

PART-C

THE FACTORIES ACT, 1965

Chapter I

HISTORY OF FACTORY LEGISLATION IN BRITISH INDIA

Though the present factory legislation in Bangladesh owes its origin mainly to British rule in India, the pivotal force behind the introduction of the same in the sub-continent was not due to any philanthropic reasons¹; it was not out of realisation of real plight of the then working people in India; nor was it a policy formulated work on the part of the British Government. It was passed and introduced in British-India with full consideration of colonial and capitalistic interest from the view point of British industrialists. The best available historical analysis of factory legislation in British-India can be found in *The Working Class in Bengal* by Rajani Kant Das which provides the foreground of this chapter.

Till the middle of the 19th century India had a vast working people but no working class. Without a factory industry there can be no working class worth the name. Once industrial revolution was accomplished in England the large scale industry brought all the people of the earth into relationship with one another by circuitous lumping all the small local markets into one world market. It was a process thorough which India came to be linked with the industrialised nation of Europe, in particular Britain. As the mechanism of colonialism came to be pressed in full England was soon to become 'the workshop of the world' and all other countries were to become for England.....markets for her manufactured goods supplying her in return with raw materials and food-stuff. India naturally became an 'agrarian appendage of England'.²

For deep economic penetration the English, out of necessity introduced railways, developed roads, electricity, telegraph etc. which in their turn led to the ushering in modern industries. Consequent upon the Industrial Revolution in England, rail roads were laid in India for reaching out to

¹ Ahmad, Kamruddin, *Labour Movement in Bangladesh*, Dhaka: 1969 at p.5

² Engles, Protection & Free Trade, *On Colonialism*, Moscow, pp. 233-36

greater overseas markets and better manipulation of raw materials. Thus modern factory industry made its appearance in India with its pattern set by the colonial context and that explains why its industrial development was neither rapid nor remarkable.

A notable feature of the industrial development in Bengal was that most of the major industries were controlled and managed by Europeans mainly British and the capital invested in them was also European. What prompted Europeans eagerly to invest capital in these industries was purely motive for profit. The entire administrative, political and financial set up in India helped to maintain the dominance of European business houses in newly sprung industries. This is why industries in India were not encouraged to develop the productive power of the country.

India had to pay heavily for these foreign investments which were steadily growing in volume and as a result was subjected to heavy economic drain. For reasons of extreme poverty India's home market remained very limited. Our poor working class had to pay much because of these profit oriented business. They became the tools of making profit for the Europeans. They had to work 18 to 19 hours and was paid a poor. The condition of life and work of indentured workers attracted public attention in British India. Abject poverty, extreme misery which prevailed in the rural areas as a result of destruction of handicraft industries and growth of population, compelled workers to offer themselves as indentured labours. But the amount of wage was at minimum level. The workers had no choice but to accept this meagre wage because they possess nothing but their labour power and can live only by selling that power. So very reasonably India became well known for her cheap labour and this was due to widespread poverty of the masses. This cheapness of labour was an incentive to foreign capitalist to invest their capital in India. And India being a colonial country sufferings of the workers here were more intense. The method of oppression common to capitalism combined here in the most inhuman manner with various forms of precapitalist exploitation. The long working hours of Indian factory hands and unregulated exploitation of female and child labour roused protest in different quarters including England itself. Even in India some philanthropists started an agitation for legislation to regulate the hours of work in Indian factories. Their principal objective was social and moral uplift of the workers.

It will be clear that two distinct forces worked behind the introduction of factory legislation in India: first, the native force which were in line with philanthropic ideas and second, the foreign force particularly the Lancashire interest. It will also be revealed that of these two forces it was British capitalist interest, i.e. the Lancashire interest which eventually compelled the British Parliament to pass Factory legislation for India.

The native force could not gain any momentum at that stage because of the fact that factory workers were still hugely unorganised and inarticulate. Moved by sheer cruelty practised upon Indian workers some philanthropists like N.M. Lokhanday, Chairman of the Mills Hands Association, S.S. Bengalee of Bombay started an agitation for legislation to regulate the hours of work in Indian factories. Mr. Bengalee went to England where he urged introduction of factory legislation in India. Alongside this native force in England industrial interest as represented by Lancashire and Manchester business community and Dundee Chamber of Commerce grew apprehensive of unfair competition and demanded that factories conducted by the subjects of the Crown whether in India or in England should be equally subject to the control of the Parliament and they urged the Secretary of India for suitable reforms. The issue of factory legislation was also raised in both the Houses of Parliament. Secretary of India drew the attention of the Bombay Government to the grave abuses existing in textile mills and called for legislation. Consequently a Factory Commission was appointed by the Bombay Government in 1875 to inquire into the conditions in textile factories. Commission reported for legislation but the Governor of Bombay refused to take any action. Any progress was thwarted by counter pressure from the British capitalists in India who had invested their capital in Indian industries. In order to protect and promote their class interest these British capitalist had already organised themselves into powerful associations and they vehemently opposed any attempt at legislative interference under the pretext of protecting nascent Indian industries from jealous competition of Lancashire and Dundee. All the local governments were totally under the influence of these powerful business magnets; responsible government officials rejected any proposal for legal control as unnecessary and undesirable.

Subsequently the Lancashire interest once again became active. Textile industries run by British capitalists in Lancashire and Dundee in England faced a tuff competition with the Indian textile industries which could

employ cheap Indian labour with the result of low production cost. To protect their interest and defend the unfair competition by Indian industries the Lancashire Mills owners and the Manchester Chamber of Commerce passed a resolution to lessen the exploitation of female and child labour in India. In November 1878 they resolved that:

“In view of excessive hours of work in Cotton Mills of British India, the provisions of British Factories Act, in so far as they related to the employment of women, young persons and children should be extended to include the textile factories of India.”

In line with this resolution the absence of a Factories Act in India was raised in the British Parliament by an MP at the instance of Lancashire Mill Owners Association in April 1879³. In the House of Lords, the Earl of Shaftsbury stated:

“We must bear in mind that India has the raw material and the cheap labour; and if we allow the manufacturers there to work their operatives 16 or 17 hours and put them under no restriction we are giving them vary unfair advantage over the manufacturers of our country, and we might undersold even in Manchester itself, by manufactured goods imported from the East.”

Thus the pressure to introduce factory legislation into India as exerted by the British business community, particularly the Lancashire and Dundee Textile Mill Owners was not from the view point of deteriorated conditions of the working class in India; rather it was to prevent unfair competition and to protect their own interest.

However, following the pressure the Indian Factories Act 1881 was passed by the British Parliament, which was the first effective labour legislation in this Sub-continent. The Indian Factories Act 1881 applied to manufacturing establishment using mechanical power and employing 100 or more persons; small concerns, gins and presses remaining outside the scope of the Act. The Act for the first time:

- (i) Limited working hours of woman to 11 hours a day.

³ There is confusion about the year and date. Ahmad Kamruddin has used 1875 whereas Rajani Kant Das has used 1879. I have preferred using Rajani Kanta Das.

- (ii) The employment of children in factories under the age of 7 year was prohibited.
- (iii) A weekly holiday for children was introduced.
- (iv) Restriction was imposed upon works of children at night.

Still this Act roused strong protest from the business community on the ground that this was motivated by Lancashire to injure the infant industries in India. Though it was true that Lancashire Community were motivated by their business interest but the picture of abuses highlighted by them were real as Dr. Nair remarked "abuses are abuses whether pointed out by friends or foes"⁴.

The shortcomings of the Act of 1881 soon became evident and necessity for its modification was soon felt in different quarters and the Indian Factories Act 1881 was replaced after a lapse of 10 years by the Indian Factories Act 1891. [Mr. Meade King was deputed by the Secretary of State for India to report on the working of the Factories Act]

On the basis of the report of the Commission appointed by the British Government the Factories Act 1891 was passed.

- (i) All factories employing 50 person or more were brought within the purview of the Act.
- (ii) Minimum age for child employee was fixed at 9 years.
- (iii) Working hours for women was restricted at 11 hours with one and half an hour rest.
- (iv) Male workers were also provided a weekly rest.
- (v) Half an hour rest in a day for male worker was also provided for.

