

4. To pay such amount as may be awarded by it as compensation to the negligence of the opposite party.

Appeal : Any person aggrieved by an order made by the State Commission may prefer an appeal against such order to the National Commission within a period of 30 days from the date of the order. The appeal must be made in such form and manner as maybe prescribed. National Commission may, however, entertain an appeal after the expiry of the said period of 30 days if it is satisfied that there was sufficient cause for not filing it within that period. Where no appeal has been preferred, the order of the State Commission shall be final. However, *the order of the State Commission on appeal made against the order of a District Forum shall not be entertained by the National Commission.*

Enforcement of Orders : The orders of a State Commission are enforceable in the manner of an order or decree made by a Civil Court in a civil suit. If the State Commission is not able to execute its order, it may forward the same to the civil court for execution.

Penalties : Every trader or a person against whom complaint is made is bound to comply with the order of the State Commission. If a trader fails comply with the order, he shall be punishable as under :

- ↪ with imprisonment for a minimum period of one month and maximum of 3 years; or
- ↪ with minimum fine of Rs. 2000 and maximum of Rs. 10,000, or
- ↪ both with imprisonment and fine as stated above.

National Commission

In exercise of the powers conferred under sec 9(c) of The Consumers Protection Act, the Central Government established a "National Consumer Disputes Redressal Commission" to be known as the 'National Commission' by notification.

Composition of the National Commission : According to section 20(1) of the Act, the National Commission shall consist of the following :

- (a) A person who is or has been a judge of the Supreme Court shall be appointed by the Central Government in consultation with the Chief Justice of India. He shall be its *president.*
- (b) *Four other members* shall be persons of ability, integrity and standing. They shall have adequate experience of or have shown capacity in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration. One of them shall be a woman. The Selection Committee shall consist of a Judge of the Supreme Court to be nominated by the Chief Justice of India, the secretary in the Department of Legal Affairs and the secretary incharge of consumers Affairs in the Govt. of India. A sitting judge of the Supreme Court can be appointed only after consulting the Chief Justice of the Supreme Court. Every member of the National Commission shall hold office for a term of 5 years of upto 70 years of age whichever is earlier and shall not be eligible for reappointment.

Every appointment made under this clause by the Central Government shall be made on the recommendation of a Selection Committee consisting of a Judge of a Supreme Court to be nominated by the Chief Justice of India, the Secretary in the Department of Legal Affairs and the Secretary in charge of Consumer Affairs in the Government of India.

Section 20(2) gives power to Central Government to fix the salary/honorarium and other allowances payable to the members as well as the other terms and conditions of their service. Every member of the National Commission shall *hold office for term of five years or upto seventy years of age, whichever is earlier and shall not be eligible for reappointment.*

Jurisdiction of the National Commission : The jurisdiction of the National Commission shall be as under :

1. It can entertain complaints where the value of goods or service and compensating, if any, *claimed exceeds Rs. 50 lakhs.*
2. It can entertain *appeals against the orders of any State Commission,* and
3. It can call for the records and pass appropriate orders in any consumer dispute pending before or has been decided by any State Commission. It can do so where the State Commission has exercised jurisdiction not vested in it by law or has acted in the exercise of its jurisdiction illegally or with material irregularity. Therefore, *the jurisdiction of the National Commission could also be categorised as original, appellate and revision as that of the State Commission.*

Procedure applicable to the National Commission : The National Commission shall, in the disposal of any complaints or of any proceedings before it, have the powers of a Civil Court. It shall follow such procedure as may be prescribed by the Central Government. The procedure to be followed by the National Commission has been prescribed by the Consumer Protection Rules, 1987 made by the Central Government. The procedure to be followed is as under:

A complaint containing the following particulars shall be presented by the complainant *in person or by his agent to the National Commission or be sent by registered post to the National Commission :*

- (a) the name, description and the address of the *complainant.*
- (b) the name, description and address of the *opposite party or parties.*
- (c) the facts, relating to complaint, and *when and where it arose.*
- (d) *documents* in support of the allegations contained in the complaint.
- (e) the *relief* which complainant claims.

Procedure on receipt of Complainant : The National Commission on receipt of a complaint, has to observe the following procedures as outlined in section 13 of the Act:

- A. *Refer a copy of the complaint to the opposite party* directing him to give his version of the case within a period of 30 days or such extended period not exceeding 15 days.
- B. Where the opposite party, on receipt of a complaint copy, denies or disputes the allegation contained in the complaint, the omits or fails to take any action to represent his case within the time given by the National Commission, the National Commission shall *proceed to settle the consumer dispute in the manner provided by the Act.*
- C. If the complaint relates to some defects in the goods, which cannot be determined without proper analysis or test of the goods, the National Commission shall *obtain a sample of the goods from the complainant and refer the sample to the appropriate laboratory for analysis or test.*
- D. The appropriate laboratory has to analyse or test the sample received to find out whether such goods suffer from any defect alleged in the complaint, *within 45 days of the receipt*

of the reference or with such extended period as may be granted by the Commission the laboratory shall submit its report the National Commission.

- E. On receipt of the report from the appropriate laboratory, the National Commission shall *forward a copy of the report along with such remarks* as the National Commission may feel appropriate to the opposite party.
- F. If any of the parties dispute the correctness of the findings of the laboratory, or disputes the correctness of the methods of analysis or test adopted by the laboratory, the National Commission shall *require the opposite party or the complainant to state in writing his objections in regard to the report made by the laboratory.*
- G. The National Commission, before issuing any final order in the matter, will *provide an opportunity to both parties to present their views about the report of the laboratory.* On the date of hearing, it shall be obligatory on the parties or their agents to appear before the National Commission. Where the complainant or his agent fails to appear before the National Commission on the date of hearing, the National Commission may in its discretion, either dismiss the complaint for default or decide its merits. Where the opposite party or its agent fails to appear on the date of hearing, the National Commission may decide the complaint *ex parte.*

Findings of the National Commission : If the National Commission is convinced that the goods were really defective or that the complain about the service is proved, it shall order the opposite party to do one or more of the following things :

- ↪ *to remove the defect pointed out by the appropriate laboratory from the goods.*
- ↪ *to replace the goods with new goods of a similar description, which shall be free from any defect.*
- ↪ *to return to the complainant the price of the goods or the charges for services paid by the complainant.*
- ↪ *to pay to the complainant a sum of money by way of compensation for any loss or injury suffered by the consumer due to the negligence of the opposite party.*
- ↪ *to remove the defects or deficiencies in the services in question.*
- ↪ *to discontinue the unfair trade practice or the restrictive trade practice or not to repeat them.*
- ↪ *not to offer the hazardous goods for sale.*
- ↪ *to withdraw the hazardous goods from being offered for sale.*
- ↪ *to provide for adequate costs to parties.*

Appeal : An appeal against the orders of the National Commission can lie to the Supreme Court. *An appeal to the Supreme Court can be made within a period of 30 days* from the date of the order of National Commission. The Supreme Court may permit an appeal even after the expiry of the prescribed period if there was a sufficient cause for not being able to file an appeal in time.

Finality of the Orders : Where no appeal has been filed against the order of the National Commission, the same shall be final.

Enforcement of Orders : Every order made by the National Commission may be enforced in the same manner as a decree or order made by a Civil Court.

Penalties : Every trader or a person against whom complaint is made is bound to comply with the order of the National Commission. If a trader or a person fails to comply with the order, he shall be punishable.

- ↳ with *imprisonment for a minimum period of one month and maximum of 3 years*, or
- ↳ with *minimum fine of Rs. 2000 and maximum of Rs. 10,000*, or
- ↳ *both*, (with imprisonment and fine as stated above)

According to Section 19 of the Consumers Protection Act, a person aggrieved by an order of the State Commission can prefer an appeal against such order to the National Commission within 30 days from the date of the order in such form and manner as may be prescribed. The procedure for hearing the appeal is laid down by the Consumer Protection Rules, 1987.

Procedure for hearing an appeal

1. Memorandum shall be presented by the appellant or his agent to the National Commission *in person or be sent by registered post* to the Commission.
2. The memorandum shall be in *legible hand writing, preferably typed*. The memorandum shall include grounds of appeal without any argument or narrative. The grounds must be numbered consecutively.
3. The memorandum shall be *accompanied by a certified copy of the order* the State Commission appealed against. It shall also be *accompanied by any of the documents* as may be required to support grounds of objection stated in the memorandum.
4. The appellant shall submit *six copies of the memorandum* to the Commission for office use.
5. On the date of hearing, all the *parties or agents must appear* before the National Commission.
6. The appellant shall not, except by leave of the National Commission, urge or be heard in support of any ground of objection not set forth in the memorandum but the National Commission, in deciding the appeal, may not confine to the grounds of objection set forth in the memorandum.

Provided that the Commission shall not rest its decision on any other ground than those specified in the memorandum unless the party who may be affected thereby, has been given an opportunity of being heard by the National Commission.

7. The National Commission may, on such terms as it deems fit and at any stage of the proceedings, *adjourn the hearing* of the appeal, but *not more than one adjournment shall ordinarily be given* and the appeal should be decided, as far as possible, *within 90 days from the first date of hearing*.
8. The order of the National Commission shall be communicated to the parties concerned free of cost.

