

A CRITICAL STUDY OF PROVISIONS RELATING TO WELFARE OF THE WORKERS UNDER THE FACTORIES ACT, 1948

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I. INTRODUCTION :

Labour welfare occupies an important place in an industrial society. It is all the more so in a country like ours which has embarked upon comprehensive plans of industrialization. It involves conflicting claims and interests of labour and management. A worker expects maximum welfare amenities when he works in a factory, mine, port and dock or other industrial establishments. On the other hand, the management wants to provide minimum welfare facilities to the labour confronted with this situation the state has intervened and adopted several statutory measures (keeping in view the interest of the industry itself) to ensure certain minimum welfare needs of the labour. But the workers are critical of the existing statutory provisions. They argue that –

- i. Welfare facilities provided in the statutes are inadequate and unsatisfactory; and
- ii. The labour welfare legislation has not effectively been implemented.

The management on the other hand, opposes the idea of providing more welfare facilities to workers on two grounds :

- i. The statutory welfare amenities have caused a heavy financial burden on the industry; and
- ii. Where the statutory welfare facilities have been provided, the same have either remained under-utilized or are improperly utilized by the workers.¹

No legislative attempt was made in respect of factories to regulate the welfare facilities for workmen employed there in till 1934. The Factory Act, 1934 provided, inter alia, for drinking water and rest shelters. The Act had many defects. Moreover, the provisions of labour welfare were inadequate and unsatisfactory.

Further, the Act excluded a large number of workers employed in factories. To remove this short coming the act was re-enacted in 1948. In this respect it can be said that this Act is important welfare legislation.

So the main object of this Factories Act, 1948 is to remove the defects and weaknesses which hamper effective administration in the earlier act and to provide for the regulation of labour employed in factories in India and to make effective provisions relating to health, safety and welfare of workers employed therein.

Following are the characteristics of this legislation :

1. It is an administrative law having control over the factories.
2. It is regulatory law as per the workers who are employed in the factory are concerned
3. It is comprehensive and unique labour legislation in India.
4. It is a uniform welfare legislation dealing with the welfare of the workers.

The scheme of this legislation can be focused specifically on three points: 1st –

Applicability of the legislation

2nd – Provisions relating to welfare of the workers, and Lastly – Powers of the Inspectors

II. SCHEME OF THE LEGISLATION :

1. Applicability of the legislation :

As the title of the Act suggests, the Act applies to all factories. Factories belonging to the central government or any government are also not to be excluded unless otherwise provided.

a. Definition of 'factory' :

A factory has been defined as² “any premises including the precincts” there of –

- i. Where on ten or more workers are working or were working 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. Where on twenty or more workers are working or were working on any day of the preceding twelve months and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on.

