

New Labour Codes of India
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Lecture 48
Working conditions, Welfare Provisions and Liability of Occupier

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Dear students, today we are going to discuss the working conditions, welfare provisions and also to some extent the liability of occupiers in factories.

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CONCEPTS COVERED

- Working Conditions
- Liability of Occupier
- Welfare Provisions

And we will see the provisions in the old Factories Act and also the new Occupational Health and Safety Code. These provisions are very important with regard to the safety conditions and also other welfare provisions and we can see these, liability of the occupier is also very clearly mentioned in the provisions.

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KEYWORDS

- Health safety
- Working conditions
- Welfare provisions
- Responsibility of employer
- Welfare facilities

In the last class also we were talking about the health and safety in a particular factory.

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❑ Health and Safety of Workers



It is very important for the purpose of maintaining the health and safety of workers.

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- **Health Safety, working conditions and welfare provisions under Factories Act, 1948 - Repealed**

And to some extent, the liability of the employees is also very strict in nature.

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❑ **Liability of Occupier**

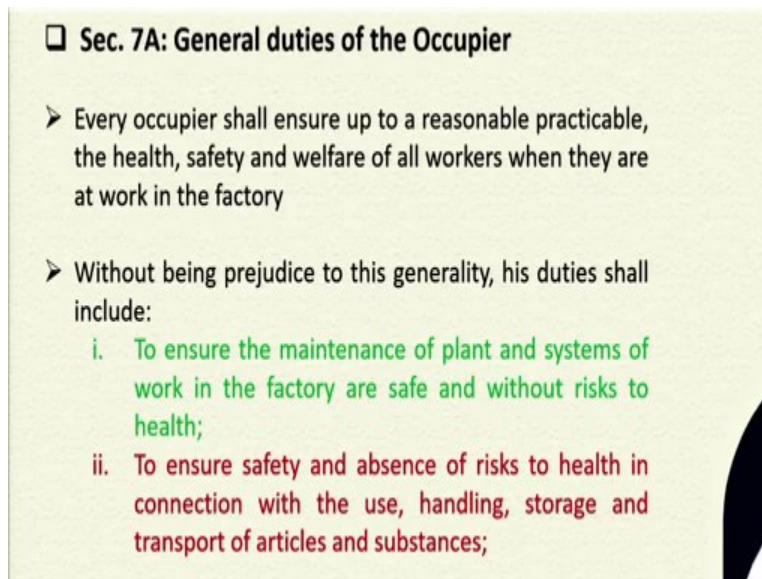
- Latrines, urinals and washing facilities in so far as the maintenance of the common supply of water for these purposes is concerned;
- Fencing of machinery
- Safe means of access to floors or flats and maintenance of cleanliness
- Precaution case of fire
- Maintenance of hoists and lifts;
- Maintenance of common facilities.

And we will see one by one, first, we will see what are the duties and liabilities of the occupier with regard to these health and safety and other facilities to be provided to the workers. So, the old provisions say that it is the duty of every employer to provide a number of separate latrines and urinals and washing facilities for women and men

workers and also the common supply of water is to be provided to these particular facilities.

And we talked about the fencing of machinery also, and safe means of access to floors, flats, and maintenance of cleanliness in the floor and also walkways are also very important. And in case of fire, also sufficient safety mechanism is to place. And specifically, the maintenance of hoists and lifts are to be ready at all times. And the maintenance of common facilities is also to be taken into consideration for keeping the overall safety and also the cleanliness of these factories.

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□ **Sec. 7A: General duties of the Occupier**

- Every occupier shall ensure up to a reasonable practicable, the health, safety and welfare of all workers when they are at work in the factory
- Without being prejudicial to this generality, his duties shall include:
 - i. To ensure the maintenance of plant and systems of work in the factory are safe and without risks to health;
 - ii. To ensure safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances;

