

New Labour Codes of India
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Lecture 51

The Meaning of Factory, Manufacturing Process, Approval and Licensing of Factories

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Dear students, this week, we are going to discuss the various aspects of the factory and also some of the interlinkage and cross-sectional permissions with regard to the Occupational Safety Code and other codes.

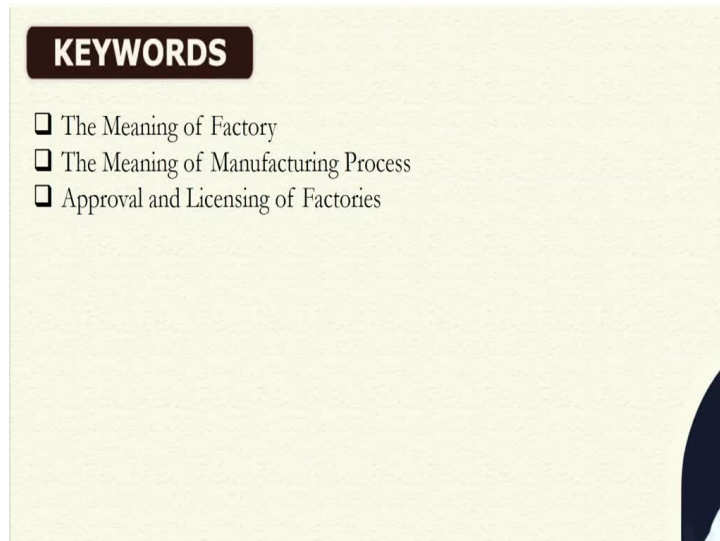
So today we are going to discuss what is the factory and what are the definitions of the manufacturing process specifically, there is a number of decisions by various courts, and what is the jurisprudence, what is the meaning of factory along with the manufacturing process? And also, we are going to see what permissions are required for a particular factory, and also the licensing procedures of factories which we are going to see.

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And factory, everybody knows that a factory is defined under the Factories Act, the old Act and under the new Act also.

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History

- ❑ First *cotton* factory was set up in Bombay in 1854, followed by many factories for *iron* and *steel*, *jute*, *paper*, *leather* etc. set up in various parts of the country by the end of the Century.
- ❑ **Major Moore**, Inspector-in-Chief of the Bombay Cotton Department, in his Report in 1872-73 was the first person to raise the question of provision for legislation to regulate the working condition in factories; the 1st Factories Act was enacted in 1881.
- ❑ **Factories Act, 1881** was enacted as a result of efforts of Indian social workers and manufacturers of Lancashire for different reasons
 - ❑ Amended in 1891, 1911, 1922
- ❑ **Factories Act, 1934** was enacted on recommendation of **Royal Commission on Labour**
 - ❑ Amended many times till 1947

So the Act says clearly that some kind of manufacturing activities should be there in a particular factory. So if we look into the history of the development of the Factories Act, in the first class itself, we have gone through the historical aspects of the development of factories as well as trade unionism. So we can see that the first factory was set up in Bombay in 1854, and then various factories all over the country, whether it is steel or it is paper, it is leather, cotton mills etc. So cotton mill factories are established all over the country, whether it is in Nagpur, or it is in Madras or in other parts of the country at that point of time.

And you can see that there was an Inspector in chief of factories during the British time. So the first report by Major Moore in 1872-73, raised some questions to regulate the working time, working conditions, and also other conditions of work and this was not to favour the workmen but to favour the British to maximum production. And finally, the Factories Act was passed in 1881. So but at the same time, this 1881 code regulated working hours and also the conditions of work.

Then you can see that the Act was submitted in n number of times. And then the Factories Act 1934 was enacted mainly on the recommendation of the Royal Commission on labour. Then finally, it was amended in 1947 and the Factories Act was passed in 1948.

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Factories Act, 1948 - Repealed

Objective:

- An Act to **consolidate** and **amend** the law **regulating labour in factories.**

- To Secure working conditions in the Factories
- To Ensure that the basic minimum requirements for health
- Welfare of the Factory Workers were provided
- To Regulate the working hours, leave, holidays, employment of children and women and young persons

So the Act says to secure working conditions in factories, to ensure the basic minimum requirements of health. So welfare of the factory workers to regulate the working hours, leave holidays, and employment of children, women, and young persons. So working hours then the welfare measures, so minimum requirements of health and working conditions in a factory.

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Occupational Safety, Health and Working Conditions Code, 2020

Occupational Safety, Health and Working Conditions Code, 2020

- An Act to **consolidate** and **amend** the laws **regulating the occupational s** **health and working conditions** of the **persons employed in an establish** and for matters connected therewith or incidental thereto.

Now, we can see that these provisions are in the new code which is Occupational Safety, Health and Working conditions Code 2020. If you look into the code, so we already saw the objectives of this particular code many times.

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Factory

- 2(w) “**factory**” means any **premises** including the precincts thereof—
 - i. whereon **20 or more workers** are **working, or were working on any day of the preceding 12 months**, and in any part of which a **manufacturing process is being carried on with the aid of power**, or is ordinarily so carried on; or
 - ii. whereon **40 or more workers** are **working, or were working on any day of the preceding 12 months**, and in any part of which a **manufacturing process is being carried on without the aid of power**, or is ordinarily so carried on,but **does not include a mobile unit belonging to the armed forces of the Union, railways running shed or a hotel, restaurant or eating place:**

And factory has been again defined under this Act as well in section 2(w). So it says factory means any premises including the precincts thereof, where 20 or more workers, it was 10 earlier now it is increased to 20 or more workers. So working on any day of the preceding 12 months.