Appeal : An appeal to the Supreme Court, against the order of the National Commission in case of an appeal to it, cannot be made as per law.

An appeal lies to the Supreme Court from an order passed by the National Commission. Order XX(F) of the Supreme Court Rules, 1966 provides the following procedure for filing of appeals to the Supreme Court :

1. Subject to the provisions of Section 4, 5 and 12 of the Limitation Act, 1963, the petition of appeal from the order of the National Commission shall be presented by an aggrieved person within 30 days from the date of the order sought to be appealed against. However, in computing the said period of 30 days, the time required for obtaining a copy of such order shall be excluded.
2. Petition of appeal shall recite succinctly and clearly all the relevant facts leading up to the order from which appeal is sought. The appeal petition shall also set forth in brief, objections to the order appealed from and other grounds relied upon in support of the appeal. The petition shall further state the date of the order appealed from as well as the date on which it was received by the appellant.
3. The petition of appeal shall be accompanied by the following :
 - (i) an authenticated copy of the order in appeal.
 - (ii) atleast 7 spare sets of petition and the papers filed with it.
4. If the appeal is registered, it is put up for hearing ex-parte before the Court. The Court may dismiss it either summarily or direct issue of notice to all concerned parties or make such order as the circumstances of the case may require.
5. A fixed court fee of Rs. 350 shall be paid on the petition of appeal.

For the purpose of settling the disputes, under section, 13 of the Consumer Protection Act, State Commission or National Commission shall have the same powers as are vested in the Civil Court under the Civil Procedures Code in the following matters :

1. the summoning and enforcing the attendance of any defendant and witness and examining the witness on oath.
2. the discovery and production of any document or other material object producible as evidence.
3. the reception of evidence of affidavits.
4. the requisition of the report of the concerned analysis or test from the appropriate laboratory or other relevant source.
5. issuing of any commission for the examination of any witness, and
6. dismissal of frivolous or vexatious complaints.

Consumer Protection Rules, 1987 framed by the Central Government have given additional powers to the National Commission and State Commission : They are :

1. The National Commission or the State Commission shall have power to require any person:
 - (a) to produce before and allow to be examined and kept by an officer of the National Commission or the State Commission such books, accounts documents or commodities in the custody or under the control of the person so required described in the requisition.
 - (b) to furnish to an office so specified such information as may be required for the purpose of this Act.
2. Where during any proceedings under this Act, the National Commission or the State Commission has any ground to believe that any book, paper, commodity or document

which may be required to be produced in such proceedings are being or may be destroyed, mutilated, altered, falsified or secreted, it may be written order authorise any officer to exercise the power of entry and search of any premises. Such authorised officer may also seize such books, papers, documents or commodities as are required for the purpose of this Act.

CONSUMER PROTECTION COUNCILS

The objects of the Consumer Protection Act are sought to be promoted and protected by the consumer protection councils established at the Central and State levels. The consumer protection council established at Central level is known as *Central Council*. The consumer protection council established at State level is known as *State Council*.

Central Council

The Central Government has constituted a Central Protection Council by notification with effect from 1-6-1987. As per the Consumer Protection Rules the *Central Council consist of 150 members*. They are :

1. the Minister-in-charge of Department of Civil Supplies in the Central Government. He shall be the Chairman of the Central Council.
2. the Minister of State or Deputy Minister in the Department of Civil Supplies in the Central Government. He shall be the Vice-Chairman of the council.
3. the Minister of Food and Supplies in States.
4. eight Members of Parliament-Five from the Lok Sabha and three from Rajya Sabha.
5. the Commissioner of scheduled castes and scheduled tribes.
6. 10 representatives of women.
7. 20 representatives of farmers, trade and industries.
8. 15 persons capable of representative consumer interests.
9. 35 representatives of the consumer organisation or consumers.
10. the Secretary in the Department of Civil Supplies. He shall be the members secretary of the Central Council.

Procedure of the Central Council : The Central Council shall meet as and when necessary. Atleast one meeting of the council shall be held every year. The Central Council shall meet as at such time and place as the Chairman may think fit. It shall observe such procedure in regard to the transaction of its business as may be prescribed. For the purpose of performing its functions under the Act, the Central Council may constitute from amongst its members necessary working groups. Every working group shall perform such functions as are assigned to it by the Central Council. The findings of such working groups shall be placed before the Central Council for its consideration. The resolutions passed by the Central Council shall be recommendatory in nature.

Objects of the Central Council : Section 6 of the Consumers Protection Act, 1986 lays down the objects of the Central Council. The objects of the Central Council shall be to promote and protect the right of the consumers.

1. *The right to be protected against the marketing of goods which are hazardous to life and property :* For example, adulterated goods are dangerous to life as well as to property. The consumer

is assured by this Act that if he has been victimised into purchasing goods which have injured his person or property, he will have simple, speedy and effective remedy under the hierarchy constituted under the Act. The subject matter of dangerous goods is generally taken care of under law of Torts. All such matters can now be taken before the authorities constituted under the Act. It has become an established principle that a producer sending goods into the market would be liable to the ultimate user if his person or property is injured in the normal use of goods.

2. *The right to informed about the quality, quantity, potency, purity, standard and price of goods so as to protect consumer against unfair trade practices* : This is intended to save the consumer from unfair trade practices like false and misleading descriptions about the nature and quality of the goods, and exaggerated statements about their power and potency. In all cases of unfair trade practices or restrictive trade practices, the consumer would have the option of either apply to the Monopolies Commission under the Monopolies and Restrictive Trade Practices Act, 1969 or the Redressal Agencies constituted under the Consumer Protection Act. Viz., (a) District Forum, (b) State Commission, (c) National Commission.

3. *The right to be assured, wherever, possible, access to variety of goods at competitive price* : The Central Council constituted under this Act has been charged with the responsibility of bringing about the organisation of markets and market practices in such a way that all dealers are supplied with a variety of goods for the benefit of consumer and that the goods with a variety are being offered at competitive prices. It is only then that the consumer will have success to variety and will be able to enjoy the benefit of competitive prices.

4. *The right to be heard and to be assured that consumer's interest will receive due consideration at appropriate Forums* : The Central Council is charged with the responsibility of assuring the consumers that they would be heard of right by the appropriate Forums and the consumers will receive due attention and consideration from such Forums.

5. *The right to seek redressal against unfair trade practices, or unscrupulous exploitation of consumers* : Three redressal agencies have been established to provide simple and speedy redressal to consumer disputes. These agencies have been empowered to give relief of specific nature and to award compensation to consumers. They will observe the principles of natural justice. Their orders are final unless appealed.

6. *The right to consumer education* : The consumer has been given the right to education by section 6 of the Consumer Protection Act, 1986. The Central Council has been charged with the responsibility to provide to the people proper education in terms of their remedies under Act. People's awareness is likely to prove a better for putting the trade on some level of discipline that of Governments Controls.

State Council

The objects of every State Council shall be the same as those of the Central Council. The objects of every State Council shall be to promote and protect within the State the rights of consumers as laid down in section 6 of the Consumer Protection Act.

Section 7 provides for the establishment of State Consumer Protection Councils by any State Government (by notification) to be known as Consumer Protection Council for (name of the State). The State Council shall consist of a Minister incharge of consumer affairs in the State Government who shall be its Chairman and such number of other official or non-official members representing

such interests as may be prescribed by the State Government. The State Council shall meet as and when necessary but not less than two meetings shall be held every year. The procedure to be observed in regard to the transaction of its business at such meetings shall be prescribed by the State Government.

Consumer Protection Council. Vs. National Dairy Development Board : The complainant wanted to know in what way the Dairy Board was using the imported palm oil. The Board was refusing to give the information on the ground that the disclosure was against the public interest. Without that information the complainant was not able to make out his case. It was held that the consumer had the right to the requisite information.

REVIEW QUESTIONS

1. What are the objectives of Consumer Protection Act, 1986?
2. Who is a 'Consumer'? Who is not a consumer under the Consumer Protection Act, 1986?
3. What do you mean by 'Service'? What services will come under the purview of the Consumer Protection Act, 1986?
4. What do you mean by 'Complaint'? Who can make a complaint and to whom a complaint can be made?
5. What do you mean by 'Unfair Trade Practices'? State its ingredients and instances. Support your answer with few decided cases.
6. What is meant by (a) defect in goods and (b) deficiency in service?
7. What are the consumer disputes redressal agencies provided under the Consumer Protection Act, 1986?
8. What is the nature and scope of remedies under the Consumer Protection Act?
9. What is the jurisdiction of the various forums/commissions for the purpose of Consumer Protection Act, 1986?
10. What is a 'District Forum'? Explain the procedure to be adopted by the forum on receipt of a complaint.
11. State the jurisdiction, powers and procedure and settlement of disputes by the National Commission.
12. State the jurisdiction, powers and procedure and settlement of disputes by the State Commission.
13. State the objects and composition of the Central Consumer Protection Council and State Consumer Protection Council.
14. What are the rights of consumers and how the Consumer Protection Act, 1986 seeks to protect such rights of consumers?
15. Write short notes on (a) Defect in goods, (b) Deficiency in service, (c) Public interest complaints, (d) Consumer Rights, (e) Consumer Welfare legislations, (f) Unfair trade Practices, (g) Restrictive trade practices.