² Section 2(m), Factories Act, 1948

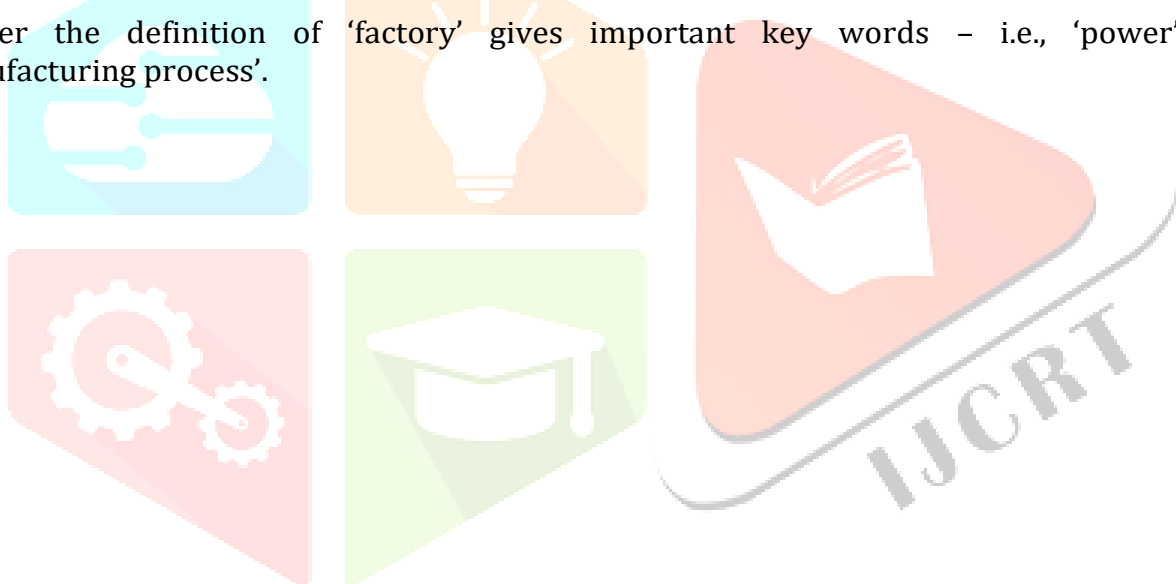
It does not include a mine subject to operation of the Mines Act, 1952 or a railway running shed, or a mobile unit belonging to the armed forces of the Union, or a hotel, restaurant or eating place.

The expression “premises including precincts” envisages premises which have precincts and those which might not have precincts. Where premises are lands, they would have no precincts. Therefore lands would be deemed to be included in the premises and such lands in which a process of manufacture e.g., salt manufacture, is carried on would be deemed to be a factory.

A portion of the premises is not outside the factory or workshop merely because no operation of the manufacturing process or no work incidental to the process is carried on there. To be included, the work must be used for some other purposes than the manufacturing process carried on in the premises. For example, use of the premises for demonstration, clerical work, research laboratories, designing or drawing rooms, do not normally form part of the factory.³

But the question arises as to where the agricultural operations are carried on where in 50 or more persons employed whether it is a factory? And also where seasonal industries comes under the purview of factory. When the changes introduced by the Factories Act, 1948, it abolished the distinction between seasonal and non-seasonal factories. So it is clear from it that even seasonal and non-seasonal industrial comes under the definition of factory.

Further the definition of ‘factory’ gives important key words – i.e., ‘power’ and ‘manufacturing process’.



³ G.M. Kothari, “A Study of Industrial Law”, 2nd ed, Bombay : N.M. Tripathi Private Limited, 1973, p. 259.

Definition of 'Power'⁴ :

It means electrical energy or any other form of energy which is mechanically transmitted and is not generated by human or animal agency. Therefore the definition is very clear which excludes power generated by human agency or animal agency.

b. Definition of 'Manufacturing Process' :

Manufacturing process⁵ means any process for –

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

Out of there 6 clauses, clause (II) to (VI) need not require any clarity. Because they deal with specified nature of production. The clarity requires is only in case of clause (i).

In *New Taj Mahal Café Ltd v. Inspector of Industries*⁶ it has been stated that the object of the manufacturing process (which is sale) is a stage different from that of the manufacturing process itself and the stage of sale is reached after the manufacturing process is completed. Section 2(k) states that sale is the object of manufacturing process. What the status defines as the object, cannot be said to be incidental to the process of manufacturing itself.

⁴ Sec 2(g), Factories Act, 1948

⁵ Sec 2(k), Factories Act, 1948

⁶ (1956) I.L.L.J. 273

A perusal of the definition 'manufacturing process' will show that a mention is made of a wide variety of the processes which can be employed in connection with the manufacture of articles some processes which are normally not considered connected with manufacturing are also included, e.g., packing, ornamenting or finishing. The words in the definition are neither technical words nor terms of art. They must be given the natural meaning.⁷

In *Shree Gopal Paper Mills v. Inspector of Industries*⁸, it is discussed that there is no ambiguity in the words 'packing' or 'article' or 'substance' use in the definition and the doctrine of noscitur a sociis will not apply to give a narrower interpretation to the words 'article' or 'substance' but would mean the 'article' or

substance ultimately manufactured and not any article. Similarly, it is not correct to say that the words used 'are for transport' should get narrower meaning as reference to the 'substance' ultimately manufactured in the context of the other words used viz., sale delivery or disposal.