And many parts of which a manufacturing process is being carried out with the aid of power. So if with the aid of power 20 or more workers, so without the aid of power 40 or more workers, but it does not include the mobile units belonging to the armed forces of the Union,

railways running shed, hotel, restaurant, or eating place, clearly excluded from the purview of the definition of factory.

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Factory

❑ Section 85 states that,

(1) The State Government may, by notification in the official gazette declare that all or any of the provisions of the act shall apply to any place wherein a manufacturing process is carried with or without the aid of power or so is ordinarily carried on, notwithstanding that – (i) the number of persons employed therein is than 10, if working with the aid of power and less than 20 without the aid of power, or (ii) the persons working therein are not employed by the owner thereof but are working with the permission of, or under agreement with, such owner: provided that the manufacturing process is not being carried on only with the aid of his family,

(2) After a place is so **declared, it shall be deemed to be a factory for the purpose of this Act**, and the owner shall be deemed to be the occupier, and any

So section 85 also states that the state government in the Official Gazette declared all or any part of a particular manufacturing process can also be declared as a factory. In that case, it shall be deemed to be for the purpose of this Factories Act, that particular deemed to be factory also will come under the definition of the factory for the purpose of Factories Act 1948 and the new code now. So the state government can notify any part of any precincts.

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Laundry Services in a Hotel – Not a Factory

❑ **Welcome Group Windsor Manor vs. State Of Karnataka, 2004(102)FLR 369**

❑ What distinguishes any independent laundry unit from this one, is the fact that the laundry here is not a unit by itself. It is a part and parcel of a hotel established by the appellant. Its activities are entirely dedicated to the efficient running of the hotel, and the comforts and convenience of those making use of the facilities offered therein.

❑ It therefore cannot be viewed to be anything different from the Hotel which is a composite entity.

❑ Section 2(m) of the Factories Act however excludes a Hotel from the meaning of the factory.

So we will see a series of cases which is fought in court and the court finally conclude. So Welcome Group Windsor Manor versus State of Karnataka, this was the 2004 judgment. So the Court considered whether the laundry services in a particular hotel can be a factory.

So here we know what is laundry, and it is part and parcel of every hotel and the activities are only dedicated to the guest who is visiting that particular hotel. So the question is whether the laundry services attached to the particular factory are a factory. So actually section 2(m) of the Factories Act excludes hotel from the meaning of factory.

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Not a Factory

- ❑ The case law of **K.V.V.Sharma** AIR , 1953, Mad 269, stated precincts as; “a space enclosed by walls or fences.
- ❑ A place solely used for some purpose **other than the manufacturing process** carried on in a factory or a workshop **does not constitute a factory.”**

So here we know that another case K.V.V. Sharma the Madras case 1953, one of the oldest cases. So the question was whether a place enclosed by walls or fences, but if the place only used for some purpose other than the manufacturing process constitutes a factory. The Court held that there must be a manufacturing process then only it can be called as a factory.

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Premises **include** open land **such as salt works**

❑ **Ardeshir H. Bhiwandiwala vs. State Of Bombay, 1962 AIR 29**

- ❑ The appellant was convicted of an offence under s. 92 of the Factories Act, 1948, **for working a salt works without obtaining a licence**. The salt works extended over an area of ~250 acres. The only buildings on this land were **temporary shelters** for the resident labour and for **an office**; at some places **pucca platforms for fixing the water pump** required to pump water from the sea.
- ❑ The appellant contended that the word “premises” in the definition of factory **did not include open land**.
- ❑ **Held, “premises” is a generic term meaning open land or land with buildings or buildings alone**. The extraction of salt from sea water was not due merely to natural forces but was due to human efforts aided by natural forces. The process of conversion of seawater into salt was a **“manufacturing process”** as salt was manufactured from seawater by a process of treatment and adaptation.

So the question constraint in this particular case was whether the salt works or we can say that the huge area of salt fields are factories. So in 1962, the court decided in this particular case. So here the appellant was convicted for not complying with the provisions of the Factories Act and he was running a salt work without obtaining a license. You cannot run a factory without obtaining a license.

So in this particular case, the salt field was up to 250 kilometres or 250 acres at that point of time. So the only building is temporary shelters for the labourers and also a small office. So there are certain platforms for pumping water that is all that the salt fields look like.

Here the appellant contended that the premises in the definition of the factory did not include open land. So people who know the salt fields it is a huge field and nothing is there. So whether the question is will the open land is the precinct come out of the definition of precincts or factory.

So the court held that the premises of a particular factory are a generic term, meaning upon land or the land with buildings or buildings alone or without buildings. So the extraction of seawater was not merely a natural process, some human effort also had to be put into it and aided by natural forces. The process of conversion of seawater into salt water is the manufacturing process, then, it is going to be considered as the precincts, the precincts mean the whole area is considered to be a factory because a manufacturing process is going on seawater to salt. So the manufacturing process is happening, so it is a factory.

