

Beneficial Legislation: Factories Act, 1948

The article delves on the Legislative provisions under Factories Act, 1948. The author emphasizes on the need to open more factories in order to expand the manufacturing activities in various sectors of the economy. Further the article also enumerates various provisions related to welfare and working conditions.



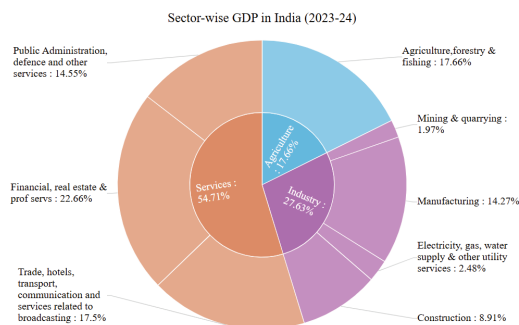
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INTRODUCTION

The Government of India initiated the push for Liberalisation, Privatisation, and Globalisation (LPG) starting from 1993. The Government of India after many efforts came up with 4 Codes on Labour by consolidating 29 labour laws i.e. the Code on Wages, 2019, the Occupational Safety, Health and Working Conditions Code, 2020, the Code on Social Security, 2020 and the Industrial Relations Code, 2020. Till the codes are fully implemented the licensing and registration shall continue to be governed by the Provisions of the Factories Act, 1948 (hereinafter referred to as the Act).

India needs rapid growth in manufacturing sector which requires establishing more and more factories. This is required in tune with the growth trajectory being envisaged with a view that the Indian economy grows at a rapid pace and India attains the status of manufacturing global hub. As on Financial Year 2023-24 share of various sectors to the GDP is as under:



Source: <https://statisticstimes.com/economy/country/india-gdp-sectorwise.php>

One of the important factors contributing to the growth of Indian economy is contribution of Manufacturing Sector. Currently, in Financial Year 2024-25, the share of Manufacturing to the India's GDP is 17%. India has long-standing target of 25% GDP share for manufacturing to make it a global manufacturing powerhouse.

The procedure, regulation and rules for registration and licencing of Factories under the Act, are being dealt hereunder in the article along with the provisions related to welfare and working conditions.

Sector-wise Factories During 2020:

Table 1

Sector	Number of Working Factories	Percentage to Total
Public	3825	2.09
Private	179195	97.91
Total	183020	100.00

Source: https://labourbureau.gov.in/uploads/pdf/FA_2020.pdf

The data as to the annual return submitted in terms of requirement under the Act, from 2014 is as under:

Table 2: Annual Return

Year	Total No. of Working Factories submitting returns	Percentage of Factories (Submitting Returns)		
		Employees Less Than Workers	Employing 50 or more but less than 500 workers	Employing 500 or more workers
2014	39527	75	22	3
2015	45976	72	25	3
2016	48727	69	28	3
2017	52334	62	31	7
2018	26534	57	36	7
2019	56659	70	26	4
2020	48406	65	29	6

Source: https://labourbureau.gov.in/uploads/pdf/FA_2020.pdf

LEGISLATIVE PROVISIONS

To register as a factory under the Act, there are many requirements that are to be complied with under the Rules framed in terms of the Act. These rules are framed by State Governments. Apart from the aforesaid, permission is also required to be obtained before establishing the Factory in the Municipal Area under relevant Municipal Act. State Government derives power to frame rules under Section 112 of the Act. The provision in this regard is as under:

"112. General power to make rules —The State Government may make rules providing for any matter which, under any of the provisions of this Act, is to be or may be prescribed or which may be considered expedient in order to give effect to the purposes of this Act."

Therefore procedure, format, and other requirements more particularly the specific documents required while applying for registration for factories may differ from state to state. Government of India, Ministry of Labour has published model Factories Rules to be adopted by the various State Governments¹. Each State Government has issued Factories Rules. Factories running in each State are required to comply with the Central Act and Rules published by the respective State Government.

INTENT OF ENACTMENTS

Factories Act, 1948 and the rules framed thereunder with an intent to provide for health, safety, welfare, working hours, leave and other benefits for workers, employed in factories and also provides for improvement of working conditions within the factory premises. Hon'ble Apex Court in the case of *Balwant Rai Saluja v. Air India Ltd.*, (2014) 9 SCC 407 has held that the Act is a social and beneficial legislations. It has been enacted with main objective to protect interest of workers engaged in factories against occupational hazards and owners of factories are under obligation to ensure conditions conducive to workers health and safety. Courts have held that the provision of the Act is to be interpreted in a manner so as to give efficacy to the legislative intent.

