspect the accident spot, take the witness of the victims, then he shall issue a show cause notice to the Occupier and Factory Manager to reason out the causes of the mis happening. If the Factory Inspector is not satisfied with the reply given by the factory management he shall institute a case against the Occupier and Factory Manager before Judicial Magistrate First Class, Labour Court (Section 105). Then in case if the party to the disputes are not satisfied with the judgement they shall refer the case to the High Court or and to the Supreme Court respectively.

Penalties under factory act, 1948

Section 92. General penalty for offences. -

Save as is otherwise expressly provided in this Act and subject to the provisions of section 93, if in, or in respect of, any factory there is any contravention of the provisions of this Act or of any rules made there under or of any order in writing given there under, the occupier or manager of the factory 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 one lakh rupees or with both, and if the contravention is continued after conviction, with as further fine which may extend to one thousand rupees for each day on which the contravention is so continued.

Provided that where contravention of any of the provisions of Chapter IV or any rule made there under or under section 87 has resulted in an accident causing death or serious bodily injury, the fine shall not be less than twenty-five thousand rupees in the case of an accident causing death, and five thousand rupees in the case of an accident causing serious bodily injury.

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

General Manager, Wheel & A. P, Bangalore v. State of Karnataka (1996) .It was held in this case that the requirement of obtaining sanction to prosecute is mandatory and taking cognizance of an offence in the absence of sanction cannot be allowed to stand and has to be quashed.

Provincial Government v. Ganpat, AIR 1943 Nag 243. It was held in this case where the occupier or the manager of the factory admits the guilt under Section 92 of the Act, but alleges the clerk of the Factory to be the actual offender, the onus of establishing the innocence is on such occupier or the manager as the case maybe.

Section 94. Enhanced penalty after previous conviction. -

(1) If any person who has been convicted of any offence punishable under section 92 is again found guilty of an offence involving a contravention of the same provision, he shall be punishable on a subsequent conviction with imprisonment for a term which may extend to three years or with fine, which shall not be less than ten thousand rupees but which may extend to two lakh rupees or with both;

Provided that the Court may, for any adequate and special reasons to be mentioned in the

judgment, impose a fine of less than ten thousand rupees:

Provided further that where contravention of any of the provisions of Chapter IV or any rule made there under or under section 87 has resulted in an accident causing death or serious bodily injury, the fine shall not be less than thirty-five thousand rupees in the case of an accident causing death and ten thousand rupees in the case of an accident causing serious bodily injury.

(2) For the purpose of sub-section (1), 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 being convicted.

Section 95. Penalty for obstructing inspector. -

Whoever wilfully obstructs an Inspector in the exercise of any power conferred on him by or under this Act, or fails to produce on demand by an Inspector any register or other documents kept in his custody in pursuance of this Act or of any rules made there under, or conceals or prevents any workers, in a factory from appearing before, or being examined by, an inspector, shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to ten thousand rupees or with both.

Section 96A. Penalty for contravention of the provisions of sections 41B, 41C and 41H.-

(1) Whoever fails to comply with or contravenes any of the provisions of sections 41B, 41C or 41H or the rules made there under, shall, in respect of such failure or contravention, be punishable with imprisonment for a term which may extend to seven years and with fine which may extend to two lakh rupees, and 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.

(2) If the failure or contravention referred to in sub-section (1) 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.

Section 97. offences by workers. -

(1) Subject to the provisions of section 111, if any worker employed in a factory contravenes any provision of this Act or any rules or orders made thereunder, imposing any duty or liability on workers, he shall be punishable with fine which may extend to five hundred rupees.

(2) Where a worker is convicted of an offence punishable under sub-section (1) the occupier or manager of the factory shall not be deemed to be guilty of an offence in respect of that contravention, unless it is proved that he failed to take all reasonable measures for its prevention.

Exemptions of occupier or manager from liability in certain cases

Section 101. Exemption of occupier or manager from liability in certain cases.-

Where the occupier or manager of a factory is charged with an offence punishable under this Act he shall be entitled, upon complaint duly made by him and on giving to the prosecutor not less than three clear days' notice in writing of his intention so to do, to have any other person whom

he charges as the actual offender brought before the Court at the time appointed for hearing the charge; and if, after the commission of the offence has been proved, the occupier or manager of the factory, as the case may be, proves to the satisfaction of the Court -

- (a) that he has used due diligence to enforce the execution of this Act, and
- (b) that the said other person committed the offence in question without his knowledge, consent or connivance,

that other person shall be convicted of the offence and shall be liable to the like punishment as if he was the occupier or manager of the factory, and the occupier or manager, as the case may be, shall be, discharged from any liability under this Act in respect of such offence:

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

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

Changes brought about by the Factory Act, 1948

The following changes were made by the factories Act, 1948: -

The definition of the term "Factory" was widened to cover all industrial establishments employing ten or more workers where power was used and 20 or more workers in all other cases.