However, this Act did not contain any restriction on the hours of work of adult male who formed almost 75% of total labour force in India. Lancashire Mill owners and Manchester Chamber of Commerce still continued pressure to introduce changes to limit working hours in Indian factories though this was strongly protested by Indian Government and

⁴ RIFLC 1908, Dr. Nair's Minute of Dissent, quoted by Rajani K. Das, *ibid*, at p. 85.

industrialists. However, in spite of tremendous opposition from the business community and local government in India the Factories Act of 1911 was introduced. The Act finally introduced-

- (i) The working of an adult male at 12 hours a day.
- (ii) The working hours of child at 6 hours a day in textile industries.
- (iii) The Act contained extensive provisions for health and safety and effective inspection of the administration of the factories.

Establishment of International Labour Organisation (ILO) in 1911 is a landmark in the history of labour legislation. British India as a member of ILO amended the factory law in 1922. By this Act all the factory using mechanical power and employing 20 or more persons were brought under this Act. Hours of work irrespective of gender was fixed at 60 hours a week in the maximum. Age of children for work was fixed at 12. Employment of women or child below 18 was prohibited in dangerous process.

The Factories Act 1911 underwent some amendments in 1922, 1926, 1931 and finally the Act was repealed in 1934. The Royal Commission on Labour was appointed by his Majesty the King Emperor in 1929 to inquire into and report on the existing condition of labour in industrial undertakings and plantations in British India on health, efficiency and standard of living of the workers. The Commission submitted its report in 1931. And the Factories Act of 1934 was passed.

Due to enormous rise of workers employed in the factories during the later half of the nineteenth century, the need was felt by the legislators in India to regulate their conditions of service for their betterment. An attempt was made to regulate their conditions under the Factories Act, 1934. Experience of working of the Act revealed a number of defects and weakness with regard to safety and welfare of labour employed in factories. With the change in social environment and outlook and growing consciousness of the workers working in factories not covered under the provisions of the Act, the necessity arose to extend statutory protection to those workmen who were outside of the purview of the above Act. The Factories Act, 1948 is a step in this direction to remedy those defects which were noticed in the working of

the Factories Act, 1934. However, after the partition in 1947 the Factories Act, 1934 continued to be enforced in Pakistan until 1965 when the East Pakistan Assembly repealed the said Act and reenact the same and passed the East Pakistan Factories Act, 1965. After liberation in 1971 the Act remained in force and no major change has yet been brought to it.

✓ Objects of the Act

The preamble of the Act states that whereas it is expedient to repeal and, with certain amendments, re-enact the Factories Act, 1934 (Act XXV of 1934) for regulating working conditions in factories and for matters connected therewith this Act is passed.

Thus the Act was intended to consolidate and amend the law regulating labour in factories. It is a beneficial piece of legislation focused to achieve social reforms to workers working in factories. The Act is enacted mainly with the object of protecting workers employed in factories against industrial and occupational risk. It seeks to impose upon the owners and/or occupiers certain obligations to protect the workers and also to secure for them employment in conditions conducive to their health and safety.

The object of the Factories Act is to secure health, safety, welfare, proper working hours and conditions, leave and other benefits for workers employed so that the workers may feel interest and charm in going to factories and devote their time and labour in the working process of the factory without being afraid of bodily strain and without fear and danger of infection and accidents. In order to ensure safe, healthy and sanitary working conditions including rest intervals and measures of their welfare, the Act makes provision for the appointment of Inspectors to see that objects of the Act are achieved and benefits are ensured to the workers. The objects of the Factories Act may be summarised as follows:

- (i) to protect labourers being subject to unduly long hours of bodily strain or manual labour;
- (ii) to provide health and safety for the workers;
- (iii) to provide safety devices and prevent hazards and accidents;
- (iv) to regulate working hours of adult and other type of workers;
- (v) to regulate working conditions of woman and young persons;
- (vi) to provide welfare measures for workers.

All legislation in a welfare State is enacted with the object of promoting general welfare, but certain types of enactments are more responsive to some urgent social demands, and also have immediate and visible impact on social vices by operating more directly to achieve social reforms. The Factories Act belongs to this category and therefore demands an interpretation liberal enough to achieve the legislative purpose without violence to the language. Thus the Factories Act, 1965 is a social enactment to achieve social reform and must receive liberal construction (*Workes Manager, Central Rly, Workshop v Vishwanath*, AIR 1970 SC 488, *M/s Rohas Industres Ltd. v Ram Lakhan Singh*, AIR 1978 SC 849).

Extent and Scope of the Act

Extent: The Act extends to the whole of Bangladesh.

Application and Scope:

- (i) The Act normally applies to all establishments which come under the definition of factory as defined in section 2(f) of the Act, i.e. any premises where any manufacturing process is carried on with ten or more persons to work.
- (ii) However, under section 3 the Government is empowered to apply by Gazette notification any provisions of the Act to any place wherein the manufacturing process is carried on or is ordinarily carried on whether with or without the use of power whenever five or more workers are working therein or have worked therein on any day of the twelve months immediately preceding. Once a place is so declared by notification, it shall be deemed to be a factory within the meaning of the Act.
- (iii) The Government may, by order in writing direct that the different departments or branches of a specified factory shall be treated as separate factories for all or any of the purposes of this Act (section 4).
- (iv) The Government may by notification in the official Gazette, exempt any factory or any class or description of factories from all or any of the provisions of this Act for such period as it may think fit in the public interest. However, that no such exemption shall be made for a period exceeding six months at a time (section 5)

FACTORY: DEFINITION AND ESTABLISHMENT

Definition of Factory

Section 2(f) defines the term 'factory'. Factory means any premises including the precincts thereof whereon ten or more workers are working or were working on any day of the preceding twelve months and in any part of which a manufacturing process is being carried on with or without the aid of power, but does not include a mine subject to the operation of the Mines Act, 1923 (IV 1923).

Elements:

- (i) It means premises which includes precincts of the premises;
- (ii) There must be ten or more workers working in the premises;
- (iii) The premises or any part of it must carry on manufacturing process;
- (iv) The manufacturing process may be carried on with the use of power or without the use of power.

Premises including precincts

The word 'premises' used in the definition of factory is a generic term meaning open land or land with the building or buildings alone. The expression 'premises' including precincts' does not necessarily mean that the premises must always have precinct.

Manufacturing Process

As defined in section 2(h) 'manufacturing process' means any process-

- (i) for making, altering, repairing, ornamenting, painting and washing, finishing, or packing, or otherwise treating any articles or substance with a view to its use, sale, transport, deliver, display or disposal; or
- (ii) for pumping oil, gas water, sewage or other fluids or slurries; or

- (iii) for generating, transforming or transmitting power or gas; or
- (iv) for contracting, reconstructing, repairing, refitting, finishing or breaking up of ships or vessels; or
- (v) for printing by letter press, lithography, photogravure or other similar work or book-binding which is carried on by way of trade or for purposes for gain or incidental to another business so carried on.

Thus the definition of 'manufacturing process' is wide enough to include in its ambit all activities which deal with the various stages involved in the process of manufacturing goods in the finished shape. To constitute manufacture there must be transformation. No definite or precise test can be prescribed for determining whether a particular process is a manufacturing process or not. Each case must be judged on its own facts regard being had to the nature of the process employed, the eventual result achieved and the prevailing business and commercial notions of the people (*C.S. Angre v State*, AIR 1965 Raj 65). Sun-cured tobacco leaves subjected to process of moistening, stripping, breaking up, adaptation and packing with a view to transport to company's main factory for their use in manufacturing cigarettes was held to be manufacturing process (*Gopala Rao v Public Prosecutor*, AIR 1970 SC 66); making bidi is a manufacturing process (*Chintaman Rao v State of M.P.* AIR 1958 SC 388); the conversion of a raw film into finished product to render it fit for screening in a theatre was held to be manufacturing process (*In re K.V. Sarma v Manager, Gemini Studio, Madras* AIR 1953 Mad. 269).

Establishing a Factory

Establishing a factory and starting its work as a factory are two different things. To establish a factory the first requirement would be to get permission of construction and approval of plan; the second requirement is to get registration and licence. In some cases there is a third requirement which is the clearance from the Department of Environment under the Environment Conservation Act, 1995. These conditions are described below:

Any manufacturing company or factory employing ten or more workers is required to be registered under section 8 of the Factories Act, 1965 with the office of the Chief Inspector of Factories and Establishment.