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FOREIGN EXCHANGE MANAGEMENT ACT (FEMA), 1999

CHAPTER OUTLINE

FOREIGN EXCHANGE REGULATION

FERA-FEMA

- CAPITAL ACCOUNT TRANSACTION
- CURRENT ACCOUNT TRANSACTION
- AUTHORISED PERSON

DIRECTORATE OF ENFORCEMENT

RULES AND REGULATIONS BY RBI

- EXPORT AND IMPORT OF CURRENCIES
- ACQUISITION AND TRANSFER OF PROPERTY
- FOREIGN CURRENCY ACCOUNT

Industrialisation of the country depends on the extent of investments made in the economy for starting many projects. Resources in the form of money and material are very essential for development. Capital for investment may be forthcoming within the country or it may also come from foreign countries. Non-Resident Indians would be interested in investing in the Indian ventures. Further, industrialists and big businessmen would have earned a lot of foreign exchange for further investments. It has become an imperative need for the Government to regulate the flow of foreign capital and also stimulate investment for purposes of industrialisation and economic development of the country.

During the Second World War period, the then Government passed several ordinances regulating the foreign exchange transactions. In 1947, a full-fledged Foreign Exchange Regulation Act was passed by the Government of India. In the year 1973, the Act was modified and the Foreign Exchange Regulation Act, 1973 was passed. The term foreign Exchange includes foreign deposits and balances payable in foreign currency and also foreign securities.

As stated earlier, the Foreign Exchange Management (FEMA) Act was passed by the Government of India in Parliament in 1999. The Act aims "to consolidate and amend the law relating to foreign exchange with objective of facilitating external trade and payments and for promoting the orderly development and maintenance of foreign exchange market in India.

- « The stated objective of the new Act is to facilitate external trade and payment.
- « It seeks to promote the orderly development and maintenance of the foreign exchange market.
- « On the capital account, the forex outflow is allowed only for transactions that are permitted.
- « Current account transactions can be restricted by the Centre in consultation with the RBI.

This Act extends to the whole of India and shall also apply to all branches, offices and agencies outside India owned or controlled by a person resident in India.

DEFINITIONS

An Act to consolidate and amend the law relating to foreign exchange with the objective of facilitating external trade and payments and for promoting the orderly development and maintenance of foreign exchange market in India.

In this Act, unless the context otherwise requires-

- (a) "*Adjudicating Authority*" means an officer authorised under sub-section (1) of Sec. 16.
- (b) "*Appellate Tribunal*" means the Appellate Tribunal for Foreign Exchange established under Sec. 18.
- (c) "*authored person*" means an authorised dealer, money changer, off-shore banking unit or any other person for the time being authorised under sub-section (1) of Sec. 10 to deal in foreign exchange securities;
- (d) "*Bench*" means a Bench of the Appellate Tribunal;
- (e) "*Capital accountant transaction*" means a transaction which alters the assets or liabilities, including contingent liabilities, outside India of persons resident in India or assets or

liabilities in India of persons resident outside India, and include transactions to in sub-section (3) of Sec. 6.

- (f) "*Chairperson*" means the Chairpersons of the Appellate Tribunal;
- (g) "*Chartered Accountant*" shall have the meaning assigned to it in CI. (b) of sub-section (1) of Sec. 2 of the Chartered Accountants Act, 1949 (38 of 1949);
- (h) "*currency*" includes all currency notes, postal notes, postal orders, money orders, cheques, drafts, travellers cheques, letters of credit, bills of exchange and promissory notes, credit cards or such other similar instruments, as may be notified by the Reserve Bank.
- (i) "*currency notes*" means and includes cash in the form of coins and bank notes;
- (j) "*current account transaction*" means a transaction other than a capital account transaction and without prejudice to the generality of the foregoing such transaction includes,-
 - (i) payments due in connection with foreign trade, other current business, services, and short-term banking and credit facilities in the ordinary course of business,
 - (ii) payments due as interest as loans and as net income from investments,
 - (iii) remittances for living expenses of parents, spouse and children residing abroad, and
 - (iv) expenses in connection with foreign travel, education and medical care of parents, spouse and children;
- (k) "*Director of Enforcement*" means the Director of Enforcement appointed under sub-section (1) of Sec. 36;
- (l) "*export*", with its grammatical variations and cognate expressions means-
 - (i) the taking out of India to a place outside India any goods,
 - (ii) provision of services from India to any person outside India;
- (m) "*foreign currency*" means any currency other than Indian currency;
- (n) "*foreign exchange*" means foreign currency and includes-
 - (i) deposits, credits and balances payable in any foreign currency,
 - (ii) drafts, travellers cheques, letters of credit or bills of exchange, expressed or drawn in Indian currency but payable in any foreign currency,
 - (iii) drafts, travellers cheques, letters of credit or bills of exchange, expressed or drawn by banks, institutions or persons outside India, but payable in Indian currency;
- (o) "*foreign security*" means any security, in the form of shares, stocks, bonds, debentures or any other instrument denominated or expressed in foreign currency and includes securities expressed in foreign currency, but where redemption or any form of return such as interest or dividends is payable in Indian currency;
- (p) "*import*" with its grammatical variations and cognate expressions, means bringing into India any goods or services;
- (q) "*Indian currency*" means currency which is expressed or drawn in Indian rupee but does not include special bank notes and special one rupee notes issued under Sec. 28A of the Reserve Bank of India Act, 1934 (2 of 1934);
- (r) "*legal practitioner*" shall have the meaning assigned to it in CI. (i) of sub-section (1) of Sec. 2 of the Advocates Act, 1961 (25 of 1961);

Sections 5 and 6 deal with current account and capital account transactions. According to Section 5, any person may sell or draw foreign exchange to or from an authorised person if such sale or drawal is a current account transaction. However, the Central Government may, in public interest and in consultation with the Reserve Bank, impose such reasonable restrictions for current account transactions as may be prescribed. According to Sub-section 1 of Section 6, any person

may sell or draw foreign exchange to or from a authorised person for a capital account transaction subject to provisions of Sub-section 2. Sub-section 2 states that Reserve Bank may, in consultation with the Central Government, specify : (a) any class or classes of capital account transactions which are permissible; (b) the limit up to which foreign exchange shall be admissible for such transactions. However, the Reserve Bank shall not impose any restriction on the drawal of foreign exchange for payments due on account of amortisation of loans or for depreciation of direct investments in the ordinary course of business.

Sub-section 3 of Section 6, nevertheless, lays down that without prejudice to the generality of the provisions of Sub-section 2, the Reserve Bank may, by regulation prohibit, restrict or regulate the following :

- (a) transfer or issue of any foreign security by a person resident in India;
- (b) transfer or issue of any security by a person resident outside of India;
- (c) transfer or issue of any security or foreign security by a branch, office or agency in India of a person resident outside India;
- (d) any borrowing or lending of foreign exchange in whatever form or by whatever name called;
- (e) any borrowing or lending in rupees in whatever form or by whatever name called between a person resident in India and a person resident outside India;
- (f) deposits between persons resident in India and persons resident outside India;
- (g) export, import or holding of currency or currency notes;
- (h) transfer of immovable property outside India, other than a lease not exceeding five years, by a person resident in India;
- (i) acquisition or transfer of immovable property in India, other than a lease not exceeding five years, by a person resident outside India;
- (j) giving of a guarantee or surety in respect of any debt, obligation or other liability incurred;
 - (i) by a person resident in India and owed to a person resident outside India; or
 - (ii) by a person resident outside India.

Sub-section 4 of Section 6 states that a person resident in India may hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India. Sub-section 5 states that a person resident outside India may hold, own, transfer or invest in Indian currency, security or any immovable property situated in India if such currency, security or property was acquired, held or owned by such person when he was resident in India or inherited from a person who was resident in India.

According to Sub-section 6 of Section 6, without prejudice to the provisions of this Section, the Reserve Bank may by regulation prohibit, restrict, or regulate establishment in India of a branch, office or other place of business by a person resident outside India, for carrying on any activity relating to such branch, office or other place of business.

Export of Goods and Services : Sub-section 1 of Section 7 of the Act lays down that every exporter of goods shall-

- (a) furnish to the Reserve Bank to such other exchange to or from an authorised person for a capital account transactions which are permissible;
- (b) the limit up to which foreign exchange shall be admissible for such transactions. However, the Reserve Bank shall not impose any restriction on the drawal of foreign exchange for payments due on account of amortization of loans or for depreciation of direct investments in the ordinary course of business.

Sub-section 2 of Section 7 lays down that the Reserve Bank may direct any exporter to comply with such requirements as it deems fit for the purpose of ensuring that the export value of goods is received without any delay. Sub-section. 3 lays down that every exporter of services shall furnish to the Reserve Bank, in a specified manner, the details regarding the true and correct material particulars in relation to payment for such services.