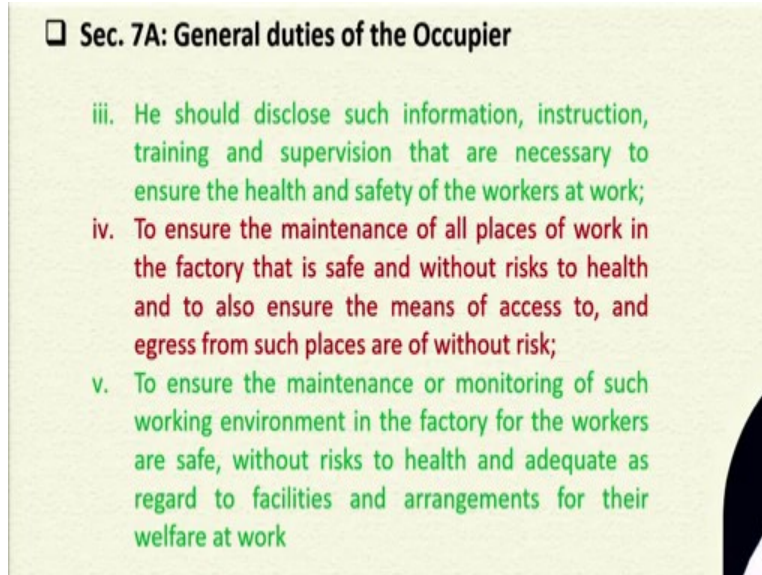
And Section 7A specifically talks about the general duties of the occupier. So, every occupier shall ensure that it is a reasonable and practicable level of health and safety and welfare of all workers in different means in a factory. So, this is very particular and important with regard to maintaining a healthy working environment as well as the personal health of workers in a particular factory.

And their duties should not generally be prejudicial to the health and safety of the workers. So, specifically to ensure the maintenance of plant systems of work in the factory as safe and without risk to the health of workers. And in order to ensure the safety and absence of risk to health in connection with the use, handling, storage and transport

of articles and substances also is to be handled in a safe way. So, the occupier or the employer should take care of this.

In the last class also we discussed who an occupier is. An occupier of a factory is one who is responsible or has ultimate control over the affairs of the factory, he is the occupier. He can be the manager, he can be a director, he can be an agent. So, the occupier is liable to provide all these facilities or specifically in focus on the safety and welfare of the workers.

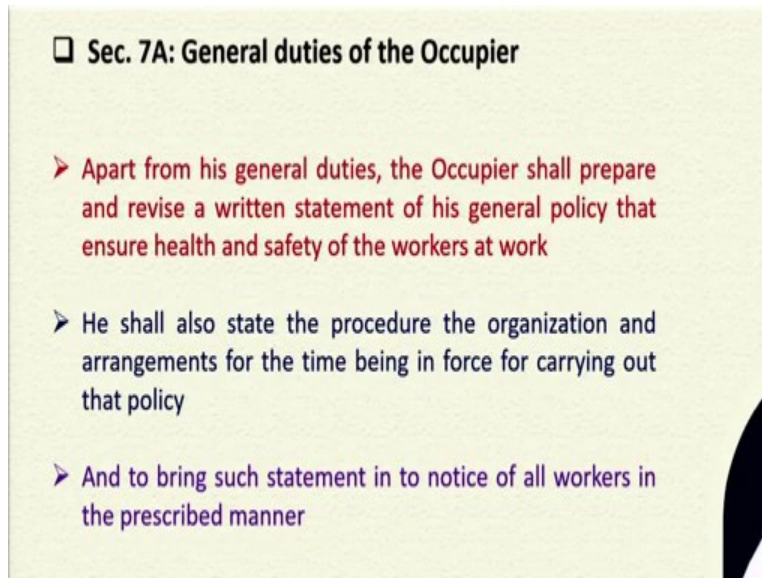
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And also, it is provided that he should disclose information and also instruction, training, and necessary supervision to the workers so that the workers can keep their health and safety at a supreme level and also to ensure the maintenance of all places of work in the factory that is safe and without risk to health and to also ensure the means of access to and egress from such places are of without risk.

So, basically, you can see that the prime duties of the occupier include at that even one by one to see that these workers are free from any kind of health and occupational hazard risk. And also, the monitoring of the working environment in the factory for the workers are safe and without risk to health and adequate facilities and arrangement for their welfare at work, this also to be taken into consideration.

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□ **Sec. 7A: General duties of the Occupier**

- Apart from his general duties, the Occupier shall prepare and revise a written statement of his general policy that ensure health and safety of the workers at work
- He shall also state the procedure the organization and arrangements for the time being in force for carrying out that policy
- And to bring such statement in to notice of all workers in the prescribed manner

And apart from the general duties, you can see that the occupier should prepare a written statement as a general policy that ensures the health and safety of the workers at the factory, and this particular document should be published. So, there must be a policy document of the factory with regard to the general safety and health of workers.

And also the state, the process and procedure in the organization and arrangements for carrying out this particular policy, the implementation of policy, there must be some kind of arrangements for the implementation of these policies. And these policies must be brought to the notice of all workers in an appropriate manner.