A. Application for Construction and approval of Plan

To start the construction of any factory previous permission (in form No. 1) from the Chief Inspector must be obtained (Section 8(1)(a) and (Rule 3). Such an application must contain the following:

- (i) A flow chart of the manufacturing process supplemented by a brief description of the process in its various stages;
- (ii) Plans showing sites, surroundings etc. and details relating to walls, roofings, natural lighting etc.

B. Application for Registration and Licence

After obtaining the previous permission for establishing a factory under Rule 3 the second step for the occupier or owner would be to make another application (in form No. 2) for obtaining licence and registration. (Section 8(1)(b) and (Rule 4).

In both the above cases the Chief Inspector appointed under section 9 of the Act shall make an order either granting or refusing the application within two months from the date of receipt of the application (Section 8(2)). In case the Chief Inspector does not make any order within two months, the permission applied for in the application shall be deemed to have been granted after the expiry of two months. Where the Chief Inspector refuses to grant permission as per the application, the applicant may within sixty days of the date of such refusal, appeal to the Government.

C. Granting of Licence

Under Rule 5 of the Factories Rules, 1979 the Chief Inspector shall, on fulfillment of the above conditions, grant licence.

D. Clearance from the Department of Environment

The Environment Conservation Act, 1986 requires that all sorts of socio-economic development activities which include various industrial enterprises and undertaking of projects should take environmental aspects into due consideration and obtain prior environmental clearance. Accordingly, an environmental clearance will be required from the Department of Environment before setting up an industry or factory.

Commencement of Work of Factory

Section 6 of the Factories Act, 1965 lays down the following rules as the commencement of the work of a factory:

Step One: (Notice Before occupy/use Premises)

The occupier shall, at least fifteen days before he begins to occupy or use any premises as a factory send to the Chief Inspector a written notice containing—

- a. name and situation of the factory;
- b. name and address of the occupier;
- c. address to which communications relating to the factory may be sent;
- d. nature of the manufacturing process—
 - (i) to be carried on in the factory during the last twelve months in the case of factories in existence on the date of the commencement of this Act,
 - (ii) to be carried on in the factory during the next twelve months in the case of all factories;
- e. nature and quantity of power to be used;
- f. name of the Manager of the factory for the purposes of this Act;
- g. number of workers likely to be employed in the factory;
- h. average number of workers per day employed during the last twelve months in the case of a factory in existence on the date of the commencement of this Act; and
- i. such other particulars as may be prescribed (section 6(1)).

Step Two: (Notice Before Commencement of Work):

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, the occupier shall, send a written notice to the Chief Inspector containing the particulars specified in sub-section (1) within thirty days before the date of the commencement of work (section 6(3)).

Chapter III

HEALTH, SAFETY AND WELFARE MEASURES

Chapter three, four and five of the Factories Act, 1965 deal with health and hygiene, safety and welfare respectively. The Act has given much accent to maintain the physical fitness and welfare of the workers by requiring certain minimum standards of occupiers to keep factories clean and free from effluvia arising from drain, privy or refuse in and around the factory premises. Detailed provisions are inserted to keep inside and outside the factories clean and safe.

Health and Hygiene

A. Cleanliness: Section 12 of the Act provides for rules as to cleanliness which are as follows:

- (i) Every factory shall be kept clean and free from effluvia arising from any drain, privy or other nuisance;
- (ii) The accumulation of dirt and refuse shall be removed daily by sweeping or by any other effective method;
- (iii) The floor of every work-room shall be cleaned at least once in every week by washing, using disinfectant where necessary or by some other effective method;
- (iv) All inside walls and partitions, all ceilings, or tops of rooms, and walls, side and tops of passages and staircases shall be repainted or revarnished at least once in every five years;
- (v) Where walls are painted or varnished and have smooth impervious surfaces, they shall be cleaned at least once in every fourteen months;
- (vi) In any other case, they shall be kept white-washed or colour-washed and the white-washing or colour-washing shall be carried out at least once in every fourteen months.

B. Disposal of Wastes and Effluents: Section 13 of the Act provides for rules as to disposal of wastes etc. which are as follows:

- (i) Effective arrangements shall be made in every factory for the disposal of wastes and effluents due to the manufacturing process carried on therein;

C. Ventilation and Temperature: Section 14 of the Act provides for rules of ventilation and temperature which are as follows:

- (i) Every occupier shall take effective and suitable measures for securing and maintaining in every work-room adequate ventilation by the circulation of fresh air;
- (ii) Such temperature will be maintained as will secure to workers therein reasonable conditions of comfort and prevent injury to health;
- (iii) The walls and roofs shall be of such material and so designed that temperature shall not be exceeded but kept as low as practicable;
- (iv) Where the nature of the work carried on in the factory involves, or is likely to involve, the production of excessively high temperature, such adequate measures as are practicable, shall be taken to protect the workers there from by separating the process which produces such temperature from the work-room by insulating the hot parts or by other effective means.

D. Dust and Fume: Section 15 provides for rules relating to dust and fumes which are as follows:

- (1) Dust, fume or other impurity which is injurious or offensive to the workers arising due to the manufacturing process must be diverted by effective measures so as to prevent dust inhalation and accumulation in any workroom;
- (2) Exhaust appliance or other safeguards must be used for this.

E. Artificial Humidification: Section 16 provides for rules relating to artificial humidification which are as follows:

- (i) 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.

- (ii) If it appears to an Inspector that the water used in a factory for increasing humidity which is required to be effectively purified is not effectively purified, he may serve on the Manager of the factory an order in writing, specifying the measures which, in his opinion, should be adopted, and requiring them to be carried out before a specified date.

F. Overcrowding: Section 17 provides for rules relating to overcrowding which are as follows:

- (i) No work-room in any factory shall be overcrowded to an extent injurious to the health of the workers employed therein.
- (ii) There shall be provided for every workers employed in a work-room at least five hundred cubic feet of space in the case of a factory built after the commencement of this Act.

G. Lighting: Section 18 provides for rules relating to lighting which are as follows:

- (i) 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.
- (ii) In very factory all glazed windows and skylights used for the lighting of the work-room shall be kept clean on both the outer and inner surfaces and free from obstruction as far as possible.
- (iii) In every factory effective provisions shall be made for the prevention of glare either directly from any source of light or by reflection from a smooth or polished surface etc.

H. Drinking Water: Section 19 provides following rules as to drinking water:

- (i) In every factory effective arrangement shall be made to provide and maintain at a suitable point conveniently situated for all workers employed therein, a sufficient supply of wholesome drinking water.
- (ii) All such points shall be legibly marked "Drinking Water" in a language understood by the majority of the workers.

- (iii) No such point shall be situated within twenty feet of any washing place, urinal or latrine, unless a shorter distance is approved in writing by the Chief Inspector.
- (iv) In every factory wherein more than 250 workers are ordinarily employed, provision shall be made for cooling the drinking water during the hot weather.

I. Latrines and Urinals: Section 20 provides the following rules as to latrines and urinals:

- (i) In every factory--
 - (a) sufficient latrines and urinals of prescribed types shall be provided conveniently situated and accessible to workers at all times while they are in the factory;
 - (b) enclosed latrines and urinals shall be provided separately for male and female workers;
 - (c) such latrines and urinals shall be adequately lighted and ventilated and no latrine or urinal shall, unless specially exempted in writing by the Chief Inspector, communicate with any work-room except through an intervening open space or ventilated passage;
 - (d) all such latrines and urinals shall be maintained in a clean and sanitary condition at all times with suitable detergents or disinfectants or with both;
 - (e) the floors and internal walls of the latrines and urinals and the sanitary blocks shall, up to a height of three feet, be finished to provide a smooth polished impervious surface.

J. Spittoons: Section 21 provides the following rules as to spittoons:

- (i) In every factory there shall be provided, at convenient places, a sufficient number of spittoons which shall be maintained in a clean and hygienic condition.
- (ii) No person shall spit within the premises of a factory except in the spittoons provided for the purpose. A notice containing this provision and the penalty for its violation shall be prominently displayed at suitable places in the premises.
- (iii) Whoever spits in contravention of the above provision shall be punishable with a fine not exceeding Take Two.

SAFETY MEASURES

Safety is a basic and primary requirement in a factory. Unless body, mind and life of workers is secured, smooth and proper working cannot be ensured in any factory. As indicated earlier, the Factories Act, 1965 is a piece of social legislation and its main object is to ensure adequate safety measures and to promote health and welfare of the workers employed in factories. The safety provisions are absolute and obligatory in nature and the occupier of every factory is bound to follow them. They are contained in sections 22 to 42.