Realisation and Repatriation of Foreign Exchange: Section 8 lays down that save as otherwise provided in the Act, where any where any amount of foreign exchange is due or has accrued to any person resident in India such person shall take all reasonable steps to realise and repatriate to India such foreign exchange within such period and in such manner as may be specified by the Reserve Bank.

Section 9 Provides the following exemptions from realisation and repatriation of foreign exchange:

- (a) possession of foreign currency or foreign coins by any person upto such limit as the Reserve Bank may specify;
- (b) foreign currency account held or operated by such person or class of persons and the limit up to which the Reserve Bank may specify;
- (c) foreign exchange acquired or received before the 8th day of July, 1947 or any income arising or accruing thereon which is held outside India by any person in pursuance of permission granted by the Reserve Bank;
- (d) foreign exchange held by a person resident in India upto such limit as the Reserve Bank may specify, if such foreign exchange was acquired by way of gift or inheritance from a person referred to in clause (c) including any income arising therefrom;
- (e) foreign exchange acquired from employment, business, trade, vocation, services, honorarium, gifts, inheritance or any other legitimate means upto such limit as the Reserve Bank may specify; and
- (f) such other receipts in foreign exchange as the Reserve Bank may specify.

Authorised Person

Chapter III of the Act relates to the authorisation of a person by the Reserve Bank to deal in foreign exchange, Reserve Bank's powers to issue directions to authorised person and the power of Reserve Bank to inspect authorised person. Section 10 of the Act says that the Reserve Bank may authorise any person to deal in foreign exchange or in foreign securities, as an authorised dealer, money changer or off-shore banking unit or in any other manner as it deems fit. The authorisation shall be in writing and shall be subject to the condition laid down therein. However, the Reserve Bank may revoke the authorisation (a) if it is in public interest to do so, or (b) if the authorised person has failed to comply with the condition subject to which the authorisation was granted or has contravened any of the provisions of the Act or any rule, regulation, notification, direction or order made thereunder. Section 11 empowers the Reserve Bank to give directions to the authorised person in regard to making of payment or the doing or desisting from doing any

Miscellaneous

The last chapter, chapter VII consisting of Sections 39 to 49 deals with miscellaneous issues. Sub-section I of Section 40 empowers the Central Government in the public interest and by notification to suspend or relax the provisions of the Act in certain circumstances. Sub-section 3 provides that notification issued thereunder shall be laid before each House of Parliament. Section 41 empowers the Central Government to give general or special directions to the Reserve Bank. Section 42 provides that where contravention of any of the provisions of this Act is committed by a company, the person responsible for the conduct of its business shall be deemed to be guilty of the contravention. Section 44 bars the prosecution of legal of its business shall be deemed to be guilty of the contravention. Section 44 bars the prosecution of legal proceeding against the officers of the Central Government or the Reserve Bank or any other person exercising any powers or discharging any functions or performing any duties under the provisions of this Act for anything done in good faith. Section 45 empowers Central Government to remove the difficulties in giving effect to the provisions of the Act. Section 46 empowers the Central Government to frame the rules and Section 47 empowers the Reserve Bank to make regulations to carry out the provisions of this Act and the rules made thereunder. Section 48 provides for laying before Parliament the rules and regulations made under this Act. Section 49 provides for repayment of the Foreign Exchange Regulation Act, 1973 and for dissolution of the Appellate Board constituted under Section 52 of the said Act. Sub-section 3 of this Section says that notwithstanding anything contained in any other law for the time being in force, no court shall take cognizance of an offender under the repealed Act and adjudicating officer shall take notice of any contravention under Section 51 of the repealed Act after the expiry of a period of two years from the date of the commencement of this Act. According to Sub-section 4, subject to the provisions of Sub-section 3 all offences committed under the repealed Act shall continue to be governed by the provisions of the repealed Act as if that Act had not been repealed. Sub-section 5 states that-

- (a) anything done or any action taken or purported to have been done or taken including or declaration made or any licence, permission, authorization or exemption granted or any document or instrument executed or any direction given under the Act hereby repealed shall, in so far as it is not inconsistent with executed or any direction given under the corresponding provisions of this Act;
- (b) any appeal preferred to the Appellate Board under Sub-section 2 of Section 52 of the repealed Act but not disposed of before the commencement of this Act shall stand transferred to and shall be disposed of by the Appellate Tribunal constituted under this Act;
- (c) every appeal from any decision or order of the Appellate Board under Sub-section 3 or Sub-section 4 of Section 52 of the repealed Act shall, if not filed before the commencement of this Act, be filed before the High Court within a period of sixty days of such commencement. Provided that the High Court may entertain such appeal after the expiry of the said period of sixty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period.

RULES AND REGULATIONS FRAMED UNDER F.E.M.A.

In order to implement the various Sections of the Act, i.e., Foreign Exchange Management Act, 1999, the Reserve Bank of India framed several Rules and Regulations. These rules and regulations are as follows :

1. Foreign Exchange Management (Encashment of Draft, Cheque, instrument and payment of interest) Rules, 2000.
2. Foreign Exchange (Authentication of Documents) Rules, 2000.
3. Foreign Exchange Management (Current Account Transaction) Rules, 2000.
4. Foreign Exchange Management (Adjudication Proceedings and Appeals) Rules, 2000.
5. Foreign Exchange (Compounding Proceedings) Rules, 2000.
6. Foreign Exchange Management (Permissible Capital Account Transaction) Regulations, 2000.
7. Foreign Exchange Management (Issue of Security in India by a Branch, Office or Agency of a person Resident Outside India) Regulations, 2000.
8. Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000.
9. Foreign Exchange Management (Borrowing and Lending in Rupees) Regulation, 2000.
10. Foreign Exchange Management (Deposit) Regulations, 2000.
11. Foreign Exchange Management (Export and Import of Currency) Regulation, 2000.
12. Foreign Exchange Management (Acquisition and Transfer of Immovable Property Outside India) Regulations, 2000.
13. Foreign Exchange Management (Guarantees) Regulations, 2000.
14. Foreign Exchange Management (Realisation, Repatriation and Surrender of Foreign Exchange) Regulations, 2000.
15. Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) Regulations, 2000.
16. Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2000.
17. Foreign Exchange Management (Insurance) Regulations, 2000.
18. Foreign Exchange Management (Remittance of Assets) Regulations, 2000.
19. Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2000.

It will not be possible to study all the rules and regulations mentioned above. We shall confine with the study of a few important rules and regulations

FOREIGN EXCHANGE MANAGEMENT (CURRENT ACCOUNT TRANSACTIONS) RULES, 2000.

1. Remittance out of lottery winnings.
2. Remittance of income from racing/riding, etc., or any other hobby.
3. Remittance for purchase of lottery tickets, banned/prescribed magazines, football pools, sweepstakes, etc.
4. Payment of commission on exports made towards equity investment in joint ventures/ wholly Owned Subsidiaries abroad of Indian companies.
5. Remittance of dividend by any company to which the requirement of dividend balancing is applicable.

6. Payment of commission on exports under Rupee State Credit Route.
7. Payment related to "Call Back Services" of telephones.
8. Remittance of interest income on funds held in Non-resident Special Rupee Scheme account.
9. Drawal of foreign exchange is prohibited for a travel to Nepal and Bhutan; or a transaction with a person resident in Nepal or Bhutan.

Under Rule No. 4, no person shall draw foreign exchange for a transaction mentioned below, without prior approval of the Government of India with the concerned Ministry.

- (a) Cultural Tours
- (b) Advertisement abroad by any PSU/State and Central Government Department
- (c) Remittance of Freight of Vessel chartered by a PSU.
- (d) Payment of import by a Govt. Department or a PSU on c.i.f. basis (i.e., other than f.o.b. and f.a.s. basis)
- (e) Multimodal transport operators making remittance to their agents abroad
- (f) Remittance of container detention charges exceeding the rate prescribed by Direct-General of Shipping
- (g) Remittance under technical collaboration agreements where payment of royalty exceeds 5% on local sales and 8% on exports and lump-sum payment exceeds US dollar 2 million
- (h) Remittance of prize money/sponsorship of sports activity abroad by a person other than International/National/State level Sports bodies, if the amount involved exceeds US dollar 1,00,000.
- (i) Payment for securing insurance for health from a company abroad.

The above rule shall not apply where the payment is made out of funds held in Resident Foreign Currency (RFC) Account or Exchange Earner's Foreign Currency (EEFC) Account of the remitter.

Under Rule No. 5, no person shall draw foreign exchange for the following transactions without prior approval of the Reserve Bank of India.

- (i) Remittance by artiste, e.g., wrestler, dancer, entertainer, etc. (This restriction is not applicable to artists engaged by tourism related organisations in India like ITDC, State Tourism Development Corporations, etc., during special festivals or those artists engaged by hotels in five-star category, provided the expenditure is met out of EEFC (account))
- (ii) Release of exchange exceeding US dollar 5000 or its equivalent in one calendar year, for one or more private visits to any country (except Nepal and Bhutan)
- (iii) Gift remittance exceeding US dollar 5,000 per beneficiary per annum.
- (iv) Donation exceeding US dollar 5,000 per annum per beneficiary
- (v) Exchange facilities exceeding US dollar 5,000 for person going abroad for employment.
- (vi) Exchange facility for emigration exceeding US dollar 5,000 or amount prescribed by country of emigration.
- (vii) Remittance for maintenance of close relatives abroad exceeding US dollar 5,000 per year per recipient.