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❑ Safety Officer

- Section 40-B empowers the State Government for directing a occupier of factory to employ such number of Safety Officers as specified by it where more than 1,000 workers are employed or where manufacturing process involves risk of bodily injury, poisoning or disease or any other hazard to health of the persons employed therein.
- The duties, qualifications and working conditions may be prescribed by the State Government.

And as a part of keeping this safety on a very high pedestal, so the occupier must appoint safety officers. So, the safety officers must appoint where more than 1,000 workers are working or employed during the preceding calendar year. And at the same time, the manufacturing process involves a risk of bodily injury, poisoning or disease or any other hazard to the health of the person employed.

So, this safety officer is a trained personnel who can handle the safety issues and the qualifications and experiences have to be prescribed by the respective State governments. So, through the notification, so a qualified person is appointed in the factory as Safety Officer.

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□ **BHEL v. B.K. Vijay, 2006 (108) FLR 113**

- **Observation** – *“A safety officer is appointed for the purpose of Factory Act only. A safety officer in terms of Rule 5 is merely given the status of a departmental head or a senior executive in the factory. Such status is conferred because he would be posted under the chief executive of the factory and would report only him. As regards safety aspect, other officers would be bound by his direction.”*

So, in one of the cases where, BHEL is a public sector undertaking of the government of India versus B. K. Vijay, in 2006, the court observed what is the role of a Safety Officer. So, the court said a safety officer is appointed for the purposes of the Factories Act only. A safety officer in terms of Rule 5 is merely given the status of a departmental head or a senior executive in the factory.

Such status is conferred because he would be posted as the Chief Executive of the factory and would report only to him. As regards the safety aspect, other officers would be bound by his direction. So, the post of Safety Officer is very important as far as a factory is concerned. So, this was highlighted by the court in this particular case. So, it is mandatory for the occupier to appoint a safety officer when more than 1,000 workers are working at a time.

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□ *Debesh Kumar Bhattacharyya v. Rishra Sheel Ltd,*
(1995) 86 FLR 595 (Cal).

➤ **Observation** – *“Issuance of notification is an indispensable condition for employment of safety officer in terms of section 40B in both the cases mentioned in the section.”*

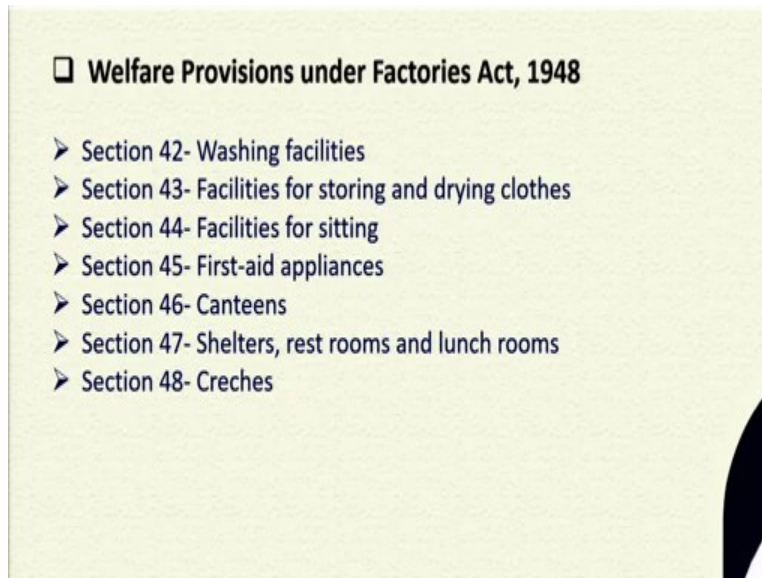
So, we can see another case, Debesh Kumar Bhattacharyya versus Rishra Sheel Limited. In this particular case, the court said that issuance of notification is an indispensable condition for the employment of a safety officer in terms of section 40B in both the cases mentioned in this section. So, that means, so the appointment of the safety officer must be notified.