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M/s Kalpana Kala Kendra, Kanpur v. Employees' State Insurance Corporation, 1985 LIC 763

- ❑ Whether **electric ironing was done with the aid of power** was enough to constitute the place of the factory within the meaning of Section 2(12) of the ESI Act?
- ❑ Held: **Ironing is a process of treating the articles with a view to their use for sale in the market.** A ready-made garment must be ironed properly before it can be sold in the market.
- ❑ As it is a process of treating the article, it must be held that manufacturing is carried on with the aid of power, that is to say, so as to **constitute the appellant's place or premises as a factory as defined under the ESI Act.**

In Kalpana Kala Kendra, Kanpur versus Employee State Insurance Corporation in 1985. Here the question was ironing without the help of electric irons because it is the aid of power whether it is enough to constitute a factory under the meaning of Section 2(12) of the ESI Act. So everybody knows that ironing is done to the clothes mainly for it is like a treatment. So this ironing of clothes is with the objective to sell ready-made garments in the market.

So the question is whether ironing is a treatment. So it is like a manufacturing process with the aid of power. So the question is whether it constitutes the premises as a factory. The court said that yes, with the aid of power, there is some kind of manufacturing activities going on, so it constitutes a factory under the definition of ESI Act.

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Manufacturing Process

- 2(z) “**manufacturing process**” means any process for—
 - i. Making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal; or
 - ii. Pumping oil, water, sewage or any other substance; or
 - iii. Generating, transforming or transmitting power; or
 - iv. Composing, printing, printing by letter press, lithography, offset, photogravure screen printing, three Dimensional or four Dimensional printing, prototyping, flexography or other types of printing process or book binding; or
 - v. Constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or
 - vi. Preserving or storing any article in cold storage; or

So next we will see what you mean by this manufacturing process. So the court says if it is to be considered a factory, there must be precincts of a manufacturing process. So the definition section 2(z) says the manufacturing process is making altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing or otherwise treating or adapting any article substance with the view it is used say transport, delivery or disposal, Pumping oil, sewerage any other substance.

Generating, transforming, and transmitting power is a manufacturing process. So composing is related to printing, letterpress, lithography, offset, then photogravure, screen printing, three dimensional or four-dimensional. So we can see that photogravure screen printing and three-dimensional or four-dimensional printing, photo typing.

So prototyping, flexography or other types of the printing process or book binding, constructing, reconstructing, repairing, refitting, finishing, and breaking up of shops or vessels. So we can see this ship-breaking industry in Gujarat, completely breaking up ships or vessels. Or preserving or storing any article in cold storage and other processes. So manufacturing process is a long list of activities.

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Taj Mahal Cafe Ltd Mangalore /vs/ Inspector of Factories, Mangalore,(1950) I.LJ,273.

□ that, “In order that any premises may be held as a factory, the following conditions must be fulfilled :-

(a) a manufacturing process must be carried on in any part of the premise of the establishment and,

(b) where a manufacturing process is carried on with the aid of power, ten or more workers must be working and where the manufacturing process is carried on without the aid of power, twenty or more workers must be working in that establishment.

But, the **mere fact that the power is used in the premises is not sufficient**, but power must be used in the aid of the manufacturing process.

In Taj Mahal Cafe Ltd Mangalore versus Inspector of factories Mangalore in 1950, the court looked into the matter. So the court said that in order that any premise may be held as a factory, the following two conditions must be fulfilled. What are those two conditions? The first condition is that a manufacturing process must be carried out on any part of the premises of the establishment.

Secondly, when a manufacturing process is carried out with the aid of power 10 or more workers must be working in where the manufacturing process is carried on without the aid of the power in the establishment. So the old Act says it was 10, but now it is 20. So we can say that, so but power must be used in the manufacturing process, so to endure more and without power, it is 40 we already saw that.

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ESIC, Bombay vs Vyankatesh Coop., (1993) IILLJ 394 Bom

- ❑ Whether the use of **electric power for processing the effluent (water) preparatory to its eventual dispersal**, can be termed as “manufacturing process” as contemplated under Section 2(12) of the ESI Act?
- ❑ Vyankatesh was engaged in **bleaching, dyeing and mercerising of grey-cloth**.
- ❑ Power was used for the treating of the effluent before its discharge into the Krishna River basin. The “treatment” of the water was not a part of the “manufacturing process”.
- ❑ There being **no nexus between the manufacturing activity and the treatment and eventual discharge of the effluent**, it must be held that the use of power in the present case **was not for any manufacturing process** of the Society's factory.

So in another case, ESIC Corporation versus Bombay in Vyankatesh Coop. So in this case, the question was whether the electric power for processing the effluent in the water proprietary to its eventual dispersal can be termed as a manufacturing process under relevant provisions of the Factories Act.

So here Vyankatesh Coop was engaged in bleaching, dyeing and mercerizing grey cloth. So power was treated for treating the effluent before it is discharged into the Krishna river basin. So the treatment of water is not a part of the manufacturing process. There was no nexus between the manufacturing activity and the treatment and eventually discharged from the hospital treatment.

So it was held in the present case the power is not for any manufacturing process of the society's factory. So that means the nexus between the manufacturing activity and the treatment is very clear.

So held that the use of power and the present case was not of any manufacturing process of society's factory. So manufacturing electricity or transmitting electricity again, the question comes whether it will come under the definition of manufacturing power.