- (viii) Release of foreign exchange, exceeding US dollar 25,000 to a person irrespective of period of stay, for business travel, or attending a conference or specialised training or for maintenance expenses of a patient going abroad for medical treatment or check-up.
- (ix) Release of exchange for meeting expenses for medical treatment abroad exceeding the estimate from the doctor in India or hospital/doctor abroad.
- (x) Release of exchange for studies abroad exceeding the estimates from the institution abroad or US dollar 30,000 whichever is higher.
- (xi) Commission to agents abroad for sale of residential flats/commercial plots in India, exceeding 5% of the inward remittance.
- (xii) Short-term credit to overseas offices of Indian Companies.
- (xiii) Remittance for advertisement on foreign television by a person whose export earnings are less than Rs. 10 lakhs during each of the preceding two years.
- (xiv) Remittance of royalty and payment of lump-sum fee under the technical collaboration agreement which has not been registered with Reserve Bank.
- (xv) Remittance exceeding US dollar 1,00,000 for architectural/consultancy services procured from abroad.
- (xvi) Remittances for use and/or purchase of trade mark/franchise in India.

The above state rule shall not apply where the payment is made out of funds held in Resident Foreign Currency (RFC) Account or Exchange Earner's Foreign Currency (EEFC) Account of the remitter.

FOREIGN EXCHANGE MANAGEMENT (PERMISSIBLE CAPITAL ACCOUNT TRANSACTIONS) REGULATIONS, 2000

Permissible Capital Account Transactions

Regulation No. 3(1) : Capital account transactions of a person may be classified under the following heads, namely :

- (A) transactions, specified in Schedule I, of a person resident in India;
- (B) transactions specified in Schedule II, of a person resident outside India.

(2) Subject to the provisions of the Act or the rules or regulations or direction or orders made or issued thereunder, any person may sell or draw foreign exchange to or from an authorised person for a capital account transaction specified in the Schedules : Provided that the transaction is within the limit specified in the regulations.

Schedule : I [Regulation 3(1)(A)]

Classes of Capital account transactions of persons resident in India:

- (a) Investment by a person resident in India in foreign securities.
- (b) Foreign Currency loans raised in India and abroad by a person resident in India.
- (c) Transfer of immovable property outside India by a person resident in India.
- (d) Guarantees issued by a person resident in India in favour of a person resident outside India.

- (e) Export, import and holding of currency/currency notes
- (f) Loans and overdrafts (borrowings) by a person resident in India from a person resident outside India.
- (g) Maintenance of foreign currency accounts in India and outside India by a person resident in India.
- (h) Taking out of insurance policy by a person resident in India from an insurance company outside India.
- (i) Loans and overdrafts by a person resident in India to a person resident outside India.
- (j) Remittance outside India of capital assets of a person resident in India.
- (k) Sale and purchase of foreign exchange derivatives in India and abroad and commodity derivatives abroad by a person resident in India.

Schedule II : [Regulation 3(1)(B)]

Classes of capital account transactions of persons resident outside India :

- (a) Investment in India by a person resident outside India, that is to say,
 - (i) issue of security by a body corporate or an entity in India and investment therein by a person resident outside, India; and
 - (ii) investment by way of contribution by a person resident outside India to the capital of a firm or a proprietorship concern or an association of persons in India.
- (b) Acquisition and transfer of immovable property in India by a person resident outside India.
- (c) Guarantee by a persons resident outside India in favour of or on behalf of, a person resident in India.
- (d) Import and export of currency/currency notes into/from India by a person resident outside India.
- (e) Deposits between a person resident in India and a person resident outside India.
- (f) Foreign currency accounts in India of a person resident outside India.
- (g) Remittance outside India of capital assets in India of a person resident outside India.

Regulation No. 4 : Prohibition

Save otherwise provided in the Act, rules or regulations made thereunder :

- (a) no person shall undertake or sell or draw foreign exchange to or from an authorised person for any capital account transaction,
- (b) no person resident outside India shall make investment in India, in any form, in any company or partnership firm or proprietary concern or any entity, whether incorporated or not, which is engaged or proposes to engage-
 - (i) in the business of Chit Fund, or
 - (ii) as Nidhi Company, or
 - (iii) in agricultural or plantation activities, or
 - (iv) in real estate, business, or construction of farm houses, or

(v) in trading in Transferable Development Rights (TDRs)

Explanation : For the purpose of this regulation "real estate business" shall not include development of townships, construction of residential/commercial premises, roads or bridges.

"Transferable Development Rights" means certificates issued in respect of category of land acquired for public purpose either by Central or State Government in consideration of surrender of land by the owner without monetary compensation, which are transferable in part or whole.

Method of Payment for Investment

Regulation No. 5 : The payment for investment shall be made by remittance from abroad through normal banking channels or by debit to an account of the investor maintained with an authorised person in India in accordance with the regulations made by the Reserve Bank under the Act.

Declaration to be Furnished

Regulation No. 6 : Every person selling or drawing foreign exchange to or from an authorised person for a capital account transaction shall furnish to the Reserve Bank, a declaration in the form and within the time specified in the regulations relevant to the transaction.

FOREIGN EXCHANGE MANAGEMENT (EXPORT AND IMPORT OF CURRENCY) REGULATIONS, 2000

Export and Import of Indian Currency notes

Regulation : 3(1) : Save as otherwise provided in these regulations, any person resident in India,

- (a) may take outside India (other than to Nepal and Bhutan) currency notes of Government of India and Reserve Bank of India notes upto an amount not exceeding Rs. 5,000/- per person;
- (b) may take or send outside India (other than to Nepal and Bhutan) commemorative coins not exceeding two coins each.

Explanation : 'Commemorative Coin' includes coin issued by Government of India Mint to Commemorate any specific occasion or event and expressed in Indian currency;

- (c) who had gone out of India on a temporary visit, may bring into India at the time of his return from any place outside India (other than from Nepal and Bhutan), currency notes of Government of India and Reserve Bank of India notes upto an amount not exceeding Rs. 5,000/- per person.

According to **Regulation No. 4**, no person shall take or send out of India the Indian coins which are covered by the Antique and Art Treasure Act, 1972.

According to **Regulation No. 5**, except as otherwise provided in these regulations, no person shall, without the general or special permission of the Reserve Bank, export or send out of India, or import or bring into India, any foreign currency.

Opening, Holding and Maintaining a Resident Foreign Currency Account

Regulation No. 5 (1) : A person resident in India may open, hold and maintain with an authorised dealer in India a Foreign Currency Account to be known as a Resident Foreign Currency (RFC) Account out of foreign exchange-

- (a) received as pension or any other superannuation or other monetary benefits from his employer outside India; or
- (b) realised on conversion of the assets referred to in sub-section (4) of the Section 6 of the Act, and repatriated to India; or
- (c) received or acquired as gift or inheritance from a person referred to in sub-section (4) of Section 6 of the Act; or
- (d) referred to in clause (c) of Section 9 of the Act, or required as gift or inheritance therefrom

(2) the funds in a Resident Foreign Currency Account opened or held or maintained in terms of sub-regulation (1) shall be free from all restrictions regarding utilisation of foreign currency balances including any restrictions on investment in any form, by whatever name called, outside India;

Regulation No. 6

A shipping or airline company incorporated outside India or its agents in India may open, hold and maintain a Foreign Currency Account with an authorised dealer in India for meeting the local expenses in India of such airlines of shipping company : provided that the credits to such accounts are only by way of freight or passage fare collection in India or by inward remittances through normal banking channels from its office outside India and, in the case of agent, from his principal outside India.

Opening, Holding and Maintaining a Foreign Currency Account Outside India

Regulation No. 7(1) : An authorised dealer in India may open, hold and maintain with his branch or head office or correspondent outside India, a Foreign Currency Account for the purpose of transacting foreign exchange business and other matters incidental thereto, in accordance with the provisions of the Act or the rules or regulations made or the directions issued thereunder.

(2) A branch outside India of a bank incorporated or constituted in India may open, hold and maintain with a bank outside India, a Foreign Currency Account for the purpose of carrying on normal banking business outside India, subject to compliance with the directions or guidelines issued from time to time by the Reserve Bank, and the regulatory authority in the country where the branch is located.

(3) A shipping or airline company incorporated in India may open, hold and maintain with a bank outside India, a Foreign Currency Account for the purpose of undertaking transactions in the ordinary course of its business.

(4) Life Insurance Corporation of India or General Insurance Corporation of India and its subsidiaries may open, hold and maintain with a bank outside India, a Foreign Currency Account for the purpose of meeting the expenditure incidental to the insurance business carried on by them and for that purpose, credit to such account the insurance premia received by them outside India.