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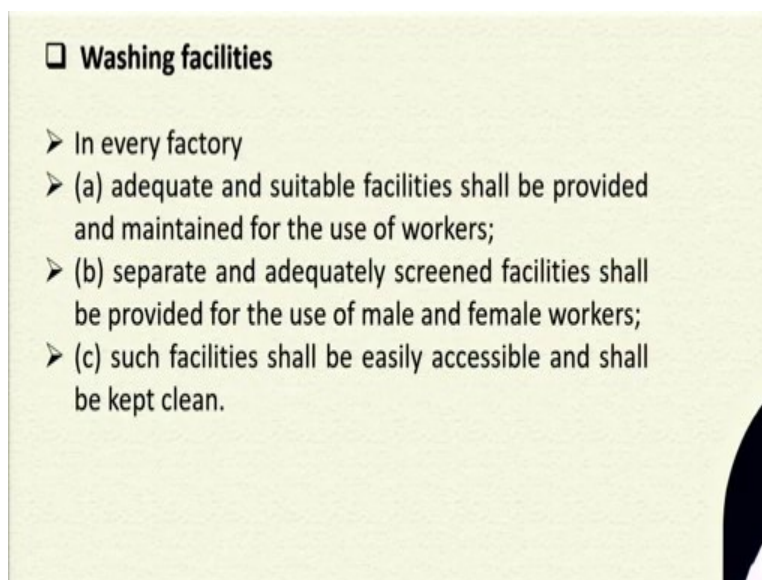
So, it is a statutory requirement to appoint a safety officer in accordance with the Factories Act because there are so many risks involved in a particular factory. So, there must be a safety officer in a factory where more than 1,000 employees are working.

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Now, we will see what are the welfare provisions. Welfare provisions are to be provided by the employer in factories under the old Act as well as the new Act. So, simply, we can say that these are the washing facilities, facilities for storing and drying clothes, facilities for sitting, first aid, appliances, canteens, shelters and restrooms and creches, we will see one by one.

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So, the provision says that washing facilities should be provided in every factory. So, this is for the use of workers and there must be separately adequately screened facilities, that

shall be provided for male and female workers for providing privacy to them. So, washing facilities, and easily accessible, and they must be kept clean. So, the washing facility should be provided and it should be kept clean by the employer. So, one is the washing facilities.

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Facilities for storing and drying clothing:

- In every factory provision for a suitable place should exist for keeping clothing not worn during working hours and for the drying of wet clothing.

And the second one is facilities for storing and drying clothes. So, because if it is a factory, there may be constant water spraying and that kind of worker may be available. So, in that case, there must be a sufficient facility for, after the duty, there must be a facility for storing and drying the clothes. So, there must be provision for a suitable place to keep clothes not worn during working hours and for drying wet clothing after work. So, there must be a common facility for drying of clothes after work.

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Facilities for sitting

- In every factory, suitable arrangements for sitting shall be provided and maintained for all workers who are obliged to work in a standing position so that the workers may take advantage of any opportunity for rest that may occur in the course of work.

And then facilities for sitting. So, in every factory, suitable facilities should be made, provided for the workers who are obliged to work in a standing position. So that the workers may take advantage of this opportunity for rest and occur during the course of work. So, no worker should be placed to stand there for 8 hours and do his work, So, this sitting facility must be provided in a factory. So, even though they are maintaining machinery and standing is required, in between the rest times they will be able to sit. So, sitting facilities may be provided to the people, to workers in a particular factory.

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First aid

- Under the Act, the provisions for first-aid appliances are obligatory.
- At least one first-aid box or cupboard with the prescribed contents should be maintained for every **150 workers**.
- It should be readily accessible during all working hours.

First aid appliances are a mandatory provision because any time injury can happen to the workers. So, the provision of first aid appliances is obligatory. And also at least one first aid box or cupboard, a particular content or a box with a first aid appliance should be there where more than 150 workers are working. So, it should be readily accessible to any workers during working hours. So, it is not only the first aid box which is available, that must be readily available to all the workers so that if there is, in case of an injury, it is readily accessible to the workers so that first aid can be done.

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Canteens

- In every factory employing more than **250 workers**, the State government may make rules requiring that a canteen or canteens shall be provided for the use of workers.

Every factory, under the old Factories Act, employs more than 250 workers, so there must be a mandatory canteen. Now, the number has been changed. So, the canteen facilities are also mandatory for the workers as a welfare measure. So, 250 and more, that is the old Act says, 250 or more workers, the canteen facilities to be provided to the workers.

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❑ *Ferro Alloys Corporation Ltd. v. Govt. of Andhra Pradesh Labour Employment and Technical Education (Labour II) Deptt, 2003 (96) FLR 160*