Therefore it will depend upon the circumstances of each case whether a particular business carried on comes within the definition of manufacturing process or not, the different processes enumerated in the clauses being merely illustrative.

In *Vishwamitra Karyalaya Press v. Authority Under the Payment of Wages Act*,⁹ it was observed :

"Everything that was necessary before or after the complete process would be included within the definition of the words 'manufacturing process'. Therefore whenever nothing is done to change the nature or alter the character of the product in respect of which the process is adopted then, it cannot be brought within the scope of the expression 'manufacturing process'. If on the other hand, the product indicates some cleaning treatment or adaptation for the purpose of sale or export, then it must be said that the process is a manufacturing process. The words used in section 2(k) are so wide that they comprehend every possible process for adaptation.

⁷ G.M. Kathari, "Labour Law and Practice", 2nd ed., Calcutta : International Law Book Centre, 1980, p. A/110.

⁸ (1962) I.L.L.J. 697

⁹ AIR 1955 All 702

Apart from the above discussions there are processes involved in preparation of food, salt, bricks, etc, the question arises as to whether such processes come under definition of manufacturing process. In *Employees State Insurance Corp. v. Jalandhar Gymkhana Club*¹⁰, it was held that the preparation of food and drinks in the kitchen attached to the club and the preservation and storing of articles in the cold storage would be a manufacturing

process under section 2(k) of the Factories Act and therefore it follows that the premises of the club is 'factory' under sec 2(m) of this Act.

Even in *Ardeshir v. Bombay State*¹¹, Supreme Court held that the process carried out in the salt works comes within the definition of manufacturing process in sec 2(k) in as much as salt can be said to have been manufactured from sea water by the process of treatment and adaptation of sea water into salt.

c. Definition of 'Occupier' :

Occupier¹² under the Act means in simple words he is a person who has ultimate control over the affairs of the factory.

2. Provisions relating to welfare of the workers :

a. Specific welfare provisions :

As it is stated earlier the main object of the act is to ensure adequate safety measures and to promote the health and welfare of the workers employed in factories. As per the welfare measures are concerned the Report of the Royal Commission has recommended :

"The Provisions of suitable washing facilities for all employees is even desirable and here many factories are deficient. The worker who lives in crowded areas has inadequate facilities for working at their homes and bathing facilities would add to their comfort, health and efficiency. We recommend that for workers engaged in dirty processes, the provisions for washing place and water should be made obligatory."

¹⁰ (1993) ILLJ 477

¹¹ AIR 1962 SC 29

¹² Section 2(n)

The Factories Act contains a separate chapter (chapter V) laying down specific welfare measures such as washing facilities (Sec 42), facilities for storing and drying clothing (Sec 43), facilities for sitting (incase of factories employing over 150 workers) (sec 44), first aid appliances (Sec 45), canteens (incase of factories employing over 250 workers) (Sec 46), shelter, rest rooms and lunch rooms (Sec 47), crèches (in case of factories employing more than 50 women workers) (Sec 48)

Factories employing 500 or more workers are required to appoint welfare officers. It is left to the state Govts to prescribe the duties, qualifications and conditions of service of these officers. The State Govts are empowered to order any factory or class of factories to associate the representatives of workers with the management of the welfare arrangements for the workers.¹³