(5) A person resident in India, being an exporter who has undertaken a construction contract or a turnkey project outside India or who is exporting services or engineering goods from India on deferred payment terms may open, hold and maintain a Foreign Currency Account with a bank outside India, provided that-

- (a) approval as required under the Foreign Exchange Management (Export of Goods and Services) Regulations, 2000 has been obtained for undertaking the contract/project/export of goods or services, and
- (b) the terms and conditions stipulated in the letter of approval have been duly complied with.

(6) A person resident in India who has gone abroad for studies or who is on a visit to a foreign country may open, hold and maintain a Foreign Currency Account with a bank outside India during his stay outside India, provided that on his return to India, the balance in the account is repatriated to India.

Provided that short visits to India by a person who has gone abroad for studies, before completion of his studies, shall not be treated as his return to India.

(7) A person resident in India who has gone out of India to participate in an exhibition/trade fair outside India may open, hold and maintain a Foreign Currency Account with a bank outside India for crediting the sale proceeds of goods on display in the exhibition/trade fair. Provided that the balance in the account is repatriated to India through normal banking channels within a period of one month from the date of closure of the exhibition/trade fair.

Limit on holding in a Foreign Currency Account

Regulation No. 8 : Unless otherwise stipulated by the Reserve Bank, a person resident in India who has opened and is maintaining a Foreign Currency Account in accordance with the provisions of Regulations 6 and 7, may hold therein foreign exchange without any limit.

Types of accounts

Regulation No. 9 : A Foreign Currency Account with an authorised dealer in India under these Regulations may be opened, held and maintained-

- (1) in the form of current or savings or term deposits account in cases where the account holder is an individual and in the form of current account or term deposit account in all other cases;
- (2) singly or jointly in the name of person eligible to open, hold and maintain such account

Remittances out of the accounts after the account holder's death

Regulation No. 10 : On the death of a foreign currency account holder :

- (1) the authorised dealer with whom the account is held or maintained may remit to a nominee being a person resident outside India, funds to the extent of his share or entitlement from the account of the deceased account holders.
- (2) a nominee being a person resident in India, who is desirous of remitting funds outside India out of his share for meeting the liabilities abroad of the deceased, may apply to the Reserve Bank of such remittance.

Responsibility of authorised maintaining foreign currency accounts

Regulation No. 11 : An authorised dealer maintaining foreign currency accounts shall-

- (1) comply with the directions issued by the Reserve Bank from time to time; and
- (2) submit periodic returns of Statements; if any, as may be stipulated by the Reserve Bank.

In the Schedule under these 'Regulations', 'Exchange Earner's Foreign Currency (EEFC) Account Scheme' has been furnished in detail.

REVIEW QUESTIONS

1. Bring out the salient features of Foreign Exchange Regulation Act, 1973 (FERA).
2. What are the essential differences in the objects of FERA & FEMA.
3. Briefly summarise the essential features of FEMA
4. Where was the need to repeal FERA and substitute it with FEMA?
5. What are the definitions of the following expressions and terms according to Foreign Exchange Management Act, 1999?
 - (a) Authorised person
 - (b) Capital Account Transaction
 - (c) Current Account Transaction
 - (d) Director of Enforcement
 - (e) Foreign Currency
 - (f) Foreign Security
 - (g) Foreign Exchange
 - (h) Person Resident in India
 - (i) Adjudicating Authority
6. Summarise the dealings in Foreign Exchange under this Act, in Current Account Transactions and Capital Account Transactions.
7. Who is an 'Authorised person' according to FEMA? Elucidate the powers of Reserve Bank of India in this connections under Section 11 and 12.

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THE FACTORIES ACT, 1948

CHAPTER OUTLINE

LEGISLATION ON WORKING CONDITIONS

OBJECTIVES OF FACTORIES ACT, 1948

APPROVAL, LICENSING AND REGISTRATION

- OCCUPIER, INSPECTORS, CERTIFYING SURGEON

PROVISIONS RELATING TO

- HEALTH OF WORKERS
- SAFETY OF WORKERS
- HAZARDOUS PROCESSES
- SITE APPROVAL COMMITTEE
- INQUIRY COMMITTEE
- EMERGENCY STANDARDS

PROVISIONS REGARDING WELFARE OF WORKERS

- WORKING HOURS
- WELFARE OFFICERS
- WOMEN WORKERS
- YOUNG PERSONS
- CHILD LABOUR
- HOLIDAYS AND LEAVE

OBLIGATIONS AND RIGHTS OF EMPLOYERS AND EMPLOYEES

The problems of health, safety and welfare of factory workers have been engaging the attention of the Government since the last quarter of the 19th century. The first attempt to regulate working conditions in factories was made in 1881 when a legislation was enacted to protect women and children and provide health and safety measures. This was replaced by a new Act regulating hours of work for adults for the first time in 1911. The new Factories Act was overhauled in 1934 for implementing the recommendations of the Royal Commission of Labour, and was replaced in 1948 by a more comprehensive Factories Act to meet some of the aspirations of the workers aroused by Independence. The Act of 1948 is now the Act in force with amendments made during the last six years.

Administration

The State Governments administer and enforce this Act through their inspectorates. They are empowered to (i) apply all or any provisions of the Act to any manufactory employing less than ten persons if working with power and less than 20 persons if working without power, or where persons are not employed by the owner but are working there with the permission or with the agreement with the owner, provided the manufacturing is not being carried on with the help of his family; (ii) exempt any factory or class or description of factories and public institution from any of all of the provisions of the Act, except Sec. 67 of the Act, for not more than three months at a time; and (iii) appoint Chief Inspector of Factories, Additional, Joint & Deputy Chief Inspectors, and any number of Inspectors for proper enforcement of the Act, (iv) to declare different departments to be separate factories, two or more factories to be a single factory after an opportunity is given to be heard to the occupier They have also to appoint doctors or surgeons for certifying children and adolescents as fit for work in factories, register and license factories and collect licence fee, and frame necessary rules for carrying out the purposes of the Act. However, the Central Government may give direction to a State Government for carrying into execution the provisions of the Act. The licence fee realised is to be utilised for strengthening the inspectorate for effective enforcement of the Act. (Secs.5 to 8, 10, 65, 84, 85, 86, 112, 113).

The Object of the Factories Act, 1948 is to regulate the conditions of work in manufacturing establishments coming within the definition of the term "factory" as used in the Act. The Factories Act of 1948 came into force on 1st April 1949. It applies to factories, all over India, including the State of Jammu and Kashmir. The Act was amended extensively in 1976 and 1987. The Act is divided into eleven Chapters and contains one schedule.

Chapter I : It deals with preliminary information like the *title, extent and commencement of the Act*; approval of licensing and registration of factories; and notice by occupier.

Chapter II : It deals with *Inspecting staff and their powers*.

Chapter III : It deals with *health of the workers* with reference to such matters as cleanliness, disposal of water and effluents, artificial humidification, lighting, drinking water etc.

Chapter IV : It deals with *safety of workers* in a factory.

Chapter V : It deals with *welfare of workers* and provides for washing facilities, facilities for storing and drying clothing, creches, welfare officers etc.

Chapter VI : It deals with *working hours of adults*.

Chapter VII : It deals with restrictions on *employment of young persons*.

Chapter VIII : It deals with *"annual leave and wages"*.

Chapter IX : It deals with special provisions relating to *power to apply the Act to certain premises*.

Chapter X : It deals with *penalties and procedures*.

Chapter XI : It deals with supplementary issues like appeals, display and services of notice, returns, etc.

DEFINITIONS

1. **Factory** : *Factory* means any *premises including the precincts thereof*-

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

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

Explanation : For computing the number of workers for the purposes of this clause all the workers in different groups and relays in a day shall be taken into account. The mere fact that an Electronic Data Processing Unit or a Computer Unit is installed in any premises or part thereof, shall not be construed to make it a factory if no manufacturing process is being carried on in such premises or part thereof.

The State Government is empowered to declare any establishment carrying on a manufacturing process to be a factory for the purposes of the Act even though it employs less than the prescribed minimum number of workers, provided that the manufacturing process is not being carried on by the owner only with the aid of his family.

The word *premises* has now come to refer to either land or buildings or to both, depending on the context. The word *premises* is a generic term meaning open land or land with buildings or buildings alone. The words *premises including precincts* have been used in a wide sense. The term *precincts* means a space enclosed by the walls or fences of the factory. Under English law, it has been held that the walls and the fences built around the factory fixes the boundaries of the premises.

2. **Manufacturing Process** : This term includes :

- (i) making, altering, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adopting 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 types for printing, printing by letter press, lithography, photogravure or other similar processes or book binding; or
- (v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or

The Rules stated above are enforced because the plans and specifications of the factory must insure proper measures of health, safety and welfare of the workers.