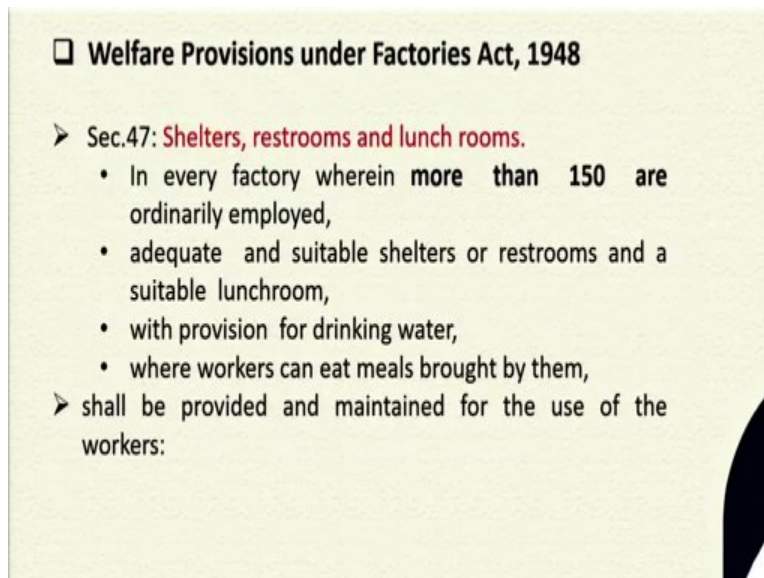
- **Observation** – *“there is nothing in section 46 of the Factories Act, 1948, which provides for the mode in which the specified establishment must set up a canteen where it is left to the discretion of the concerned establishment to discharge its obligation of setting up a canteen either by way of direct equipment or by employment of contractor, it cannot be postulated that in the latter event, the persons working in the canteen would be the employees of the establishment.”*

So, we can see that in Ferro Alloys Corporation Limited versus Government of Andhra Pradesh Labour Employment and Technical Education, 2003 case. In this particular case,

the court observed that there is nothing in section 46 of the Factories Act, 1948 which provides for the mode in which the specified establishment must set up a canteen where it is left to the discretion of the concerned establishment to discharge its obligation of setting up a canteen either by way of direct equipment or by the employment of a contractor, it cannot be postulated that in the latter event, the persons working in the canteen would be employees of the establishment.

So, the court made it very clear that a canteen employee, a canteen employee working through a contractor cannot be considered as a factory worker. He will not come under the definition of a factory worker, because, first of all, he is working through a contractor, and secondly, it is up to the contractor to decide the way in which he wants to comply with the provisions of a canteen under the Factories Act, 1948. So, the court very clearly said, a person who is working through a contractor in a canteen of a factory cannot be considered as a workman under the Factories Act. So, the consequence is that he is not eligible to get any benefits under the Factories Act.

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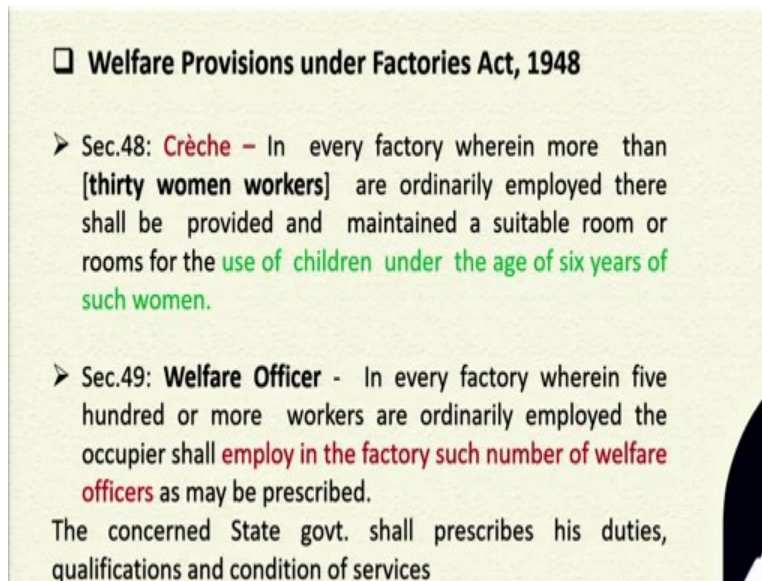
□ **Welfare Provisions under Factories Act, 1948**

- **Sec.47: Shelters, restrooms and lunch rooms.**
 - In every factory wherein **more than 150** are ordinarily employed,
 - adequate and suitable shelters or restrooms and a suitable lunchroom,
 - with provision for drinking water,
 - where workers can eat meals brought by them,
- shall be provided and maintained for the use of the workers:

So, other welfare provisions which include Section 47 of the old Act, shelters, restrooms, and lunch rooms, so every factory wherein more than 150 workers are working ordinarily, so suitable shelters or restrooms and suitable lunch rooms be provided. And there must be a provision for drinking water so that the workers can sit and eat the meals

which they have brought from their homes. And also this particular room to be maintained very cleanly. So, the cleanliness should be there in this particular room, it should be well maintained. So, shelters, restrooms and lunch rooms with drinking water facilities should be provided by the employer.