It is clear from these provisions that every occupier of a factory must provide these welfare facilities. But he must keep in mind that, incase of washing facilities it must be conveniently located near the rest or lunch rooms in factories and separate washing facilities for female workers must be so enclosed or screened that the interior are not visible from any place where males work or pass. As per first aid is concerned, a separate responsible person trained in first – aid treatment must be incharge of each first aid box or cupboard and he must always be available during the working hours of the factory. The canteen building must not be less than 15 meters from the latrine, urinal, boiler house, coal stacks, ash dumps and other sources of dust, smoke or abhorious fumes. This requirement may be leased reasonably in suitable circumstances subject to adoption of measures to secure its essential purpose Such building which is to be made according to the approved plans, shall contain at least a dining hall, kitchen, store room puntry and separate washing places for workers and utensils. The precincts of a canteen must be kept clean. Waste water must be carried away by covered drains and not allowed to accumulate so as to be a nuisance and arrangements must be effected for collection and disposal of garbage.¹⁴



¹³ Dr. T.N. Bhagoliwal, "*Economics of Labour and Industrial Relations*," Agra : Sahitya Bhawan, 1985, p. 734

¹⁴ Supra Note (3), pp. 296, 299, 301

In *Ferro Alloys Corporation Ltd. v. Government of Andhra Pradesh Labour Employment and Technical Education (Labour II) Dept.*¹⁵ it has been stated that, there is nothing in section 46 of the Factories Act, which provides for the mode in

which the specified establishment must set up a canteen where it is left to the discretion of the concerned establishment to discharge its obligations of setting up a canteen either by way of direct equipment or by employment of contractor, it cannot be postulated that in the latter event, the persons working in the canteen would be the employees of the establishment.

b. Working hours for adults :

The Act provides maximum work of eight hours a day. It is limited to five hours a day for children. Maximum 48 hours per week are allowed for adults and no adult is allowed to work in factory more than 9 hours in any day and after five hours of work, rest pause of half an hour is provided for an adult and a rest pause of the same duration for a child. The maximum hours of overtime have been fixed at so during a quarter. An overtime is not provided for children.¹⁶ The act also provides weekly holidays for the adult workers.

In *Motor and Machinery Manufactures Ltd v. State of West Bengal*¹⁷, it is hold that, the primary object of section 52 is to provide weekly holiday for the workers and such day was fixed to be the first day of the week, i.e., Sunday. But, for any special reasons, it becomes necessary to make Sunday the working day, a substitutional holiday is made compulsory. But the intendment of the section is not that the employers will at their sweet will convert successive on all the Sundays primarily intended to be holidays as working days and make any other working day of the week a holiday instead of Sunday.

c. Working hours and employment of young persons :

There are 3 types of persons stated in the Act :

1. Child

¹⁵ 2003(96) FLR 160

¹⁶ Pratibha Goyal, "Labour Welfare and Job Satisfaction", New Delhi : Deep and Deep Publications, 1995, p. 67

¹⁷ (1964) II L.L.J. 562

2. Adolescent

3. Adult

1. Child¹⁸ means a person who has not completed his fifteen year of age.

2. 'Adolescent'¹⁹ means a person who has completed his fifteen year of age but has not completed his eighteenth year.

3. 'Adult'²⁰ means a person who has completed his 18th year of age.

The act also specifies 'young persons'²¹ means a person who is either a child or an adolescent.

The act under section 67 specifically provides for the prohibition of employment of young children. It says no child who has not completed his fourteenth year shall be required or allowed to work in any factory.

But this provision is in contravention to the definition of child. Because at one side it says child means who has not completed his 15 years of age and in section 67 it says no child who has not completed his 14th year shall be required to work in any factory. It shows even if child completes his age of 14 years can be employed in factory. This provision is also in contravention to the constitutional goal. Where specifically under Art 24 constitution prohibits employment of children below the age of 15 years.

As per the working hours are concerned section 71 of this act states, no child shall be employed or permitted to work in any factory –

a. for more than four and a half hours in any day;

b. during night

Here 'night' means it is between 10 pm to 6 am and for female child it is between 7 pm to 8 am Factories Act is a welfare legislation and looking to this provision it is imposing much burden on the children stating he can work between

¹⁸ Section 2(c)

¹⁹ Section 2(b)

²⁰ Section 2(a)

²¹ Section 2(d)

6 am to 10 pm where this is the age for the children to make their future good. The act is not even allowing him to study until he completely his 15 years of age.