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Workmen, Delhi electricity Supply Undertaking vs. Management, AIR 1973 SC 365

- ❑ “Factory” is a premise where manufacturing process is carried on.
- ❑ No manufacturing process was held to take place either in the **sub-stations or in the zonal stations of the Delhi Electricity Supply Undertaking** because the workmen employed therein have **no part in any manufacturing process.**

In the Delhi Electricity Supply Undertaking versus Management in 1973, the Supreme Court was defining what is factory. Supreme court said a factory is a premise where the manufacturing process is carried out, no manufacturing process was going to be placed either in the substations or zonal stations of a Delhi supply undertaking because the workmen employed therein have no part in any manufacturing process.

So the linemen in the electricity board, whether it is in the manufacturing process are happening, substations or zonal stations. So this particular case, the court said that the substations and zonal stations have not produced anything, no manufacturing process is going on in a substation, because the high voltage may be converting into a low voltage, but no manufacturing process is happening there.

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Gujarat Electricity Board vs. State Of Gujarat, (1984) 1 GLR 51

- ❑ **Petitioner:** engaged in the business of generation, supply and distribution of electrical energy and has thermal power stations at several places. **At the thermal power stations:** the work of generation of electricity is done. **At sub-stations:** conversion of high voltage into low voltage is done with the help of transformers, No generation of electricity is done at the sub-stations.
- ❑ Whether sub-stations factories within Factories Act, 1948 ?
- ❑ Held: these activities are **not covered by the expression “manufacturing process”** as envisaged under Section 2(k) of the Factories Act because these activities **do not involve the generation of power. Therefore, any sub-station engaged in the conversion or distribution of electricity is not a factory.**

So Gujarat electricity board versus State of Gujarat, the court made it very clear that the thermal power stations' work of generating electricity is done by most thermal power stations. So no generation of electricity is done at the substation only this is converting from a higher voltage to a lower voltage.

So here the activities are not covered by the expressions Factories Act because it is not involving the generation of power. Any substation engaged in the conversion or distribution of electricity is not a factory. So a place only to convert the existing electricity is not a factory at all. So substation engaged in the conversion or distribution of electricity is not a factory. So converting from one volt to another volt is not a manufacturing process and it cannot be considered as a factory.

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Manufacturing Process

- ❑ V.P. Gopala Rao v. Public Prosecutor, AIR1970SC66
- ❑ **Sun-cured** tobacco leaves subjected to processes of moistening, stripping, breaking up, adaption, packing, with a view to transport to companies' factory for their use in manufacturing cigarette.

In V.P. Gopala Rao versus Public prosecutor in 1970 Supreme Court looked here the tobacco is cured in ground Sun-cured tobacco, because of the natural rays of the sun, the tobacco leaves will become dry. And also moistening, stripping, breaking up, adaption, and packing, with a view to transporting to the factory for use in manufacturing cigarettes. So even though it is a subsidiary, it will be a part of the main factory and the factory site will be applicable in that case.

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Manufacturing Process

- ❑ P. Natarajan vs. ESI, (1973) 1 MLJ 5
- ❑ In **pasteurisation of milk**, the process consists of heating the milk upto 72°C to bring it under particular temperature and then chilling it to destroy germs harmful to the health of the community.
- ❑ Treating an article or substance **is a manufacturing process** under the definition of Section 2(k) of the Factories Act. It is not in dispute that the milk so treated by power is transported, sold and delivered to the customers. The premises where the pasteurisation of milk is carried on is, therefore, **a "factory" within the meaning of the provisions of the Act.**

So in Natarajan versus ESI Corporation in 1973. So you can see that here pasteurization of milk, everybody knows what is happening in the pasteurization of milk. So the milk is collected from the farmers and collected at various centres, then this milk is transported to the

pasteurizing centre, and pasteurised, then packed, then it is redistributed to the customers through the dealers.

So here, is this substance a manufacturing process or not? So this is a particular case that miserably failed the petitioner, because here the dispute, is whether this milk is treated by the power is transported, sold or delivered to the customers.

So is it necessary that all this process should happen? So the premises of the pasteurization of milk is carried out. The pasteurization is carried out, it is considered as a factory with the meaning of the provisions of the Act, because otherwise what will happen, so the question comes everyday morning somebody, some inspectors come to your kitchen and going to inspect it and declared it as a factory, because some pasteurization is going on or some conversion is going on, some manufacturing activity is going on.

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Transformation of Substance

- ❑ In re. Seshadrinatha Sarma, 1966(2)LLJ235
- ❑ To constitute a manufacture **there should not be essentially some kind of transformation of substance** and the article need not become commercial another and different article from that at which it begins its existence so long as there has been an indisputable **transformation of substance by the use of machinery** and transformed substance is commercially marketable.

So we said that in this particular case in re. Seshadrinath Sarma case in 1966 Supreme court, what did Supreme court say? To constitute a manufacture or manufacturing process, there should not be essentially some kind of transformation of substance. So we can say that not to declare there must be transformation also manufacturing activity and transformation of substance. And if the article must merely return to the process of the transformation of substance by the use of machinery then, if the transformation is happening, then it is a manufacturing process in a factory.