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❑ **Welfare Provisions under Factories Act, 1948**

- Sec.48: **Crèche** – In every factory wherein more than [thirty women workers] are ordinarily 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.
- Sec.49: **Welfare Officer** - In every factory wherein five hundred or more workers are ordinarily employed the occupier shall employ in the factory such number of welfare officers as may be prescribed.

The concerned State govt. shall prescribe his duties, qualifications and condition of services

And other welfare provisions include crèche. So, if every factory wherein more than 30 women workers are ordinarily employed so the factory should maintain a crèche for children under the age of 6 years. So, now the new Act, the number from 30 to 50, has been increased. So, if there are more than 50 women workers, a crèche is to be provided. It is the duty of the employer to provide this crèche facility.

And also Section 49 provides that there must be a welfare officer. So, we talked about safety officers, like the safety officer, there must be a welfare officer to be appointed when more than 500 employees are working in a particular factory. So his qualifications are to be provided by the State governments from time to time, so his prescribed duties and qualifications and the conditions of service are to be prescribed by the State governments from time to time. So, there must be a welfare officer to be appointed, who is a qualified person, to be appointed when 500 or more workers are working under the old Act.

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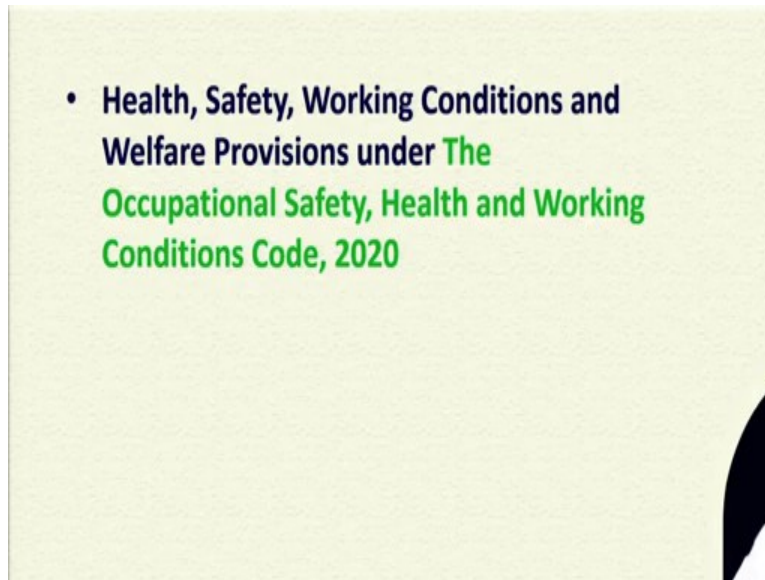
□ *Shyam Vinyals Ltd. v. T. Prasad, (1993) 83 FJR 18 (SC)*

➤ **Observation** – *“An Assistant Personnel Officer of a factory cannot be held that he was in fact appointed as a Labour Welfare Officer simply because as an Assistant and Personnel officer he was looking after the problems of the labourers and the welfare of the labourers and when the number of labourers in the concerned factory was less than 100 and there was no statutory requirement to appoint a Labour Welfare Officer.”*

So, here we can see that the, what is the role of this particular welfare officer like the safety officer. In *Shyam Vinyals Limited versus T. Prasad, 1993*, Supreme Court case. The court observed an assistant personal officer of a factory cannot be held that was in fact appointed as a Labour Welfare Officer, because, simply because he is acting as a personal officer, looking after the problems of labourers and the welfare of the labours and when the number of labours in the concerned factory was less than 100 and there was no statutory requirement to appoint a Labour Welfare Officer.

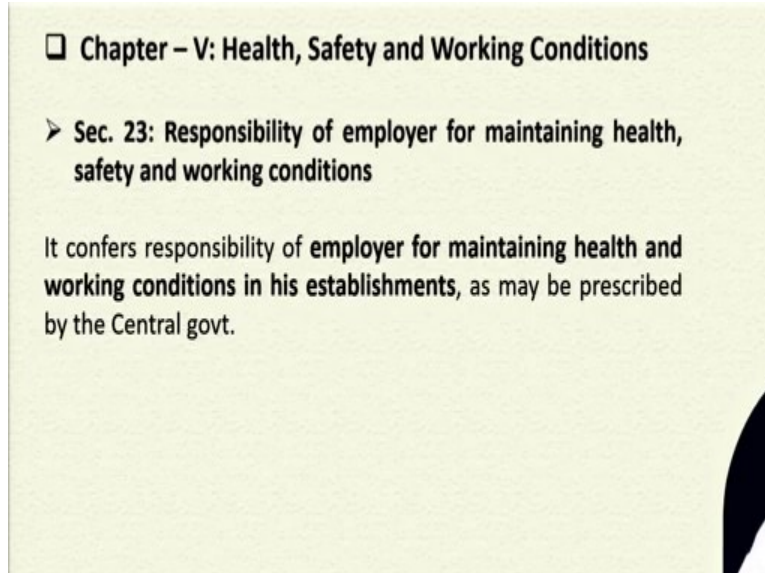
So, if the required number of workers is not there in a factory, as per the requirement of the Factories Act, it is not mandatory to appoint a Labour Welfare Officer. An assistant personal officer cannot be considered as a Labour Welfare Officer. So, the Labour Welfare Officer must be appointed if there are more than 100 workers working in a calendar year, as per the sections of the Factories Act. So, like the safety officer, the welfare officer is also to be appointed when there is more than the required number working in a particular factory.