The act also provides provisions for adolescent under sec 68 where he is not allowed to work in any factory unless –

- a. A certificate of fitness granted with reference to him (under sec 69) is in the custody of the manager of the factory, and
- b. Such child or adolescent carries while he is at work a token giving a reference to such certificate.

From the above discussions it can be said that the law is so weak in respect of working hours for children which defines night means between 10 pm to 6am. It is the responsibility of the parliament to make such provisions carefully and it is better to revise this provision stating night must be between 6 pm to 6 am.

d. Annual leave with wages :

Chapter 8 of the Factories Act deal with a number of holidays available to the workers employed in factories. The provisions of this chapter are mandatory and the employer has no discretion to withhold the benefits conferred to the worker under this chapter. However, in case where the workers have better terms of service by virtue of contract or award or otherwise, than such workers shall be entitled to take advantage of their privileges under such contract or award. But it is left to the worker to choose whichever is more beneficial to them. Section 78 makes it clear that the provisions of this chapter shall not operate to the prejudice of any right to which a worker may be entitled under any other law or under any award or agreement or contract of service. However, when such award, agreement or contract of service provides for a longer annual leave with wages than those provided in this chapter then the worker shall be entitled to such longer annual leave.

Section 79 of the Act clearly states about the provision relating to 'Annual leave with wages'. It states, every worker who has worked for 240 days or more in a factory during the calendar year is entitled during the subsequent calendar year, leave with wages as follows :

- I. In the case of an adult worker, one day for every 20 days of work performed by him during the previous calendar year;
- II. In the case of child one day for every 15 days of work performed by him during the previous calendar year.

For computing the period of 240 day or more it should also include the days of lay-off and in case of female worker, her maternity leave and the leave earned in the year prior to that in which the leave is enjoyed.²²

For the leave allowed as above, a worker shall be paid at a rate equal to the daily average of his total full time earnings for the day on which he worked during the month immediately preceding his leave, exclusive of any overtime and bonus, but inclusive of dearness allowance and cash equivalent of the advantage accruing through the concessional sales to the worker, of food grains and other articles such cash grains concession shall be computed as often as may be prescribed on the basis of the maximum quantity of food grains and other articles admissible to a standard family.²³

The act also provides payment in advance to worker for leave, if it is not less than 4 days in the case of an adult and five days in the case of a child, and where worker dies before resumption of work, the balance of his pay if any, for the period of leave, shall be paid to his nominees within one week of the receipt of intimation of such death.²⁴

e. Provisions relating to Health and Safety :

Industrial health is comparatively a new system of public health and preventive medicine practiced amongst industrial groups with the specific object of improving the health of workers and preventing the occurrence of disease as well as injury to them. The basic objective of industrial health is prevention of disease and injury, rather than curative or symptomatic medicine, although it gradually evolved from this stand point only in the last few decades.



²² Prof. K. Mhadhavan Pillai, "*Labour and Industrial Laws*", 8th ed, Faridabad : Allahabad Law Agency, 2000, p. 525

²³ Section 80

²⁴ Section 81

When the Factories Act is enacted, elaborate provisions have been made in the Act to safeguard health and to promote safety and welfare of the workers. It specifies in clear terms the requirements regarding cleanliness, lighting, ventilation, etc, and provides for the disposal of waster and effluents, the elimination of dust and fumes, the provision of drinking water facilities, latrines, urinals and of spittoons and the control of temperature. The factories employing 250 persons are required to supply cool drinking water during summer. To eliminate overcrowding the act prescribes a minimum space of 500 cft for each worker in factories built after the commencement of the Act. For other factories the minimum space fixed per worker is 350 cft.²⁵