General Duties of the Occupier (Sec. 7-A)

A new Sec. 7 has been introduced by the Amendment Act of 1987, prescribing the general duties of the occupier in regard to the health, safety and welfare of the workers in his factory. According to it, every occupier shall ensure, so far as is reasonably practicable, the health, safety and welfare of all workers while they are at work in the factory [Sec. 7-A(1)]. Sec. 7-A(2) enumerates the matters in regard to health, safety and welfare of the workers. These matters include-

- (a) the provision and maintenance of plant and systems of work in the factory that are safe and without risks to health;
- (b) the arrangements in the factory for ensuring safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances.
- (c) the provision of such information, instruction, training and supervision as are necessary to ensure the health and safety of all workers at work;
- (d) (i) the maintenance of all places of work in the factory in a condition that is safe and without risks to health and (ii) the provisions and maintenance of such means of access to and egress from such places as are safe and without such risks;
- (e) the provision, maintenance or monitoring of such working environment in the factory for the workers that is (i) safe, (ii) without risks to health, and (iii) adequate as regards facilities and arrangements for their welfare at work [Sec. 7-A(2)].

In addition to the above duties, every occupier shall also-

- (a) prepare, and, as often as may be appropriate, revise, a written statement of his general policy with respect to (i) the health and safety of the workers at work, and (ii) the organisation and arrangements for the time being in force for carrying out that policy, and
- (b) bring the statement and any revision thereof to the notice of all the workers. In some cases as may be prescribed an occupier may be exempted from this duty [Sec. 7-A(3)].

General Duties of Manufacturers, etc. as regards articles and substances for use in factories (Sec. 7-B)

A new Section, Sec. 7-B, has been introduced by the Amendment Act of 1987 prescribing the general duties of manufacturers, etc. as regards articles and substances for use in factories. The purpose of Sec. 7-B is also to ensure health and safety of the workers working in factories wherein these articles and substances are used. The provision of Sec. 7-B are as follows :

1. *Proper design and construction, testing and information.* Every person who designs, manufactures, imports or supplies any article for use in any factory shall-

- (a) ensure that the article is so designed and constructed as to be safe and without risks to the health of the workers when properly used;
- (b) carryout or arrange for the carrying out of such tests and examination as may be considered necessary for the effective implementation of the provisions of Clause (a);
- (c) take such steps as may be necessary to ensure that adequate information will be available-
 - (i) in connection with the use of the article in any factory;
 - (ii) about the use for which it is designed and tested; and

- (iii) about any conditions necessary to ensure that the article when put for such use, will be safe, and without risks to the health of the workers [Sec. 7-B(1)].

Articles designed or manufactured outside India. Where an article is designed or manufactured outside India, it shall be obligatory on the part of the importer to see-

- (a) that the article conforms to the same standards as if such article is manufactured in India, or
- (b) if the standards adopted in the country outside for the manufacture of such article are above the standards adopted in India, that the article conforms to such standards [Proviso to Sec. 7-B(1)].

Note : For the purpose of Sec. 7-B 'article' shall include plant and machinery.

2. *Research :* Every person, who undertakes to design or manufacture any article for use in any factory, may carryout or arrange for the carrying out of necessary research. This may be necessary with a view to the discovery and the elimination or minimisation of any risks to the health or safety of the workers in which the design or article may give rise {Sec. 7-B(2)}. He need not repeat the testing, examination or research which has been carried out by some one else or at his instance if he can reasonably rely on the results of testing etc. for the purposes of Sec. 7-B (1) and (2) [Sec. 7-B(3)].

3. *Duty to extend to things done in course of business :* Any duty imposed on any person by Sec. 7-B(1) and (2) shall extend only to things done in the course of business carried on by him and to matters within his control [Sec. 7-B(4)].

4. *Undertaking by the user :* Sometimes a person may design, manufacture, import or supply an article on the basis of a written undertaking by the user of such article to take the steps specified in the undertaking to ensure that the article will be safe and without risks to the health of the workers when properly used. Such an undertaking shall have the effect of relieving the person designing, manufacturing, importing or supplying the article from the duty imposed by Sec. 7-B(1)(a) to such extent as is reasonable having regard to the terms of the undertaking [Sec. 7-B(5)].

5. *When article not properly used :* For the purposes of Sec. 7-B an article is not to be regarded as properly used if it is used without regard to any information or advice relating to its use which has been made available by the person who has designed, manufactured, imported or supplied the article [Sec. 7-B(6)].

The Inspection Staff

The Factories Act empowers the State Government to appoint Inspectors, Chief Inspectors of Factories, Additional Chief Inspectors, Joint Chief Inspectors and Deputy Chief Inspectors. Every District Magistrate is an Inspector for his district. No person can act as an Inspector if he is or becomes directly or directly interested in a factory or in any process or business carried on therein or in any patent or machinery connected therewith.

Powers of Inspectors : An Inspector may exercise the following powers within the local limits for which he is appointed.

- (a) *enter, with such assistants*, being persons in the service of the Government or any local or other public authority, as he thinks fit, and place which is used, or which he has reason to believe is used, as a factory;

space. In calculating the space, an account is to be taken of space above 14 ft. (or 5 metres) from the floor.

7. **Lighting** : Factories must be well lighted. Effective measures must be adopted to prevent glare or formation of shadows which might cause eye strain.

8. **Drinking water** : Arrangements must be made to provide a sufficient supply of wholesome drinking water. All supply points of such water must be marked "*drinking water*". No such points shall be within 20 ft. (or 7.5 metres) of any latrine, washing place etc. Factories employing more than 250 workers must *cool the water during the hot weather*.

9. **Latrines and Urinals** : Every factory must provide sufficient number of latrines and urinals. There must be separate provision for male and female workers. Latrine and urinals must be kept in a clean and sanitary condition. In factories employing more than 250 workers, they shall be of prescribed sanitary types.

10. **Spittoons** : A sufficient number of spittoons must be provided at convenient places, in a clean and hygienic condition. The State Government may make Rules regarding their number, location and maintenance. No person shall spit except in the spittoons. If a person does so he may be fined upto Rs. 5.

MEASURES IN REGARD TO HEALTH

- | | |
|--------------------------------|-----------------------|
| 1. Cleanliness. | 6. Overcrowding |
| 2. Disposal of Wastes | 7. Lighting |
| 3. Temperature and Ventilation | 8. Drinking Water |
| 4. Artificial Humidification | 9. Urinal and Latrine |
| 5. Dust and Fume | 10. Spittoons |

PROVISIONS REGARDING THE SAFETY OF WORKERS

No woman or young person shall be allowed to clean, lubricate or adjust any part of the machinery while the prime mover or transmission machinery is in motion or to work between moving parts, or between fixed and moving parts, of any machinery which is in motion. The State Government may prohibit in any specified factory or class or description of factory, the factories which were in operation before the commencement of the Act, the maintenance or devices for cutting off power is required only for workrooms in which electricity is used for power. It is a punishable offence to sell or let out on hire, either directly or as an agent, any machine which does not comply with the provisions of this section or of any Rules made by the State Government on the subject. (The offender may be punished with imprisonment upto three months and/or fined up to Rs. 500). If the feed-end of a cotton-opener is in a room separated from the delivery-end by a partition extending to the roof or to such height as the Inspector may in a particular case specify in writing women and children may be employed on the side of the partition where the feed-end is situated.

1. **Fencing of machinery** : All dangerous machinery must be securely fenced *e.g.*, moving parts of prime movers, any flywheels connected to every prime mover, electric generators - Sec. 21.
2. **Work on or near machinery in motion** : Work on or near machinery in motion must

be carried out only by specially trained adult male workers wearing tight fitting clothes - Sec. 22.

3. **Employment of young persons on dangerous machines** : No young person shall work at any dangerous machine unless he has been specially instructed as to the dangers and the precautions to be observed, has received sufficient training about the work, and is under the supervision of some person having thorough knowledge and experience of the machine - Sec. 23.
4. **Striking gear and devices for cutting off power** : In every factory suitable devices for cutting off power in emergencies from running machinery shall be provided and maintained in every work room- Sec. 24.
5. **Self-acting machines** : Moving parts of a self-acting machine must not be allowed to come within 45 cms. of any fixed structure which is part of the machine - Sec. 25.
6. **Casing of new machinery** : In all machinery installed after the commencement of the Act, certain parts must be sunk, encased or otherwise effectively guarded e.g., set screw, bolt, toothed gearing etc. - Sec. 26.
7. **Women and children near cotton openers** : Women and children must not be allowed to work near cotton openers, except in certain cases - Sec. 27.
8. **Hoists, lifts, chains etc** : Every hoist and lift must be so constructed as to be safe. There are detailed Rules as to how such safety is to be secured. There are similar provisions regarding lifting machines, chains, ropes and lifting tackle - Secs. 28, 29.
9. **Revolving machinery** : Where grinding is carried on, the maximum safe working speed of every revolving machinery connected therewith must be notified. Steps must be taken to see that the safe speed is not exceeded - Sec. 30.
10. **Pressure plant** : Where any operation is carried on at a pressure higher than the atmospheric pressure, steps must be taken to ensure that the safe working pressure is not exceeded - Sec. 31.
11. **Floors, stairs and means of access** : All floors, steps, stairs, passage and gangways shall be of sound construction and properly maintained. Hand-rails shall be provided wherever necessary. Safe means of access shall be provided to the place where the workers will carry on any work - Sec. 32.
12. **Pits, sumps, opening in floors etc** : Pits, sumps, openings in floors etc. must be securely covered or fenced - Sec. 33.
13. **Excessive weights** : No worker shall be made to carry a load so heavy as to cause him injury- Sec. 34.
14. **Protection of eyes** : Effective screen or suitable goggles shall be provided to protect the eyes of the worker from fragments thrown off in course of any manufacturing process and from excessive light if any - Sec. 35.
15. **Precautions against dangerous fumes** : No person shall be allowed to enter any chamber, tank, etc. where dangerous fumes are likely to be present, unless it is equipped with a manhole or other means of going out. In such space no portable electric light of more than 24 volts shall be used. Only a lamp or light of flame proof construction can be used in such space. For people entering such space suitable breathing apparatus, reviving

shall co-opt in the Site Appraisal Committee a representative nominated by the Central Government as a member of that Committee. [Sec. 41-A(3)].