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Now, we will see similar provisions in the Occupational Safety, Health and Working Conditions Code, 2020.

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So, here, we can see that similar provisions are there in the new code as well. Section 23 says that it is the responsibility of the employer to maintain health, safety and working conditions. So, within the establishment, this particular duty is cast upon the employer.

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➤ **Sec. 23: Responsibility of employer for maintaining health, safety and working conditions**

Without prejudice to his generality of power conferred u/s. 23(1), the Central govt may with respect to all or any of the following matters, can make rules accordingly:

1. Cleanliness and hygiene;
2. Ventilation, temperature and humidity;
3. Environment free from dust, noxious gas, fumes and other impurities;
4. Adequate standard of humidification, artificially increasing the humidity of the air, ventilation and cooling of the air in work rooms;
5. Potable drinking water;

So, what are those duties? So, we have already mentioned these duties in the Factories Act. So it is taken from the Factories Act, like cleanliness and hygiene, ventilation, temperature and humidity in rooms, environment, that is, the working environment of the factory free from dust, noxious gas, fumes and other impurities. Adequate standard of humidification, artificially increasing the humidity of the air, ventilation and cooling of the air in working rooms, and portable drinking water to be provided.

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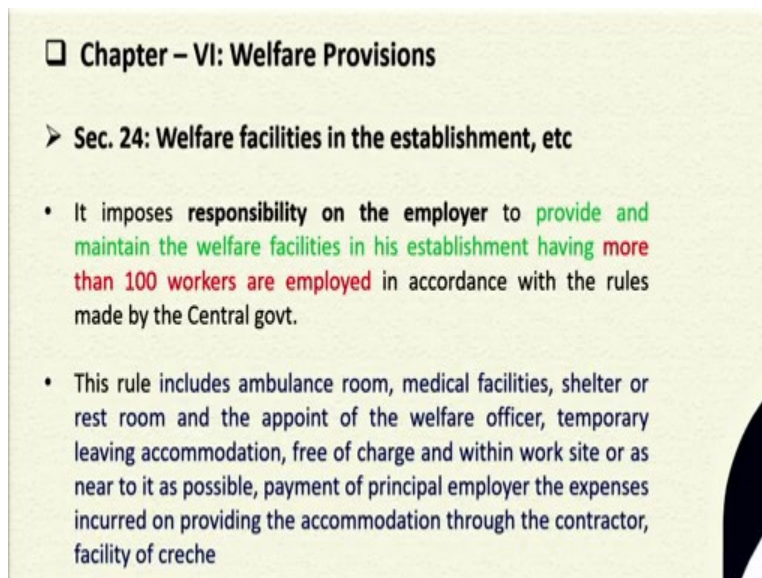
➤ **Sec. 23: Responsibility of employer for maintaining health, safety and working conditions**

6. Adequate standards to prevent overcrowding and to provide sufficient space to employees or other persons;
7. Adequate lighting;
8. Sufficient arrangement for latrine and urinal accommodation to male, female and transgender employee separately and maintaining hygiene therein;
9. Effective arrangements for treatment of wastes and effluents; and
10. Any other arrangement which the Central govt

And adequate standards to prevent overcrowding and to provide sufficient space to the employees or other personnel. So, overcrowding of the factory is to be avoided. Adequate lighting should be there. Sufficient arrangement for the latrine, urinals, accommodations to male, female and transgender employees separately and maintaining hygiene therein.

So, the addition which we can find is the transgender category is also included in the new Occupational Safety Code. And effective arrangements for the treatment of waste and effluents and any other arrangement prescribed by the Central government from time to time. So, we can see that the occupier cast a duty upon the occupier to maintain the basic minimum facilities and also the welfare facilities.