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Not a Manufacturing Process

- ❑ Exhibition of films process
- ❑ Industrial school or Institute imparting training, producing cloth, not with a view to its sale.
- ❑ Receiving of news from various sources on a reel in a teleprinter of a newspaper office, is not a manufacturing process in as much as news is not the article or substance u/s 2(k)(i)
- ❑ Any preliminary packing of raw material for delivering it to the factory (*V. Mohamed Haneef vs. Regional Director, AIR 1969 Mad. 155*).
- ❑ Finished goods and packing thereof (*F. Hare v. State, AIR 1955 2710*)
- ❑ Laboratory of the company does not fall under the definition of Factory as given in section 2(m) of the Factories Act, 1948 (*Rajesh Saigal vs. State of Haryana, 2015 (P&H)*)

In certain cases, it is not a manufacturing process. For example, an exhibition of the process of the film. So industrial schools or institutes imparting, producing clothes or whatever is. If the students are carrying out a particular activity or it is come out to be the definition of a manufacturing process.

So the news from various sources on a reel in a teleprinter of a newspaper office is not a manufacturing process. The same type of preliminary packing of raw material for delivering it to the factory is whether manufacturing process or not.

So finished goods and packaging are not manufacturing processes, the laboratory of the company made it does not fall under the definition of factories, and no premises in the factory can be declared as a particular factory. So we can see that there must be a manufacturing process, there will be a transformation and there must be something that should be produced, people will be producing something.

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Machinery

□ 2(zg) “machinery” means any **article or combination of articles assembled, arranged or connected** and which is **used or intended to be used for converting any form of energy to perform work**, or which is used or intended to be used, whether incidental thereto or not, **for developing, receiving, storing, containing, confining, transforming, transmitting, transferring or controlling any form of energy;**

And also we saw the data or we saw the proposition of other things as for example machinery. So machinery in a factory means an article combination of articles assembled arranged or connected, which is used or intended to be used for converting any form of energy to platform work. So it is intended to be used or incent to be used for developing and again you can see that transmitting or transferring or controlling any form of energy transmitting, transferring, transforming, so control of any energy that can be considered as a factory.

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Occupier

□ 2(zs) “occupier” of a **factory** means the person **who has ultimate control over the affairs of the factory:**

□ Provided that—

- i. In the case of a **firm or other association of individuals**, any one of the **individual partners or members** thereof;
- ii. In the case of a **company**, any one of the **directors**;
- iii. In the case of a **factory owned or controlled by the Central Government or any State Government, or any local authority**, the **person or persons** appointed to **manage the affairs of the factory**, shall be deemed to be the occupier

And who is the occupier, earlier also we saw who is the occupier? An occupier of a factory means, who is the ultimate control over the affairs of the company is known as the occupier.

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Employer

- 2(u) “**employer**” means a person who **employs**, whether **directly or through any person, or on his behalf, or on behalf of any person**, 1 or more employees in his establishment and where the establishment is carried on by Central/State Government authority specified or the HoD, and in relation to an establishment carried on by a local authority, the CEO and includes,—
- i. In relation to an establishment which is a **factory**, the **occupier** of the factory;
 - ii. In relation to **mine**, the **owner** of the mine, **agent** or **manager**;
 - iii. In relation to any other establishment, the person who, or the authority which has **ultimate control over the affairs of the establishment** and where said affairs are entrusted to a manager or managing director, such manager or managing director;
 - iv. **Contractor**; and
 - v. **Legal representative** of a deceased employer;

And the employer has also been defined employer in a wider scope and we can already see the definition of what you mean by the employer. So it can be a director, it can be a contractor, it can be power of attorney also.

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Worker

- 2(zzl) “**worker**” means **any person employed** in any establishment to do any **manual, unskilled, skilled, technical, operational, clerical or supervisory** work for **hire or reward**, whether the terms of employment be **express or implied**, and includes **working journalists and sales promotion employees**, **but does not include**:
- i. who is subject to the **Air Force Act, 1950**, or the **Army Act, 1950**, or the **Navy Act, 1957**; or
 - ii. who is employed in the **police service** or as an officer or other employee of a **prison**; or
 - iii. who is employed mainly in a **managerial or administrative capacity**; or
 - iv. who is employed in a **supervisory capacity** drawing wage exceeding

Shankar Balaji Waje vs. State of Maharashtra, AIR 1963 Bom 236

- ❑ Whether **bidi roller** is a worker or not?
- ❑ The management simply says that the labour is to produce bidies rolled in a certain form.
- ❑ **How the labourer carried out the work is his own concern is not controlled by the management**, which is concerned only with getting bidies rolled in a particular style with certain contents.
- ❑ The Supreme Court held that the **bidi roller is not a worker**.
- ❑ Whether **piece-rate workers**, worker within the meaning of the Act?
- ❑ Held: Piece-rate workers, can be workers within the definition of “worker” in the Act, **but they must be regular workers and not those who come and work according to their sweet will.**

Then there is a worker so here you can see the definition and differences between worker and workman, so many times.

And the question is here versus Shankar Balaji Waje versus State of Maharashtra in 1963. So this is a very old case. So the question is whether the bidi roller is a worker or not there may be special provisions, but here the question is the court concerned with is how the work is carried out. He is doing it his own will or is under the control of the management. So it depends upon what work is carried out.

So the Supreme Court held that bidi roller is not a worker mainly because they do the piece rate work. So work within the meaning of this Factories Act then the court will discuss otherwise not.