REGISTRATION OF FACTORIES²

Factories Act, 1948 provides that state governments are required to make rules for granting approval, licensing and registration of Factories under Section 6. This section stipulates that the request for permission for establishing factory is to be sent to the authorities by registered post and if no order is communicated within 3 months, it is deemed that the permission is granted. Further, in case of refusal to grant permission on application submitted, an appeal, within 30 days of refusal, lies to Central Government or to State Government as the case may be. Replacement, addition of plant and machinery does not require approval. However, it is made clear in the section that notice is required to be given under Section 7 for obtaining new/ renewal of licence and before occupying the premises and use it as factories. Rule 3 to 13 of Factories Rule prescribes the procedure, forms, schedule and formats in which application for obtaining licence is to be submitted.

FACTORY AND MANUFACTURING PROCESS

In order to understand the applicability of the Act at any workplace, it is important to understand what is the meaning of "Factory" {Section 2(m)} and "Manufacturing process" {Section 2(k)}. As per the Act the premises including the precincts thereof is called factory if manufacturing process is carried on in any part of such place, by either ten or more workers with the aid of power or by twenty or more workers without the aid of power on any day of the preceding twelve months. Mines and mobile unit of armed forces, railway running shed, hotel, restaurant's or eating place are excluded and are not covered under Factories Act, 1948. In order to compute the number of workers, all workers in different groups and relays in a day are taken into account. However, an Electronic Data Processing Unit or Computer unit, if installed

in any premise shall not be included in definition of factory if no manufacturing process is carried out at that place.

"Manufacturing process" means process for making, altering, repairing, ornamenting, finishing, packing, oiling, 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 pumping oil, water, sewage or any other substance, or generating, transforming or transmitting power, or composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding; or constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or preserving or storing any article in cold storage.

INTERPRETATION BY COURTS

Hon'ble High Court of Bombay in the case of *Kisan Atmaram Kasti v. Forest Development Corporation of Maharashtra Ltd.*, 2011 SCC OnLine Bom 250, held that the corporation is a factory as it is dealing with forest produce is engaged in commercial activities and there is manufacturing process involved converting forest produce to marketable product with a view to earn profits.

In case where the premise is used by Non-profit organisation but manufacturing process is carried out therein, then such place has also been defined as "Factory". Hon'ble Supreme Court in the case of *Delhi Gymkhana Club Ltd. v. ESI Corpn.*, (2015) 1 SCC 142 while adjudicating the short point whether the kitchen of the appellant Club and the catering section thereon come within the meaning of "factory" and "manufacturing process" as defined in the Employees' State Insurance Act, 1948 has held that Although term "kitchen" and "catering" of a club may not be called a "factory" in common parlance, having regard to definition of "manufacturing process" and that ESI Act is a beneficial legislation, a liberal interpretation has to be adopted. Therefore, so long as manufacturing process is carried on with or without the aid of power by employing more than twenty persons for wages, it would come within the meaning of "factory" as defined under Section 2(12) of the ESI Act, 1948.

However it is apt to add that the definition of "factory" in Factories Act and Employees' State Insurance Act are not the same. Explanation II of Section 2(m) of the Factories Act is inserted in the Factories Act and not in the Employees' State Insurance Act. It marks difference in its interpretation and application. In the definition of "factory" under Factories Act the words "worker working" are used, while in the Employees' State Insurance Act, in the section defining "factory", the term "person employed for wages" are used. A difference in these two definition of one word "factory" can be explained by example. A clerk or staff in the premises is not covered under the definition of "worker" under the Factories Act, however, under the Employees' State Insurance Act, the word "worker" is *not used but the legislature chose the word "person"* and for "working", the word "employed" is used. Thus, the premises where person is employed for a clerical work is covered under the definition "factory" under the Employees' State Insurance Act. Therefore, definition of "factory" has wider meaning under the Employees' State Insurance Act than the Factories Act as held in *Quzi Noorul, H.H.H. Petrol Pump v. Deputy Director, Employees' State Insurance Corporation*, reported in (2009) 15 SCC 30.

¹ https://upload.indiacode.nic.in/showfile?actid=AC_CEN_6_6_000010_194863_1517807319577&type=rule&filename=Model%20Rules%20Part%20I%20framed%20under%20the%20Factories%20Act,%201948.pdf

² Factories Act 1948

SINGLE OR MULTIPLE FACTORIES IN AN ORGANISATION

Section 4 of the Factories Act empowers the State Government, on its own or on application, to direct by an order in writing and subject to conditions as deem fit for the Act that different departments or branches of a factory of the occupier shall be treated as separate factories or that two or more factories of the occupier shall be treated as a single factory.