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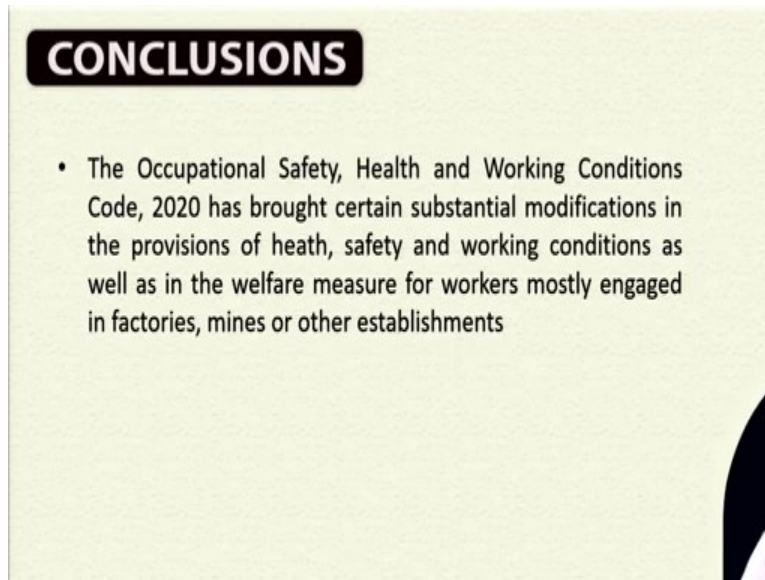
□ Chapter – VI: Welfare Provisions

➤ Sec. 24: Welfare facilities in the establishment, etc

- It imposes responsibility on the employer to provide and maintain the welfare facilities in his establishment having more than 100 workers are employed in accordance with the rules made by the Central govt.
- This rule includes ambulance room, medical facilities, shelter or rest room and the appoint of the welfare officer, temporary leaving accommodation, free of charge and within work site or as near to it as possible, payment of principal employer the expenses incurred on providing the accommodation through the contractor, facility of creche

Now, we will see what welfare facilities are prescribed under Section 24. The employer provides and maintains welfare facilities where more than 100 workers are employed. So, here, you can see that the rules include ambulance room, medical facilities, shelter or restroom, the appointment of a welfare officer, temporary leaving accommodation, free of charge and within the work site or as near as possible, and the payment of principal employer the expenses incurring on providing accommodation through the contractor, facility of crèche, etc. So, almost the same provisions are accommodated, and more duties are cast upon the employer to provide basic welfare facilities.

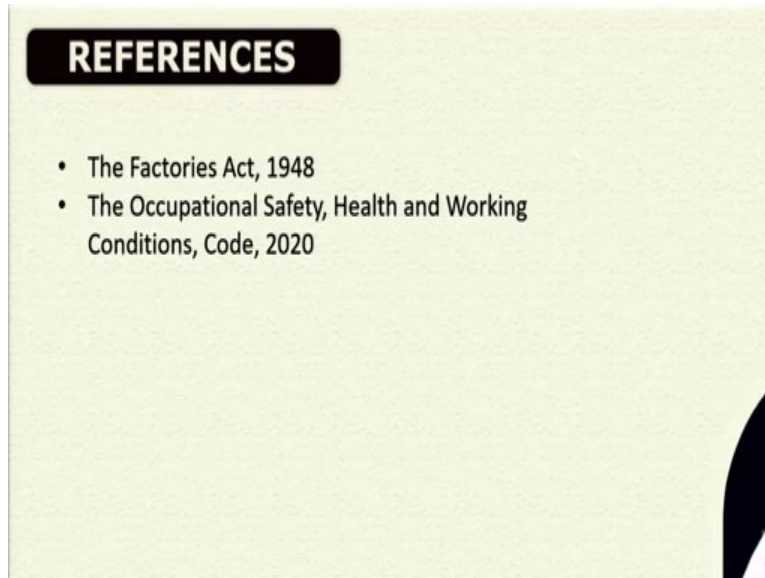
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So, here we can see that the basic safety and welfare measures are to be provided by the employer in the Factories Act and some more categories are also included in the new code. So, we can say that there is a substantial modification from the earlier Act, 1948 Act with regard to the safety and also the welfare measures of the workers, and also it is not only the factories but also applicable to the mines as well, these provisions apply to the mines as well.

So, a duty is cast upon the employer to provide these safety measures as well as welfare measures within the factory. And also, this new code is going to be implemented very soon, then these provisions are going to be in effect, which is in favour of the workers who are working in the factory.

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Thank you.