A. Precautions in case of fire: (sec. 22)

- (i) Every factory shall be provided with such means of escape in case of fire as may be prescribed.
- (ii) In every factory the doors affording exit from any room, shall not be locked or fastened so that they can be easily and immediately opened from inside while any person is within the room.
- (iii) All doors, unless they are of the sliding type, shall be constructed to open outwards.
- (iv) Where the door is between two rooms, they shall be constructed to open in the direction of the nearest exit from the building.
- (v) No such door shall be locked or obstructed while work is being carried on in the room.
- (vi) In every factory every window, door, or other exit affording means of escape in case of fire shall be distinctively marked.
- (vii) In every factory there shall be provided effective and clearly audible means of giving warning in case of fire to every person employed therein.
- (viii) A free passage-way giving access to each means of escape in case of fire shall be maintained for the use of all workers in every room of the factory.

B. Fencing of Machinery: (sec. 23)

In every factory-

- (a) every moving part of a prime mover, and every fly wheel connected to a prime mover;

- (b) the head-race and tail-race of every water wheel and water turbine;
- (c) any part of a stock-bar which projects beyond the head stock of a lathe; and
- (d) every part of an electric generator, a motor or rotary converter;
- (e) every part of transmission machinery; and
- (f) every dangerous part of any machinery shall be securely fenced by safeguards of substantive construction. It means that fencing should always be there.

Section 23 therefore confers statutory right of personal safety to every person in a factory who either comes in contact with the machinery in connection with his duties or directly works in the machinery while in motion.

C. Work on or near Machinery in motion: (sec. 24)

- (i) Where it becomes necessary to examine any part of machinery while the machinery is in motion, such examination or operation shall be made or carried out only by a specially trained adult male worker, wearing tight-fitting clothing whose name has been recorded in the register.
- (ii) No woman or child shall be allowed in any factory to clean, lubricate or adjust any part of machinery while that part is in motion.

D. Employment of Young-persons on dangerous Machines: (sec. 25)

- (i) Generally no young person shall work at dangerous machine.
- (ii) A young person, however, may work if-
 - he has been fully instructed as to the dangers arising in connection with the machine.
 - he has received sufficient training in work at the machine; or
 - he is under adequate supervision by a person who has thorough knowledge and experience of the machine.

E. Striking gear and devices for cutting off power: (sec. 26)

In every factory-

- (i) suitable striking gear or other efficient mechanical appliances shall be provided and maintained to move driving belts.
- (ii) suitable devices for cutting off power in emergencies from running machinery shall be provided and maintained in every work-room.

F. Self-acting Machines: (sec. 27)

No traversing part of a self-acting machine in any factory and no material carried thereon shall be allowed to run on its outward or inward traverse within a distance of eighteen inches from any fixed structures which is not part of the machine.

G. Casing of new Machinery: (sec. 28)

All machinery driven by power and installed in any factory must be encased or otherwise effectively guarded as to prevent danger.

H. Prohibition of employment of Women and Children near Cotton openers: (sec. 29)

No woman or child shall be employed in any part of a factory for pressing cotton in which a cotton-opener is at work.

I. Cranes and other lifting Machinery: (sec. 30)

In every factory cranes and other lifting machinery must be of

- (i) good construction, sound material and adequate strength;
- (ii) properly maintained;
- (iii) thoroughly examined by a competent person at least once in every period of twenty months, and a register shall be kept containing the prescribed particulars of every such examination;
- (iv) no such machinery shall be loaded beyond the safe working load which shall be plainly marked thereon.

J. Hoists and Lifts: (sec. 31)

Every hoist and lift in every factory shall be-

- (i) of good mechanical construction, sound material and adequate strength;
- (ii) properly maintained, and shall be thoroughly examined by a competent person at last once in every period of six month and a register shall be kept containing the prescribed particulars of every such examination;
- (iii) every hoistway and liftway shall be sufficiently protected by an enclosure fitted with gates, and the hoist or lift and every such enclosure shall be so constructed as to prevent any person or thing from being trapped between any part of the hoist or lift and any fixed structure or moving part;
- (iv) the maximum safe working load shall be plainly marked on every hoist or lift, and greater than such load shall be carried thereon.

K. Revolving Machinery: (sec. 32)

- (i) In every room in a factory in which the process of grinding is carried on, there shall be permanently affixed to each machine in use a notice indicating the maximum safe working peripheral speed.
- (ii) Effective measure shall be taken in every factory to ensure that the safe working peripheral speed of every revolving vessel, cage, basket, flywheel, pulley disc or similar appliance driven by power is not exceeded.

L. Pressure Plant: (sec. 33)

Where in any factory machinery used in manufacturing process is operated at a pressure above atmospheric pressure, effective measures shall be taken to ensure that the safe working pressure of such part is not exceeded.

M. Floors, Stairs and means of access: (sec. 34)

- (i) In every factory all floors, stairs, passages and gangways shall be of sound construction and properly maintained and if necessary they shall be provided with substantial handrails;
- (ii) There shall be provided and maintained safe means of access to every place at which any person is, at any time, required to work.

N. Pits, sumps, opening in floors, etc: (sec. 35)

In every factory, every fixed vessel, sump, tank, pit or opening in the ground or in a floor shall be either securely covered or securely fenced.

O. Excessive Weights: (sec. 36)

No person shall be employed in any factory to lift, carry or move any load so heavy as to be likely to cause him injury.

P. Protection of Eyes: (sec. 37)

The Government may require that effective screens of suitable goggles shall be provided for the protection of persons employed in a process which involves-

- (a) risk of injury to the eyes from particles or fragments thrown off in the course of the process, or
- (b) risk to the eyes by reason of exposure to excessive light or heat.

Q. Specifications of defective Parts etc: (sec. 38)

The Inspector may direct to furnish such specification or particulars as is necessary to remove dangerous conditions in any building or any part of a building or any part of the ways, machineries or plant.

R. Safety of Building and Machinery: (sec. 39)

The Inspector may direct to adopt any measure as is necessary to remove dangerous conditions of any building and machinery

S. Precautions against Dangerous Fumes: (sec. 41)

- (i) No person shall enter or be permitted to enter any chamber, tank, vat, pit, pipe, flue or other confined space in which dangerous fumes are likely to be.
- (ii) No portable electric light of voltage exceeding twenty-four volts shall be permitted for use inside any confined space.
- (iii) No person in any factory shall enter or be permitted to enter any confined space until all practicable measures have been taken to remove any fumes;
- (iv) Suitable breathing apparatus, reviving apparatus and belts and ropes shall, in every factory, be kept ready for instant use;
- (v) No person shall be permitted to enter in any factory, any boiler furnace, boiler, flue, chamber, tank, vat, pipe or other confined space for the purpose of working or making any examination therein until it has been sufficiently cooled by ventilation etc.

T. Explosive or inflammable Dust, Gas, etc: (sec. 42)

Where in any factory any manufacturing process produces dust, gas, fume or vapor which is likely to explode on ignition, all practicable measures shall be taken to prevent any such explosion by-

- (a) effective enclosure of the plant or machinery used in the process;
- (b) removal or prevention of the accumulation of such dust, gas, fume or vapour;
- (c) exclusion or effective enclosure of all possible sources of ignition.

Above are the substance of the provisions relating to safety of workers employed in any factory. It has also been provided in section 40 that Government may make rules requiring such devices as is necessary to provide safety of workers in any factory.

WELFARE MEASURES

Welfare is a very broad concept. It connotes a condition of well-being, happiness, satisfaction, conservation and development of human resources. The term 'welfare' applied to labour, therefore, refers to adoption of

measures which aim at promoting physical, psychological and general well-being of the working population. The basic aim of welfare measures in an industry is to improve the living and working conditions of workers and their families. Chapter V of the Factories Act, 1965 provides for the following provisions with regard to welfare of workers in a factory:

✓ **A. Washing Facilities: (sec. 43)**

In every factory-

- (i) adequate and suitable facilities for washing and bathing shall be provided and maintained for the use of the workers therein;
- (ii) Separate and adequately screened facilities shall be provided for the use of male and female workers; and
- (iii) Such facilities shall be conveniently accessible and shall be kept clean.