And also the court considered whether the piece rate workers, so workers, what is this definition of worker? So the court held that price rate workers can be worked within the definition of worker, but they must be regular workers and not those who came and work according to their sweet will, if anytime come anything goes then they are not going to be considered as workers.

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Tourism Corporation of Gujarat Ltd. vs. Kalu Valji Jethwa (23.11.2000)

- ❑ Whether **part-time employee** was workman and was entitled for all benefits were being extended to regular employees?
- ❑ Held, **part-time employees were not excluded** from definition of workman under Section 2(s) of Act on ground that they were part time employees. If person is a test of workman, he could not be excluded from definition only on ground that he was part time employee and not full-time employee.
- ❑ A **mixed question of law and fact**.

And part-time workers in the court in this Tourism Corporation of Gujarat versus Kalu Valji. The court held that part-time workers were not excluded from the definition of the workman. So whether they can be provided with all the benefits, is a question of fact and law. So if this mix-up question of law can be or should be separated.

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Works Manager, Central Railway vs. Vishwanath, 1970 AIR 488

- ❑ Whether **Time-keepers** are workers within the meaning of the Act?
- ❑ The work done by the respondents was "incidental to" or "connected with" the manufacturing process. The definition in s. 2(1) is fairly wide. The definition therefore **does not exclude those employees who were entrusted solely with clerical duties**, if they otherwise fell within the definition of the word "worker".
- ❑ All legislation in a welfare state is enacted with the object of **promoting general welfare**. The Factories Act belongs to this category and, therefore demands **an interpretation liberal** enough to achieve the legislative purpose, without doing violence to the language.

So in Works Manager, Central Railways versus Vishwanath. So Works Manager, Central Railways versus Vishwanath. In this case, the question was whether the Timekeepers who work with the railway will come out with a definition of worker or the main work or incidental to the main work. So general welfare, so the Factories Act belongs to this

particular category and therefore, demands an interpretation or pre-interpretation enough to achieve the legislative purpose without doing violence to the language.

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Employer-Employee Relationship

- ❑ Whether relationship of **master and servant** necessary?
- ❑ The expression “employed” does not necessarily involve the relationship of master and servant. There are instances where no such relationship exists and yet such persons would be workers.
- ❑ The expression a person employed, **means a person who is actually engaged or occupied in a manufacturing process**, a person whose work is utilised in that process.
- ❑ The definition of worker is clearly enacted **in terms of a person who is employed in** and **not in terms of person who is employed by**.

So works manager, so here timekeepers are the same, you can you have to say that the employee has to provide the same benefits which you are providing to the permanent workers, is it necessary that there must be an employer-employee relationship or a master and servant relationship. So employees show the relationship between master and servant.

Again, we can see that the expression the person employed means a person who is actually engaged or occupied in the manufacturing process. And the definition of worker is clearly enacted in terms of the person who is employed and not in terms of the person who is employed by, so it is very clear. The details and conditions should be very clear and also there must be a master and servant relationship exists so which is employer-employee relationship.

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Factories Act **did not define “Employee”** whereas Code does.

- ❑ Harbanslal v. State of Karnataka, (1976)1 Karnt.J.111
- ❑ Since the word employee has not been defined in the Act, it follows that **all the workers within the ambit of the definition under the Act would be employees, while all employees would not be workers.**
- ❑ Union of India v. G.M. Kokil, 1984 SCC (L&S) 631
- ❑ All persons employed in or in connection with a factory **whether or not employed as workers are entitled to the benefits of the Act.**

But it is saying that the Factories Act does not define the employee, at the same time the Occupational Safety Code is defining the employee. In Harbanslal versus State of Karnataka the court held all the workers within the ambit of the definition under the Act would be employees, while all employees would not be workers.

So in Union of India versus G.M. Kokil, the court said all persons employed in our construction with the factory whether or not employed as workers are entitled to the benefits of the Act. So if somebody is occupied, some of the employees and took benefits of this particular Act, somebody is appointed as a temporary worker, they are eligible to get the benefits under the particular Act.

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Connection to Factory

- ❑ **Shinde (A.G.) vs. Bombay Telephones (11.03.1968 - BOMHC)**
- ❑ Application filed for **overtime wages** by watchmen.
- ❑ Whether the workman stands outside the factory premises or inside it, if his duties are connected with the business of the factory or connected with the factory, **he is really employed in the factory and in connection with the factory.**
- ❑ Assuming that petitioners did not fall within meaning of word “workman” as contained in Act, **all employees employed in factory including petitioners entitled to get benefit of Section 59.**

So if you ask what is the connection to the factory? Here we can say that it is the connectivity between the definition of the factory and also the manufacturing process. And also the question is whether they are employed in the factory. So we can see that all employees employed in a factory including the petitioner is entitled to get benefits under Section 59.

So if there is a stall or it is ice, which is falling, then the question is who is responsible. So whether the petition is filed to get the benefit may not be under this section, but will be under the definition of other definitions. So we can take a live example that is also not a problem. So now, there we are facing a lot of cases in which we have gone through all the states that have interpreted the definition of manufacturing.