As per the safety provisions are concerned the Act provides twenty different sections on obligatory safety measures like fencing and covering of dangerous parts of machinery in operation, prohibition of employment of young person (below eighteen) and females from handling, cleaning and lubricating dangerous machines, casing of the machinery, casing and guarding of every set screw bolt, spindle, wheel and periodical examination of appliances such as hoists, goggles safety hats and gloves and prevention of fire and risks.²⁶

As per cleanliness under sec 11 is concerned it is stated that, what is effective and suitable method will depend on the circumstances of each case. For instance in the case of cleaning the floor, it would depend on the material and condition of the floor and the nature of the manufacturing process. What may be suitable for one place in a set of circumstances may not be suitable to another place, in another set of circumstances or to another place in the same set of circumstances. To illustrate : sweeping may be more suitable than washing in the engineering machine shop.

Similarly, what is 'reasonable' would in each case be a question of fact. For instance, in case of temperature, it would depend on the nature of work, the season of the year, necessities of the manufacturing process of work. Even where the air temperature in a particular room or part of the room must needs be relatively hot, it does not follow that the condition cannot be ameliorated by adopting adequate

²⁵ Supra Note (13), p. 736

²⁶ Supra Note (16) p. 66

measures of separating the process which produce such temperature from the workroom by insulating the hot parts by other effective means.²⁷

In order to remove all these difficulties it is must that the degree of cleanliness to be maintained. Even in case of ventilation and temperature under section 13 there must be scientific degree to measure ventilation and in case of over crowding it is must to mention sufficient degree of standard as to how much worker should work in a factory and in case of dust and fumes there must be effective machineries and mechanisms to be adopted in order to prevent this.

3. Powers of Inspectors :

The Factories Act is a central legislation but its administration is done by the state Govt through their respective inspectorates. State Govts are empowered to grant exemptions, appoint inspectors and surgeons for certifying children and adolescents as fit for work in factories, registering and licensing factories and collecting license fee and framing necessary rules for giving effect to achieve the purpose of the act. Even the provisions have been incorporated in the act itself for the imposition of punishment for violating the provisions of the act.

Therefore every Inspector; Chief Inspector, Additional Chief Inspector, Joint Chief Inspector, Deputy Chief Inspector and every other officer appointed under this section shall be deemed to be a public servant within the meaning of the Indian penal code and shall be officially subordinate to such authority as the state govt specifies.

The powers of inspector exercised under this Act stated under section 9 are as follows :

1. Inspector is having power to enter, with such assistants or with an expert, any place which is used as factory.
2. He has power to make examination of the premises, plant machinery, article or substance
3. He can enquire 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.
4. He is required to produce any prescribed register or any other document relating to the factory.
5. He has power to 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.
6. He is having power to direct the occupier that any premises or any part thereof or any thing lying therein, shall be left undisturbed for so long as is necessary for the purpose of any examination.
7. Take measurements and photographs and make such recordings as he considers necessary for the purpose of any examination taking with him any necessary instrument or equipment.
8. 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, 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.

²⁷ K.D. Srivasta, "Factories Act, 1948", 4th ed., Lucknow : Eastern Book Company, 1992, p. 266.

III. CONCLUSIONS :

From the above discussions it can be concluded that the matters relating to labour welfare occupies an important place in the industrial society. There were no legislation till 1934 dealing with the welfare of workers employed in factory. It is only after 1934 due to enactment of Factories Act, 1934 some sort of welfare facilities were made available to the workers employed therein. But due to some defects and inadequate welfare facilities it was repealed and fresh enactment was made in 1948, which became uniform welfare legislation having many effective provisions dealing with health, safety and welfare of workers whether he is adult or young person. The act also provides for appointment of inspectors who is empowered by the central and state govt for certifying children and adolescents as fit for work in the factories and registering and licencing factories and collecting licence fee and framing necessary rules for giving effect to achieve the purpose of the act and the act also prescribes punishments for violating the provisions of the act.

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