ⓑ **B. First-aid Appliances: (sec. 44)**

- (i) Every factory shall provide and maintain during all working hours first-aid boxes or cup boards and there shall be one such box for every 150 workers ordinarily employed in the factory.
- (ii) The first aid box or cupboard shall contain only the prescribed contents;
- (iii) All such boxes and cupboards shall be kept in charge of a responsible person who is trained in first-aid treatment and who shall always be available during the working hours of the factory;
- (iv) A notice shall be affixed in every work-room stating the name of person in charge of the first-aid box or cupboard.
- (v) Where more than 500 workers are employed, there shall be provided and maintained an ambulance room or dispensary of the prescribed size.

ⓒ **C. Canteens: (sec. 45)**

- (i) Where more than 250 workers are ordinarily employed, an adequate canteen shall be provided for the use of workers.
- (ii) There must be standard in respect of construction, accommodation, furniture and other equipment of the canteen.

D. Shelters, etc: (sec.46)

- (i) In every factory where more than 150 workers are employed, adequate and suitable shelters or rest rooms, and a suitable lunch room with provision for drinking water shall be provided and maintained for the use of the workers;
- (ii) The shelters, rest rooms or lunch rooms shall be sufficiently lighted and ventilated and shall be maintained in a cool and clean condition.

E. Rooms for Children: (sec. 47)

- (i) In every factory, where more than 50 women workers are employed, there shall be provided and maintained a suitable room or rooms for the use of children under the age of six years of such women.
- (ii) Such rooms shall provide adequate accommodation, be adequately lighted and ventilated and maintained in a clean and sanitary condition, and shall be under the charge of women trained or experienced in the care of children and infants.

F. Welfare Officers: (sec. 48)

In every factory where 500 or more workers are employed, the occupier shall employ in the factory, such number of welfare officers as may be prescribed.

WORKING HOURS

The Factories Act, 1965 not only contains measures in regard to health, safety and welfare of the workers but it also contains certain measures to be adopted in the factories in regard to working hours, holidays, compensatory holidays, periods, overtime work etc of the adult workers. The Act restricts the working hours of workers. The detailed provisions are as follows:

A. Weekly Hours: (sec. 50)

- (i) No adult worker shall be required or allowed to work in a factory for more than 48 hours in any week.
- (ii) However, with the over time, the total hours of work of an adult worker shall not exceed 60 hours in any week and on the average 56 hours per week in any year.

B. Daily Hours: (sec. 53)

- (i) No adult worker shall be required to work for more than 9 hours in a day.
- (ii) However, with over time, an adult worker may work in a factory for more than 9 hours, but not exceeding 10 hours in any day.

C. Weekly Holiday: (sec. 51)

No adult worker shall be required or allowed to work in a factory on Sunday or Friday as the case may be, unless-

- (a) he has had or will have a holiday for a whole day, on one of the three days immediately before or after that Sunday or Friday, as the case may be; and
- (b) the manager of the factory has, before that Sunday or Friday, or the substituted day, whichever is earlier-
 - (i) given a notice to the Inspector of his intention to require the worker to work on the Sunday or Friday, as the case may be, and of the day which is to be substituted; and
 - (ii) displayed a notice to that effect in the factory.

D. Compensatory Weekly Holiday: (sec. 52):

'Compensatory holiday is a holiday' which is to be allowed to a worker in lieu of some due holiday on which the worker worked. Section 52 lays down provisions for compensatory holidays.

Where by operation of the provisions of section 51, a worker is deprived of any of the weekly holidays provided for in sub-section (1) of that section, he shall be allowed as soon as circumstances permit compensatory holidays of equal number to the holidays so deprived of.

E. Intervals for Rest or Meal: (sec. 54)

- (i) An adult worker working for more than six hours in any one day must be allowed an interval of at least one hour during that day for rest or meal;
- (ii) An adult worker working for more than five hours in any one day must be allowed an interval of at least half an hour during that day for rest or meal;
- (iii) An adult worker working for more than eight and half hours must be given one hour interval for rest or two intervals of half-an-hour as mentioned above (ii).

F. Spread over: (sec. 55)

As to spread over section 55 provides that the working hours are required to be so spread over that no worker is required to stay on duty for more than ten and a half hours inclusive of his intervals in a day. The Chief Inspector may for reasons to be specified in writing increase the spread over up to eleven and a half hours in a day.

G. Night Shift: (sec. 56)

- (i) A worker who is employed in a factory to work in a night shift and the shift extends beyond midnight then, in that case, the weekly or compensatory holiday to which he is entitled would mean holiday for 24 consecutive hours beginning from the end of his shift; and
- (ii) the following day for such a worker shall be deemed to be the period of twenty-four consecutive hours beginning from the end

of his shift and the hours he has worked after midnight shall be counted towards the pervious day.

✓ **H. Prohibition of overlapping shift:** (sec. 57)

Work shall not be carried on in any factory by means of a system of shifts so arranged that more than one relay of workers is engaged in work of the same kind at the same time.

✓ **I. Extra allowance for overtime:** (sec. 58)

Where a worker works in a factory for more than 9 hours in any day or more than 48 hours in any week, he shall be paid at twice the rate of his ordinary wages for the extra hours of work done by him.

✓ **J. Restriction on double employment:** (sec. 59)

No adult worker shall be employed or allowed to be employed for work in more than one factory on any day, except on permission in writing from the Chief Inspector on such terms and conditions he may impose.

✓ **K. Notice of periods of work for adults and preparation thereof:**
(sec. 60)

- (i) There shall be displayed and correctly maintained in every factory a notice of periods of work for adults showing clearly the period which adult workers may be required to work.
- (ii) The periods shown in the notice shall be fixed beforehand in accordance with provisions of this section and shall be such that workers working during such periods would not be working in contravention of the provision of sections 50, 51, 53, 54 and 55 of the Act.

Chapter V

EMPLOYMENT OF CHILDREN, YOUNG PERSONS AND WOMEN

The Factories Act, 1965 not only contains measures in regard to health, safety and welfare of the workers but it also contains certain special provisions for women and children. It is a common practice to employ children in factories as it is comparatively cheap to employ them. In order to discourage such practice certain prohibitions are laid down in the Act for the employment of children. In order to have an effective check on the employment of children in the factories, the manager of every factory in which children are employed or are allowed to work is required to maintain a register of child workers which should be made available to the Inspector at all times during which the work is carried on in a factory. The Inspector is also empowered to get any person medically examined if he is of the opinion that a person working is a young person and has no certificate of fitness. The provisions of the Factories Act are in addition to protections already offered to the children under the Employment of Children Act, 1938. The following provisions are laid down in the Act with regard to the employment of children, women and adolescents.

Definition of Children, Adolescent and Young Person:

Section 2(c) defines that a 'child' means a person who has not completed sixteen years of age. Section 2(a) defines that an 'adolescent' means a person who has completed sixteen years but has not completed eighteen years of age. On the other hand, sub-section (q) defines that a 'young person' means a person who is either a child or an adolescent. An adult has been defined as a person who has completed eighteen years of age (sec. 2(b)).

Prohibition of Employment of Children:

Section 66 prohibits the employment of children below the age of 14 in factories. It states that no child who has not completed his fourteen years of age shall be required or allowed to work in any factory. This means two things: (i) no child below the age of 14 years can be asked to work; and (ii) no child below the age of 14 years can be permitted to work even if he himself wants to work in any factory. This provision is intended to safeguard the needy children who may like to work at the cost of their health and life. This

prohibition is total in the sense that no employer or occupier can employ a child under the age of 14 year. The prohibition is reinforced under Rule 76 of the Factories Rules, 1979 which states that no child under the age of 14 years shall be permitted within the work rooms and godowns of any factory at any time during which work is carried on. However, this total prohibition is not applicable to children who are 14 years of age or above. Thus children in between 14-16 age limit are allowed to work in factories with restrictions. It is to be emphasised that students should not be confused, as this is likely, with the use of the word 'children' by the law maker in the Act. The law makers have used this word to indicate those children who fall within the age limit of 14-18. They therefore include both the children and adolescent. In other words, they all are young persons as understood under the Factories Act. The group falling within the age limit of 14-16 are children but they are allowed to work in factories under restricted provisions of the Act. On the other hand, the remaining group falling within the age limit of 16-18 are adolescent and are allowed to work in factories under restricted provisions of the Act. Thus the provisions relating to children and young persons are meant to be the same throughout the Act.