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Nature of Work

- ❑ **D'Souza (R.E.) vs. Regional Inspector Of Factories, (1968) IILLJ 473 Ker**
- ❑ The main features or identifying marks that distinguish a **worker** from an **independent contractor** are that **the latter is not controlled by employer regarding the manner in which the work allotted to him is to be done; and that he need not do the work personally but may get it done by employing others.**
- ❑ The women and girls who come to do the peeling, cleaning etc.; are not being controlled in the manner they would be controlled if they were workers in a factory. Therefore, the women and girls who collect and do the work at the premises of the petitioner are **not workers.**

And the nature of work is also very important. So it is not the question of whether a worker or an independent contractor or the latter is not controlled by whether an employee-employer relationship exists or not. But, the women and girls who come to these for the peeling work, and cleaning of shrimp are not being controlled in the way the employer does not have control over their peeling work, they come and do the work, and they get piece rates obviously, so that whether they will be considered as.

The court said that the woman and girls who collect and do the work at the premises of the petitioner are not workers, because there does not exist employer-employee relations. So D'Souza versus Regional Transport factories 1968 case.

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Approval and Licensing of Factories

Approval and Licensing of Factories

- The appropriate Government may make rules in respect of factory/factories for—
 - a. The submission of plans including specifications, nature and certification thereof;
 - b. The **previous permission** for the site on which the factory is to be situated and for the construction or extension thereof; and
 - c. Licensing and renewal thereof including fees payable.

- If on an **application for permission, accompanied by the plans and specifications, sent to the State Government or Chief Inspector-cum-Facilitator in the electronic mode, no order is communicated to the applicant within 30 days**, the permission applied for in the said application **shall be deemed to have been**

And the next part we will see the approval of factories, there is also the non-approval process of every factory. So this previous permission of the factory's Inspector is mandatory thing. So when you submit permission or application for permission for approved licensing, it must be accompanied by the site plan and specifications of the site. So that must be submitted to the Chief Inspector cum facilitator. So then, he will examine it within 30 days and then a license may be issued.

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Approval and Licensing of Factories - Appeal

- Where a State Government or a Chief Inspector-cum-Facilitator **refuses to grant permission to the site, construction or extension of a factory or licensing of a factory**, the applicant may **within 30 days** of such refusal appeal to the Central Govt.(from a decision of State Govt.) or State Govt.(from a decision of Chief Inspector).

So here, again, they can say the state government refuses to grant permission to the site of construction or extension of a factory and licensing of a factory, the applicant may within 30 days of such refusal appeal to the central government. So that means if they are not ready to give, there are appeal lies.

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Site Appraisal Committee

- ❑ The appropriate Government may constitute, 1 or more site appraisal committee consisting of a **chairman and other members**, for such purpose including to **consider and to give recommendations on an application for grant permission for the initial location of a factory involving a hazardous process or for the expansion of such factory.**
- ❑ The site appraisal committee **shall make its recommendation within 30 days of the application.**

And site appraisal committees should visit the site and appraise the site when there is a hazardous process going to happen in that particular factory. So the site appraisal committee shall make its recommendation within 30 days of the application. Yes, I said that it is a committee of people, but it is only professional people, and only 30 days time is left for the appraisal committee to pass the plan.

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Liability of owner of premises for common facilities – Joint and Severally

- ❑ Where any **premises or separate buildings are leased to different occupiers for use as separate factories, the owner of the premises and occupiers of the factories** utilising such common facilities which include:
 - ❑ **safety and fire prevention and protection, access, hygiene, occupational health, ventilation, temperature, emergency preparedness and response, canteens, shelter, rest rooms and crèches**
 - ❑ **Shall jointly and severally be responsible** for provision and maintenance of such common facilities and services.

Then comes the liability of the owner and also the premises for common facilities. So the liability of the house owner, in case you can say that in the joint activity in case of different things, the liability of the owner, with regard to the factories and premises and precincts. So occupier, we already saw that, who is in ultimate control over the face of the factory is the

occupier. And also so the question is whether they are jointly and severally responsible for provisions and maintenance of some common facilities and services. If they do not facilitate, there will be a penalty.

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Punishment for contravention of provisions of duties relating to Hazardous

- ❑ Whoever **fails to comply** with or **contravenes** any of his duties specified under **Section 80(Joint and Several Liability of owner)**, shall be punishable with an **imprisonment** upto **2 years** and with fine upto **₹5 lakh**, and
- ❑ In case the **failure or contravention continues**, with additional fine upto **₹25,000/- for every day** during which such failure or contravention continues.
- ❑ If the **failure or contravention continues beyond a period of 1 year**, the offender shall be punishable with **imprisonment** upto **3 years** or with a fine **₹20 lakh**, or with **both**.


And there is a punishment for the violation of any of the process duties with regard to the hazardous process. So whoever fails to comply with or contravenes the provision of the duties specified under section 80. So shall be punishable with imprisonment up to 2 years and a fine of up to 5 years.

So in the case of failure or contravening continues the additional fines up to 25,000 for every day during which the failure or the contravenes is continuous. So the failure or contravenes continues beyond a period of one year in such cases, the person shall be punished with imprisonment up to 3 years or with fine 20 lakh or with both, that means, 3 years jail time also and 20 year fine also can both can be applicable in such cases.