PROVISIONS RELATED TO WELFARE AND WORKING CONDITIONS

Factories Act, 1948 is divided into 12 chapters. Chapters from II to VIII deals with the welfare of workers and working conditions in a factory. In order to ensure health and hygiene in the factory specific provisions is laid down for Cleanliness, Disposal of wastes & effluents, Ventilation and temperature, dust & fumes, for artificial humidification, to avoid overcrowding, for proper lighting and arrangements of drinking water, for latrines & urinal and also for spittoons in chapter III of the Act.

With respect to cleanliness, the rules requires that a register is maintained by the factory about the whitewashing, painting etc under Section 11 (1) of the Act. Rules requires that the treatment and disposal of wastes and effluents is done in accordance with the stipulation as approved by Air Pollution Boards appointed under the Water (Preventions and Control of Pollution) Act, 1974 or any other authorities appointed by State Government in this regard. Similarly, the rules required specific arrangements are done to maintain ventilation, temperature in factories where artificial humidification is not allowed. Therefore rules framed by respective state government prescribe the records to be maintained and also limits within which the working environment is maintained in the factory.

Safety in the workplace is to be maintained in terms of the provision contained in Chapter IV of the Act. In terms of the provision of Section 40-B of the Act, appointment of certain number of safety officers in a factory is a statutory obligation on the part of the employer. The requirement of safety officer is stipulated for factory having more than 1000 workers. There is specific provisions for protective appliances/equipment to be given to workers. Chapter IV-A of the Act stipulates that while dealing with application for factories involving hazardous process a self appraisal committee is constituted by State Government for making recommendations in terms of provision under Section 44A of the Act. The law also mandates compulsory disclosure of information by Occupier. In terms of the Rule safety committees are formed in the factories having the minimum number of workers. Under MP factories rule, safety committee is required to be constituted where the minimum number of workers is 250 or factories which carries on any process or operation declared to be dangerous.

The Act in terms of the stipulation contained in Section 49, requires appointment of Welfare officer in factory having more than 500 workers. Also, rules are framed by State Government in terms of the power vested in them

under Section 52 of the Act. Rules provide for qualification, functions and appointment of welfare officers for monitoring the compliances and working conditions of the workers. Similarly, there are various provision under the Act and rules made in relation to which compliances are required to be done by the occupier.

OTHER LEGISLATIONS

Apart from factories being an area where labours interest is required to be protected, there are certain other legislation which takes care and protects the interest of workers and labours engaged. In relation to mines, Mines Act, 1952 provides for various compliances to ensure safety, health and working conditions of labours. Also, Building and Other Construction Workers Act, 1996 and Cess Act, 1996 provides for welfare of workers engaged in the unorganised sectors.

CONCLUSION

From the aforesaid, it is clear that the Act and other legislations not only takes care of the welfare of the workers but also there are provisions with respect to working conditions at the factory. One has to go through the relevant rules applicable in the state where the factory is situated or work is being done, so as to understand all the compliances and corresponding obligations of the employer. With respect to the Act, the model rules framed requires that the occupier of every factory, except as otherwise provided, shall prepare a written statement of his policy in respect of health and safety of workers at work. Therefore the provisions of the Act being a beneficial legislation for the welfare of the workers ensures that the factories are managed in such a way that will not only benefits the employer but also ensures that the workers interest is safeguarded and there is no compromise with their health and safety.

The legislation requires that records related to compliances are properly maintained and produced to the authorities and annual reports are submitted to them. CS being the governance professionals shall have to play a crucial role in ensuring that the compliances are done and also the reports related to the compliances are made part of the Business Responsibility & Sustainability reports of the Company.

REFERENCES:

- i. *Factories Act 1948*
- ii. https://labourbureau.gov.in/uploads/pdf/FA_2020.pdf
- iii. *Model Rules Under the Factories Act, 1948*
- iv. <https://statisticstimes.com/economy/country/india-gdp-sectorwise.php>
- v. https://upload.indiacode.nic.in/showfile?actid=AC_CEN_6_6_000010_194863_1517807319577&type=rule&filename=Model%20Rules%20Part%20I%20framed%20under%20the%20Factories%20Act,%201948.pdf
- vi. Notification. No. CIF/094/S-II/IFB/2020/242, dated 14-5-2020, published in the Goa Gazette, dated 14-5-2020.
- vii. *SCCONLINE.COM*