The following provisions are laid down in the Factories Act with regard to the employment of children and adolescent, i.e. young persons.

1. Prohibition of Employment of Children: Section 66 prohibits the employment of children below the age of 14 in factories. It states that no child who has not completed his fourteen years of age shall be required or allowed to work in any factory.

2. Child or Adolescent to carry Tokens: Section 67 states that a child who has completed fourteen years of age or an adolescent shall not be required or allowed to work in any factory unless-

- (a) a certificate of fitness granted to him under section 68 is in the custody of the manager of the factory;
- (b) such child or adolescent carries while he is at work a token giving a reference to such certificate.

3. Certificate of Fitness: Section 68 lays down the following rules as the certificate of fitness:

- (i) The certifying surgeons are empowered to certify the age and physical fitness of young persons on the application of young person or his guardian, parent or the manager of the factory.
- (ii) The application must be accompanied by a document signed by the manager of a factory conveying that such young person will be employed in the factory if he is certified to be fit for the work in the factory.
- (iii) The certifying surgeon, after examination may grant the certificate of fitness or renew the same if he is satisfied that the young person has completed 14 years of age, that he is fit for such work in the factory.
- (iv) The surgeon may deny the grant or renewal of such certificate unless he has personal knowledge or has examined the place where the young person has proposed to work.
- (v) The certificate granted will be valid for 12 months only from the date of its issue.
- (vi) The certifying surgeon may revoke any certificate granted or renewed if, he finds that the holder of it is no longer fit to work in the capacity stated therein in a factory.

4. Effect of Certificate of Fitness: Section 69 states that an adolescent who has been granted a certificate of fitness to work in a factory as an adult shall be deemed to be an adult for all the purposes of Chapters VI (working hours) and VIII (leave and holiday with wages).

5. Working hours for Children: Section 70 provides following as the working hours of the children:

- (i) No child or adolescent shall be required or allowed to work in any factory (a) for more than 5 hours in any day; and (b) between the hours of 7 p.m. and 7 a. m.
- (ii) The period of work of all children employed in a factory shall be limited to two shifts which shall not overlap or spread-over more than seven and a half hours each.
- (iii) Each child can be employed only in one relay which shall not be changed except once in thirty days.
- (iv) 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.

6. Notice of periods of work for Children: Section 71 makes it obligatory on the factory owner and manager to display notices relating to the periods of work of children. The notice shall give details regarding the duration and hours of work of children employed in the factory the periods of work shall be fixed beforehand.

7. Register of Child Workers: As per section 72 the manager of every factory in which children are employed shall maintain a register of child workers. The register shall give details of the name of each child worker, nature of the work, group in which he is included, the shift, the relay etc. The register shall be made available to the factory Inspector during working hours.

8. Power to require Medical Examination: Section 74 empowers an Inspector to require medical examination if he is of opinion-

(a) that any person working in a factory without a certificate of fitness is a child or an adolescent, or

(b) that a child or adolescent working in a factory with a certificate of fitness is no longer fit to work in the capacity stated therein.

The Inspector may serve on the manager of the factory a notice requiring that such child or adolescent shall not be allowed to work in any factory until he has been so examined and has been granted a certificate of fitness by the Certifying Surgeon.

9. Prohibition of Employment of Women and Children near Cotton Openers: Section 29 provides that no woman or child shall be employed in any part of a factory for pressing cotton in which a cotton-opener is at work. However, a woman or child may be appointed at the feed-end (situated in a separate room) of the cotton-opener with the permission of the Inspector.

10. Work on or near Machinery in Motion: Section 24 provides that no woman or child shall be allowed in any factory to clean, lubricate or adjust any part of machinery while that part is in motion, or to work between moving parts or between fixed and moving parts, of any machinery which is in motion.

11. Dangerous operations: Section 87 specifies that the Government may prohibit or restrict the employment of women, adolescents or children in any factory where the operation carried on exposes any person employed in it to a serious risk of bodily injury, poisoning, or disease.

12. Annual leave with Wages: Section 78 provides that a child who has completed one year of continuous service in a factory, shall be allowed during the subsequent period of twelve months' leave with wages one day for every fifteen days of work performed by him during the previous period of twelve months.

13. Onus as to Age: Section 106 casts burden upon the accused person to prove that the age of a particular individual is not below prescribed age so as to be relieved from any alleged offence relating to employment of adolescents or children. In this regard a declaration or certificate issued by a surgeon as to the age of a child or young person shall be admissible as evidence.

14. Penalty for using false certificates of fitness: Section 100 provides that whoever knowingly use or attempts to use a false certificate of fitness or allows someone else to use a false certificate of fitness shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to Take fifty or with both.

15. Penalty for double employment of a Child: Section 101 provides that if a child works in a factory on any day on which he has already been working in another factory the parent or guardian of the child or the person having custody or control over him, or obtaining any direct benefit from his wages, shall be punishable with fine which may extend to Take fifty unless it appears to the Court that the child so worked without the consent, connivance or willful default of such parent, or guardian or person.

16. Employment of Young-persons on dangerous Machines: Section 25 provides that no young person shall work at any machine unless he has been fully instructed as to the dangers arising in connection with the machine and the precautions to be observed, and-

(a) has received sufficient training in work at the machine; or

(b) is under adequate supervision by a person who has thorough knowledge and experience of the machine.

Provisions with regard to Women

1. Prohibition of Employment of Women and Children near Cotton Openers: Section 29 provides that no woman or child shall be employed in any part of a factory for pressing cotton in which a cotton-opener is at work. However, a woman or child may be appointed at the feed-end (situated in a separate room) of the cotton-opener with the permission of the Inspector.

2. Further restrictions on the Employment of Women (sec. 65): According to proviso to section 53 an adult worker may work in a factory for more than nine hours but not exceeding ten hours in a day. Section 65 provides that this exemption shall not be granted to a woman. In other words, a woman shall not be required or allowed to work more than 9 hours a day. This section also provides that no women shall be allowed to work in a factory except between 7 a. m. and 8 p. m.

3. Rooms for Children.- Section 47 provides that in every factory, wherein more than 50 women workers are employed, there must be a suitable room or rooms for the use of children under the age of six years of such women. It also provides that such rooms shall provide adequate accommodation, be adequately lighted and ventilated and maintained in a clean and sanitary condition, and shall be under the charge of women trained or experienced in the care of children and infants.

4. Work on or near machinery in motion: Section 24 provides that no woman or child shall be allowed in any factory to clean, lubricate or adjust any part of machinery while that part is in motion, or to work between moving parts or between fixed and moving parts, of any machinery which is in motion.

87. Dangerous Operations: Section 87 specifies that the Government may prohibit or restrict the employment of women, adolescents or children in any factory where the operation carried on exposes any person employed in it to a serious risk of bodily injury, poisoning, or disease.

Chapter VI

ANNUAL LEAVE AND HOLIDAYS WITH WAGES TO WORKERS

Chapter 8 of the Factories Act, 1965 deals 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, then such workers shall be entitled to take advantage of their privileges under such contract or award notwithstanding the provisions of this Chapter. However, they cannot take the benefit of both the Act and the contract of award. They have to choose whichever is more beneficial to them. To this effect section 77 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 to under any other law or any award or agreement or contract or settlement, or custom or usage.

A. Annual Leave with Wages: Section 78 deals with the provisions of annual leave with wages. [The basis of calculation of the annual leave to which a worker would be entitled in a year is the previous calendar year, during which he had worked in a factory. The rules are as follows:

- (a) Every worker who has completed one year of continuous service in a factory, shall be allowed during the subsequent period of twelve months leave with wages for a number of days calculated at the rate of-
 - (i) if an adult, one for every twenty-two days of work performed by him during the previous period of twelve months;
 - (ii) if a child, one day for every fifteen days of work performed by him during the previous period of twelve months.
- (b) A period of leave shall be inclusive of any holiday which may occur during such period.

(c) **Unavailed Leave:** If a worker has not availed of a portion of his leave in one calendar year, such remaining portion of leave shall be carried over and added to the leave to be allowed to him in the succeeding calendar year, subject to the condition that the total number of days to be carried forward would not exceed- (a) in case of an adult 20 days; and (b) in case of a child 30 days.

(d) However, if a worker applies for leave with wages but such leave is refused for any reason, then in that case, leave refused shall be carried forward without any limit.