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Dangerous operations

- The appropriate Government may by rules make provisions for any factory or factories in which **manufacturing process or operation** is carried on **which exposes** any of the persons employed in it to a **serious risk of bodily injury, poisoning or disease:**
 - a. **Specifying** the **manufacturing process or operation** and **declaring** it to be **dangerous**;
 - b. **Prohibiting** or **restricting** the employment of **pregnant women** in the **manufacturing process or operation**;
 - c. **Periodical medical examination** to ascertain the fitness of a worker or employee for such employment **on the cost of the occupier**; and
 - d. **Welfare amenities, sanitary facilities, protective equipment and clothing, and any other requirement necessary for dangerous**



And dangerous operations. So appropriate can be rule make provisions for with regard to manufacturing process or operation. So and also the seriousness of injury and poisoning etc. So here the prescribes the procedure in the manufacturing process or operation and declares it to be dangerous probably or declaring or restricting the problem of employment. So again prohibiting or restricting the employment of pregnant women in the manufacturing process operations.

So periodical examination, in yesterday last class, we saw the examinations, how it happens, what is the periodicity of the examination, So on the cost of the occupier, welfare amenities, sanitary facilities, and protective equipment, and yesterday we talked about various kind of protective equipment and the dress, dress code. Then the welfare of somebody, so these welfare amenities, sanitary facilities, protective equipment, clothing and other any other requirement for dangerous operation must be known to the worker at large.

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Compulsory disclosure of information by Occupier

- ❑ The occupier of every factory involving a hazardous process shall disclose all information regarding dangers, including health hazards and the measures to overcome such hazards arising from the exposure to or handling of the materials or substances in the manufacture, transportation, storage and other processes, to the workers employed in the factory, the Chief Inspector-cum-Facilitator or Inspector-cum-Facilitator, the local authority and the general public in the vicinity.
- ❑ The occupier shall, at the time of registering the factory involving a hazardous process, lay down a detailed policy for health and safety of the workers employed and intimate such policy or any changes made to it, to the Chief Inspector-cum-Facilitator or Inspector-cum-Facilitator and the local authority

Then compulsory disclosure of information by the occupier. So, we can see that the occupier of every factory involving a hazardous process shall disclose information prior about the dangers and including health hazards to normal employees to the public as well. So handling your materials or substances to the manufacture transportation and storage and the process, because the implementing agencies or intermediaries have no responsibility. So here the occupier shall at the same time of registering the factory involving a hazardous process. So it lay down a detailed policy for the health and safety of the workers.

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On-site Emergency Plan, Disaster Control Measures

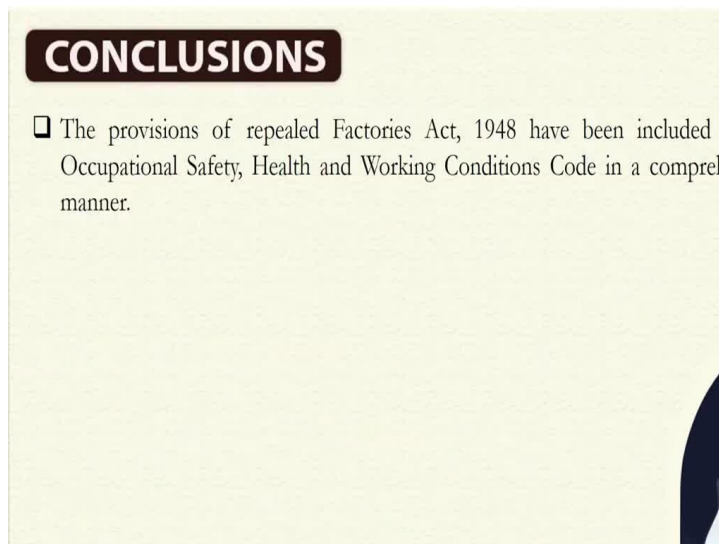
- ❑ Every occupier shall, draw up an on-site emergency plan and detailed disaster control measures for his factory and make known to the workers employed and to the general public living in the vicinity of the factory.
- ❑ Every occupier of a factory shall, if such factory proposes to engage in a hazardous Process, within 30 days before the commencement of such process, inform the Chief Inspector-cum-Facilitator about the nature and details of the process.
- ❑ Where any occupier of a factory does not inform, the licence to such factory shall be liable for cancellation.
- ❑ The occupier shall, lay down measures for the handling, usage, transportation and storage of hazardous substances inside the factory premises and the disposal of such substances outside the factory premises and publicise them among the workers and the

So on site emergency plan should be there. So this has control measures also must be taken by the occupier. So here every occupational draw all the site emergency plan and detailed

disaster control measures and also every occupier of a factory shall inform the Chief Inspector if the factory engaged in a hazardous process within 30 days, he can be arrested or the occupier of the factory does not inform the licensee or the license to such factory shall be liable to cancellation.

And also we can see the occupier shall lay down measures on handling, usage, transportation, and storage of hazardous substances. And also we can say that premises and other workers and the public general public at large on-site emergency plans which we talked about.

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CONCLUSIONS

- ❑ The provisions of repealed Factories Act, 1948 have been included in Occupational Safety, Health and Working Conditions Code in a comprehensive manner.



REFERENCES

- ❑ Factories Act, 1948 - **Repealed**
- ❑ Occupational Safety, Health and Working Conditions Code, 2020



So in conclusion, we can see that the old Act is replaced with a new code, and the provision remains with regard to factories, industries, and manufacturing processes. And also we can see that the new provisions are elaborate in nature when compared to the old provisions and the hope is that this is going to be implied and this is going to notify the government very soon. Thank you.