The distinction between seasonal and non-seasonal factories was abolished.

Under the Act of 1934 the State Governments had power to extend the application of the Act to establishments where more than 10 Workers were employed. Under the Act of 1948, the State Government may extend the provisions of this Act to any establishment irrespective of the number of the workers employed therein and irrespective of the number of the workers employed on therein and irrespective of the fact that manufacturing work is carried by power or otherwise. The only exception is an establishment where the work is done solely by the members of a family.

Chapter III of the Act of 1934 was split into three parts, dealing with health, safety and welfare of workers. The Act specifies very clearly the minimum requirements under three heads stated above.

The basic provisions of the old Act relating to Health,

safety, and welfare are extended to all work places irrespective of the number of workers employed, except premises where processes are carried on by the occupier with the sole aid of his family.

The minimum age for the admission of children to employment has been raised from 12 to 14 years and the minimum permissible daily hours of work of children were reduced from five to four and a half hour.

Provisions are made for the licensing and registration of factories and the prior scrutiny by the Factories Inspectorate of the Plans and specifications of factory buildings.

Employment of Children and women between 7 p.m. and 6 a.m. is prohibited. For overtime work the workers are entitled to twice their normal rate of wages.

The State Government are empowered to make rules requiring the association of the workers in the management of arrangements for the welfare of the workers.

State Government is obliged to see that all the factories are registered and take a licensing for working, which should be periodically renewed. Prior approval of the State Government has been made necessary for every New The installation of a Factory or for the extension of an existing factory. Besides mines, the new Act also excludes railway running sheds from the definition of Factories.

Changes made in Factories Act, 1948 in 2016

The Factories (Amendment) Bill, 2016

The Factories Act 1948 was an Act of Parliament passed in the United Kingdom by the Labour government of Clement Attlee. It was passed with the intention of safeguarding the health of workers and adopted by India.

The Factories (Amendment) Bill, 2016 was introduced in Lok Sabha on August 10, 2016 by the Minister for Labour and Employment, Mr. Bandaru Dattatreya. The Bill amends the Factories Act, 1948. The Act regulates the safety, health and welfare of factory workers. The Bill amends provisions related to overtime hours of work.

Key Amendments

(Section 2) Power to make rules on various matters: The Act permits the state government to prescribe rules on a range of matters, including double employment, details of adult workers to be included in the factory's register, conditions related to exemptions to certain workers, etc. The Bill gives such rule making powers to the central government as well.

Powers to make rules for exemptions to workers: Under the Act, the state government may

make rules to (i) define persons who hold management or confidential positions; and (ii) exempt certain types of adult workers (e.g. those engaged for urgent repairs) from fixed working hours, periods of rest, etc. The Bill gives such rule making powers to both, the central and state governments.

Under the Act, such rules will not apply for more than five years. The Bill modifies this provision to state that the five-year limitation will not apply to rules made after the enactment of this Bill.

(Section 64) Overtime hours of work in a quarter: The Act permits the state government to make rules related to the regulation of overtime hours of work. However, the total number of hours of overtime must not exceed 50 hours for a quarter. The Bill raises this limit to 100 hours. Rules in this regard may be prescribed by the central government as well.

(Section 65) Overtime hours if factory has higher workload: The Act enables the state government to permit adult workers in a factory to work overtime hours if the factory has an exceptional work load. Further the total number of hours of overtime work in a quarter must not exceed 75. The Bill permits the central or state government to raise this limit to 115

Overtime in public interest: The Bill introduces a provision which permits the central or state government to extend the 115-hour limit to 125 hours. It may do so because of (i) excessive work load in the factory and (ii) public interest

Conclusion

The present Factories Act in operation for the last 37 years has provided ample benefits to the factory workers. It has considerably improved their working and employment conditions. The Government is actively considering the introduction of some vital amendments to the Act to keep it in tune with time and make it more effective. While dealing with the duties of the Occupier and Factory Manager under Factories Act 1948, altogether we can conclude that the Occupier and Factory Manager has a vital role to play in assuring the health, safety and welfare of the workers as they are the backbone of the industrial sector. It is, however necessary that the workers and their representatives make themselves aware of the various provisions of the Act and safeguard their interests on their own and force the defaulting employer to be conscious of his legal obligations.