(e) **Continuous Service:** A worker shall be deemed to have completed a period of continuous service in an establishment notwithstanding any interruption in service during that period due to- (a) any holiday; (b) any leave with wages; (c) any leave with or without wages due to sickness or accident; (d) any maternity leave not exceeding twelve weeks; (e) any period of law-off arising due to failure, refusal or inability of an employer on account of shortage of coal, power or raw material or the accumulation of stock or the break-down of machinery or for any other reason, to give employment to a worker whose name is borne in the muster rolls of his factory; worker whose name is borne in the muster roll of his factory; (f) a strike which is not illegal or a lock-out which is not legal.

(B) **Festival Holidays:** Section 79 provides for festival holidays. It lays down that-

(i) Every worker shall be allowed at least 10 days' festival holidays with wages in a year. The days and dates for such festivals shall be fixed by the occupier or manager in such a manner as may be prescribed.

(ii) A worker may be required to work on any festival holiday, but two days' additional compensatory holidays with full pay and a substitute holiday shall be provided for him in accordance with the provisions of section 51.

(C) **Casual Leave and Sick Leave:** Section 80 prescribes rules relating to casual and sick leave which are as follows:

- (i) Every worker shall be entitled to casual leave with full wages for ten days in a year;
- (ii) Every worker shall be entitled to fourteen days' sick leave on half average wages in a year.
- (iii) The sick leave or casual leave shall not be accumulated and carried forward to the succeeding year.

D. Wages during Leave or Holiday Periods: Section 81 provides for wages during leave or holiday periods which are as follows:

For the leave or holidays allowed to a worker under the provision of this Act, he shall be paid-

- (a) in case of leave with full wages, at the rate equal to the daily average of his full time earnings, including dearness allowance, if any, for the days on which he worked during the month immediately preceding his leave, but excluding any over-time earnings and bonus; and
- (b) in case of leave with half-average wages, at the rate equal to half the daily average of his earnings calculated in the manner provided in clause (a).

The necessity of the above provision lies in the sense that, for example, in case of termination of service of a worker by the occupier, the leave due to him was not availed of by him then he would be entitled to get leave salary at the rate as mentioned above.

E. Payment in advance in certain case: Section 82 provides that any worker who has been allowed leave for not less than four days in the case of an adult, and five days in the case of a child, under section 78 shall, before his leave begins, be paid, the wages due for the period of the leave allowed.

F. Power of Inspector to act for workers: Section 83 provides that any Inspector may institute proceedings on behalf of any worker to recover any sum required to be, but has not been paid by an occupier or manager.

Chapter VII

PENALTIES AND PROCEDURE

In order to protect the interest of workers working in factories, both the occupier and manager of a factory are jointly and severally liable to a fine for an offence under the Act (*Emperor v Jamsbedji*, AIR 1031 Bom. 308). The detailed provisions are laid down in Chapter X for imposing various types of penalties upon the occupier and manager for contravening the statutory obligation imposed upon them under the Act. Not only the 'occupier' and 'manager' are made punishable for offences committed by them but even 'workers' are made punishable for contravening the provisions of the Act in certain cases. The main object of penal provisions in the Act is to require the occupiers, manager and workers to comply with the various provisions of the Act failing which they would expose themselves to fine and punishment as prescribed in the Act. The detailed provisions of the Act with regard to various penalties are as follows:

1. General Penalty for Offences: The general penalty for offences is contained in section 93 of the Act. Under this section any contravention by the occupier or manager of any provision of the Act or Rules would expose them to penalty of fine which may extend to taka one thousand and, if the contravention is continued after conviction, with a further fine which may extend to Taka seventy-five for every day of the period during which the contravention continues.

It is to be noted that the general penalty remains with an offence punishable with fine only; the Act does not make any provision for imprisonment in case of contravention of the provisions. In India there is a provision of imprisonment up to two years as general punishment.

2. Liability of Owner of Premises in certain Circumstances: Section 94 lays down the following rules as to the above:

- (i) Where in any premises separate building are leased to different occupiers for use as separate factories, the owner of the premises shall be responsible for the provision and maintenance of common facilities and service, such as approach roads, drainage, water supply lighting and sanitation.
- (ii) Similarly, where in any premises, independent or self-contained floors or flats are leased to different occupiers for use as

separate factories, the owner of the premises shall be liable as if he were the occupier or manager of a factory, for any contravention of the provisions of health, safety and welfare.

- (iii) Similarly, where in any premise independent rooms with common latrines, urinals and washing facilities are leased to different occupiers for use as separate factories, the owner of the premises shall be liable as if he were the occupier or manager of a factory, for any contravention of the provisions of health, safety and welfare.
- (iv) Where, in any premises, portions of a room or a shed are leased to different occupiers for use as separate factories, the owner of the premises shall be liable for any contravention of the provisions of (a) health and hygiene (except section 15 and 16); (b) safety (except section 24, 25, 29, 36, 37, and 41); and (c) section 43.
- (v) In all the above cases the Chief Inspector shall have power to issue orders to the owner of the premises to comply with the provisions.
- (vi) However, in respect of the provisions of sections 23, 26 and 34 the owner's liability shall be only in so far as such provisions relate to things under his control:

3. Enhanced penalty after Previous Convictions: Section 95 provides that if any person, who has been convicted of any offence punishable under section 93 is again convicted of an offence involving a contravention of the same provision, he shall be punished, on a subsequent conviction, with imprisonment for a term which may extend to six months, or with fine which may extend to Taka one thousand or with both.

4. Penalty for obstructing Inspector: Section 96 provides that whoever willfully obstructs an Inspector in the exercise of any power conferred on him by or under this Act, or fails to produce on demand by the Inspector any register or other document in his custody kept in pursuance of this Act or of any rules made thereunder, or conceals or prevents, any worker in a factory from appearing before, or being examined, by an Inspector, shall

be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to Taka five hundred or with both.

5. Penalty for wrongful disclosure of Information: Section 97 provides that whoever wrongfully publishes or disclose to any person the results of any analysis made under section 92 by way of taking samples shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to Taka five hundred or with both.

6. Restriction on disclosure of information: Section 98 provides that if an Inspector discloses any information (other than in connection with the administration of this Act and with the written consent of the owner of the process or business) relating to any manufacturing or commercial secret which may come to his knowledge in the course of his official duties, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to Taka one thousand or with both.

7. Offences by Workers: Section 99 provides the following as to offences by worker:

- (i) If any worker employed in any factory contravenes any provisions 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 Taka fifty.
- (ii) Where a workers is convicted of an offence punishable as above, the occupier of 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.

8. Penalty for using False Certificates of Fitness: Section 100 provides that whoever knowingly use or attempts to use a false certificate or uses or attempts to use a certificate granted to another person, shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to Taka fifty or with both.

9. Penalty for double employment of a Child: Section 101 provides that if a child works in a factory on any day on which he has already been working in another factory the parent or guardian of the child or the person having custody or control over him, or obtaining any direct benefit from his

wages, shall be punishable with fine which may extend to Five hundred unless it appears to the Court that the child so worked without the consent, connivance or willful default of such parent, or guardian or person.

10. Offences by a Firm, Company, etc: Section 102 provides that where a person guilty of an offence punishable for which the occupier of a factory is punishable-

- (a) is a firm or other body of individuals every partner or member thereof; or
- (b) is a company, other than a private company every director thereof; or
- (c) is a private company, every shareholder thereof shall be deemed to be guilty of such offence:

11. Exemption of Occupier or Manager from Liability in certain Cases: Section 103 provides the following as the above:

- (i) Where the occupier or manager of a factory is charged with an offence under this Act, he shall be entitled upon complaint duly made by him to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge.
- (ii) If, after the commission of the offence has been proved, the occupier or manager of the factory proves to the satisfaction of the Court that he has used due diligence to prevent to the commission of the offence and that the said other person committed the offence in question without his knowledge, consent or connivance, that other person shall be punished for the offence as if he were the occupier or manager and the occupier or manager shall be discharged from any liability for the offence.
- (iii) Where it is made to appear to the satisfaction of the Inspector at any time before the institution of proceeding for an offence under this Act-
 - (a) that the occupier or manager of the factory has used all due diligence to prevent the commission of the offence;
 - (b) that it had been committed without the knowledge, consent or connivance and in contravention of the orders, of, the occupier or manager; and
 - (c) that it has been committed by any other person, the Inspector shall proceed against that other person who shall be punishable for the offence as if he were the occupier or manager.

12. Power of the Court to make Orders: Section 104 empowers the court to pass order against the manager or occupier, after having found him guilty and awarding punishment, to remedy the matter in respect of which the offence was committed within a specified period. The period originally allowed may be extended from time to time on the application of the person convicted. In case of non-compliance of the court order, the manager or occupier shall, on the expiry of such period, be deemed to have committed further offence punishable with imprisonment for a term which may extend to six months, or with fine which may extend to Taka one hundred for every day after the expiry of the said period during which the order has not been complied with, or with both.

13. Presumption as to Employment: Section 105 provides that every person, who is found in a factory at any time, except during intervals for meals or rest, when work is going on or the machinery is in motion, shall until the contrary is proved, be deemed to have been employed in the factory for the purposes of this Act. This presumption is rebuttable and can be rebutted by evidence to the contrary.

14. Onus as to Age: Section 106 casts burden upon the accused person to prove that the age of a particular individual is not below prescribed age so as to be relieved from any alleged offence relating to employment of adolescents or children. In this regard a declaration or certificate issued by a surgeon as to the age of a child or young person shall be admissible as evidence.

15. Cognizance of Offences: Section 107 provides the following regarding cognizance of an offence under the Factories Act:

- (i) Cognizance can be taken by a court of any offence committed under the Factories Act only on a written complaint by the Inspector or by any other person with the previous permission in writing of the Inspector. Thus it is only the Inspector who can file a case for taking cognizance of an offence under the Factories Act. Any other person may file a complaint but it must be under the authority of or with the previous permission of the Inspector.
- (ii) Again, the proviso to section 107 states that no case lying before a Court shall be withdrawn without the prior permission of the Chief Inspector of Factories.
- (iii) No Court inferior to that of a Magistrate of the First Class shall try an offence under this Act or any rules or order made thereunder.

ATHORITIES UNDER THE ACT

Chapter II of the Factories Act, 1965 sets a number of authorities who are made responsible to enforce the provisions of the Act and rules framed thereunder. The Government is empowered to appoint Chief Inspector and Inspectors. The Government is also empowered to appoint qualified medical practitioners as certifying surgeons for the examination of persons engaged in the factories. They all are deemed to be public servants ensured with the power to enter any place which is used as factory, to examine the premises, plant and machinery, to require the production of any register or document relating to the factory.

The Chief Inspector and Inspectors

The main responsibility under the scheme of the Act lies on the inspecting authorities to enforce the provisions of the Act and Rules framed thereunder in the factories and launch prosecution against factory owners or occupiers in case of any breach or default. For this purpose the Government has been empowered to appoint one Chief Inspector for the whole country and as many Inspector as it thinks fit under section 9 of the Factories Act, 1965.

The Chief Inspector

- (i) Under section 9 of the Act the Government may appoint, by official Gazette notification, any person to be the Chief Inspector for the whole country.
- (ii) The Inspector shall exercise all powers given in the Factories Act. However, in addition to those powers, he shall have powers of an Inspector throughout the country.
- (iii) The Chief Inspector will have powers of supervision and control over all the Inspectors appointed under section 9.
- (iv) The Chief Inspector shall be deemed to be a public servant within the meaning of a section 21 of the Penal Code (Act XL V of 1860).
- (v) The Chief Inspector has the power to delegate his own power. The proviso to section 9(1) prescribes that the Chief Inspector

may authorise any other officer or officers under him to exercise all or any of his powers for such area or areas as may be specified by him.

The Inspectors

- (i) The Government may, by notification in the official Gazette, appoint as many persons as it thinks fit, to be Inspectors for the purposes of this act within such local limits as it may assign to them respectively.
- (ii) The Government may also, by notification as aforesaid, appoint such public officers as it thinks fit to be Inspectors for all or any of the purposes of this Act within such local limits as it may assign to them respectively.
- (iii) Every Deputy Commissioner shall be an Inspector for his district.
- (iv) Inspector shall be deemed to be a public servant within the meaning of a section 21 of the Penal Code (Act XL V of 1860) and the Inspectors appointed under 9 shall be officially subordinate to such authority as the prescribed notices are to be sent.

Disqualification for Appointment:

- (i) No person shall be appointed to be an Inspector who is or becomes directly or indirectly interested in a factory or in any process or business carried on therein or any patent or machinery connected therein.
- (ii) No person appointed as an Inspector shall continue to hold office who is or becomes directly or indirectly interested in a factory or in any process or business carried on therein or any patent or machinery connected therein.

Power of the Inspector

According to section 10 of the Act an Inspector is vested with the following powers which he may exercise within the local limits under his control.

- (1) An Inspector may, within the local limits of his control:

- (a) enter, inspect and examine any place which is, or which he has reason to believe to be, used as a factory or capable of being declared to be a factory. He may be accompanied by such assistant, who are in the service of the Government or any local authority as he thinks fit.
 - (b) require the production of the registers, certificates, notices and documents kept in pursuance of this Act, and inspect, examine and copy any of them;
 - (c) make such examination and enquiry as may be necessary to ascertain whether the provisions of this Act and other laws for the time being in force relating to health and hygiene, in respect to a factory and any person employed in a factory are complied with.
 - (d) require any person whom he finds in a factory to give such information as it is in his knowledge relating to the actual occupier of the factory;
 - (e) examine, in respect of matters pertaining to this Act, every person whom he finds in a factory, or whom he has reasonable cause to be or to have been within the preceding two months employed in a factory. However, no person shall be required to answer any question or to give any evidence tending to incriminate himself; and
 - (f) require every person so examined to sign the record to answer any question or to give any evidence tending to incriminate himself;
- (2) The occupier of every factory, his agents and servants, shall furnish the means required by an Inspector as necessary for an entry, inspection, examination, enquiry, the taking of samples, or otherwise for the exercise of his powers under this Act, in relation to that factory.
- (3) An Inspector may seize any record, register or other documents of any factory, relevant to the enforcement of the provisions of this Act, as he may consider necessary in the prescribed manner for the purpose of carrying out his functions under this Act.

✓ **Penalty for obstructing Inspector:** Section 96 provides that whoever willfully obstructs an Inspector in the exercise of any power conferred on him by or under this Act, or fails to produce on demand by the Inspector any register or other document in his custody kept in pursuance of this Act or of any rules made thereunder, or conceals or prevents, any worker in a factory from appearing before, or being examined, by an Inspector, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to Taka five hundred or with both.

Filing a Case under the Factories Act, 1965:

- (i) Section 107 provides that it is only the Inspector who can file a case for taking cognizance of an offence under the Factories Act. Any other person may file a complaint but it must be under the authority of or with the previous permission of the Inspector.
- (ii) Again, the proviso to section 107 states that no case lying before a Court shall be withdrawn without the prior permission of the Chief Inspector of Factories.

Court

Section 107 provides the following regarding cognizance of an offence by the court:

- (i) Cognizance can be taken by a court of any offence committed under the Factories Act only on a written complaint by the Inspector or by any other person with the previous permission in writing of the Inspector.
- (ii) No Court inferior to that of a Magistrate of the First Class shall try an offence under this Act or any rules or order made thereunder.

Certifying Surgeons

Section 11 of the Act empowers the Government to appoint qualified medical practitioners as Certifying Surgeons for the purposes of this Act. These surgeons are appointed to discharge duties within such local limits or for such factory or class or description of factories as may be assigned to them respectively.

Disqualification:

No person shall be appointed to be a Certifying Surgeon, or having been so appointed, continue to exercise such powers:

- (i) who is or becomes the occupier of a factory;
- (ii) who is or becomes directly or indirectly interested therein or in any patent or machinery connected therewith;
- (iii) who is otherwise in the employment of the factory.

Powers and Duties of the Certifying Surgeons:

(3) The Certifying Surgeon shall carry out such duties as may be prescribed in connection with--

- (a) examination and certification of young persons under this Act;
- (b) examination of persons engaged in factories in such dangerous occupations or processes as may be prescribed.
- (c) such medical supervision as may be prescribed of any factory or class or description of factory where--
 - (i) cases of illness having 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 substance used therein or by reason of the adoption of any new manufacturing process or any new substance for use in a manufacturing process, there is likelihood of injury to the health of the workers employed in that manufacturing process; and
 - (iii) young persons are or are about to be, employed in any work which is likely to cause injury to their health.