Functions of the Committee : The Site Appraisal Committee shall examine an application for the establishment of a factory involving a hazardous process. It shall make its recommendation to the State Government within a period of 90 days of the receipt of such application in the prescribed form [Sec. 41-A(2)]. The Site Appraisal Committee shall have power to call for any information from the person making an application for the establishment or expansion of a factory involving a hazardous process [Sec. 41-A(4)].

No further approval required : Where the State Government has granted approval to an application for the establishment or expansion of a factory involving a hazardous process, it shall not be necessary for an applicant to obtain a further approval from the Central Board or the State Board established under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 [Sec. 41-A(5)].

Compulsory Disclosure of Information by the Occupier (Sec. 41-B)

Disclosure to whom : The occupier of every factory involving a hazardous process shall disclose all information regarding dangers, including health hazard. He shall also disclose 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. This information is required to be disclosed to (a) the *workers* employed in the factory, (b) the *Chief Inspector*, (c) the *local authority* within whose jurisdiction the factory is situate, and the general public in the vicinity [Sec. 41-B(1)].

The information so furnished shall include accurate information as to the quantity, specifications and other characteristics of wastes and the manner of their disposal [Sec. 41-B(3)].

Policy with regard to health and safety of workers : The occupier shall, at the time of regarding the factory involving a hazardous process, lay down a detailed policy with respect to the health and safety of the workers employed therein. He shall intimate such policy to the Chief Inspector and the local authority. Thereafter, he shall, at such intervals as may be prescribed, inform the Chief Inspector and the local authority of any change made in the said policy [Sec. 41-B(2)].

On-site emergency plan and disaster control measures : Every occupier shall, with the approval of the Chief Inspector, draw up an on-site emergency plan and detailed disaster control measures for his factory. He shall also make known to the workers employed therein and to the general public living in the vicinity of the factory the safety measures required to be taken in the event of an accident taking place [Sec. 41-B(4)].

Information to the Chief Inspector before commencement : If a factory proposes to engage in a hazardous process, the occupier of the factory shall, within a period of 30 days before the commencement of such process, inform the Chief Inspector of the nature and details of the process in such form and in such manner as may be prescribed [Sec. 41-B(5)]. If the occupier contravenes this provision the licence issued under Sec.6 to such factory shall be subjected to under the provisions of this Act, be liable for cancellation [Sec. 41-B(6)].

Handling, usage, transportation of hazardous substances : The occupier of a factory involving a hazardous process shall, with the previous approval of the Chief Inspector, lay down measures for the handling, usage, transportation and storage of hazardous substances inside the factory

premises. He shall also lay down the measures for the disposal of such substances outside the factory premises. He shall also publicise these measures in the manner prescribed among the workers and the general public living in the vicinity [Sec. 41-B(7)].

Specific Responsibility of the Occupier in relation to Hazardous Processes (Sec. 41-C)

Every occupier of a factory involving any hazardous process shall-

- (a) maintain accurate and up-to-date health records or, as the case may be, medical records, of the workers in the factory who are exposed to any chemical, toxic or any other harmful substances which are manufactured, stored, handled or transported. Such records shall be accessible to the workers subject to such conditions as may be prescribed;
- (b) appoint persons who possess qualifications and experience in handling hazardous substances and are competent to supervise such handling within the factory and to provide at the working place all the necessary facilities for protecting the workers in the manner prescribed;

Where any question arises as to the qualification and experience of a person so appointed, the decision of the Chief Inspector shall be final.

- (c) provide for medical examination of every worker-
 - (i) before such worker is assigned to a job involving the handling of or working with a hazardous substance, and
 - (ii) while continuing in such job, and after he has ceased to work in such job, at intervals not exceeding 12 months in such manner as may be prescribed.

(Vide Appendix I The First Schedule - List of Industries involving Hazardous Process.)

Power of Central Government to appoint Inquiry Committee (Sec. 41-D)

Appointment of an Inquiry Committee in the event of occurrence of an extraordinary situation : The Central Government may, in the event of the occurrence of an extraordinary situation involving a factory engaged in a hazardous process, appoint an Inquiry Committee to inquire into the standards of health and safety observed in the factory. The object of appointing the Committee is to find out the causes of any failure or neglect in the adoption of any measures or standards prescribed for the health and safety of the workers employed in the factory or the general public affected or likely to be affected due to such failure or neglect and for the prevention and recurrence of such extraordinary situation in future in such factory or elsewhere [Sec. 41-D(1)].

Membership of the Committee and its tenure of office : The Committee shall consist of a Chairman and 2 other members. The terms of reference of the Committee and the tenure of office of its members shall be such as may be determined by the Central Government according to the requirements of the situation [Sec. 41-D(2)].

Recommendations of the Committee advisory : The recommendations of the Committee shall be advisory in nature [Sec. 41-D(3)].

Emergency Standards (Sec. 41-E)

Sometimes standards of safety may not have been prescribed in respect of a hazardous process or class of hazardous processes, or the standards so prescribed may be inadequate. In such a case if the Central Government is satisfied, it may direct the Director General of Factory Advice Service and Labour Institutes or any institution specialised in matters relating to standards of safety in hazardous processes, to lay down emergency standards for enforcement of suitable standards in respect of such hazardous processes [Sec. 41-E(1)].

The emergency standards so laid down shall, until these are incorporated in the Rules made under this Act, be enforceable and have the same effect as if they had been incorporated in the Rules made under this Act [Sec. 41-E(2)].

Permissible Limits of Exposure of Chemical and Toxic Substances (Sec. 41-F)

The maximum permissible threshold limits of exposure of chemicals and toxic substances in manufacturing processes (whether hazardous or otherwise) in any factory shall be of value indicated in the Second Schedule [Sec. 41-F(1)]. The Second Schedule, added by the Amendment Act of 1987, lays down permissible levels of certain chemical substances in work environment.

The Central Government may at any time for the purpose of giving effect to any scientific proof obtained from specialised institutions or experts in the field, by notification in the *Official Gazette*, make suitable changes in the said Schedule [Sec. 41-F(2)].

(Vide Appendix I The Second Schedule -
Permissible levels of certain chemical substances in work environment.)

Workers' Participation in Safety Management (Sec. 41-G)

Appointment of a Safety Committee : The occupier shall, in every factory where a hazardous process takes place, or where hazardous substances are used or handled, set up a Safety Committee. The Committee shall consist of equal number of representatives of workers and management to promote co-operation between the workers and the management in maintaining proper safety and health at work. It shall review periodically the measures taken in that behalf [Sec. 41-G(1)].

Composition of the Safety Committee : The tenure of office of the members of the Safety Committee and their rights and duties shall be such as may be prescribed [Sec. 41-G(2)].

Exemption : The State Government may, by order in writing and for reasons to be recorded, exempt the occupier of any factory or class of factories from setting up the Safety Committee [Proviso to Sec. 41-G(1)].

Right of Workers to warn about imminent danger (Sec. 41-H)

Apprehension of danger to be brought to notice: Sometimes the workers employed in a factory engaged in a hazardous process may have reasonable apprehension that there is a likelihood of imminent danger to their lives or health due to any accident. In such a case they may bring such danger to the notice of the occupier, agent, manager or, any other person who is incharge of the factory or the process concerned directly or through their representatives in the Safety Committee. They may also simultaneously bring the danger to the notice of the Inspector [Sec. 41-H(1)].

Duty of occupier, etc.: It shall be the duty of the occupier, agent, manager or the person incharge of the factory or process to take immediate remedial action if he is satisfied about the

existence of such imminent danger and send report forthwith of the action taken to the nearest Inspector [Sec. 41-H(2)].

Reference of matter to Inspector : If the occupier, agent, manager or the person incharge is not satisfied about the existence of any imminent danger as apprehended by the workers, he shall, nevertheless, refer the matter forthwith to the nearest Inspector. The decision of the Inspector on the question of the existence of such imminent danger shall be final [Sec. 41-H(3)].

Penalty for Contravention of the provisions of Sections 41-B, 41-C and 41-H [New Sec. 96-A as introduced by the Amendment Act of 1987].

Whoever fails to comply with or contravenes any of the provisions of Secs. 41-B, 41-C or 41-H or the Rules made thereunder shall, in respect of such failure or contravention be punishable with imprisonment for a term which may extend to 7 years and with fine which may extend to Rs. 2,00,000. In case the failure or contravention continues, the defaulter shall be punishable with additional fine which may extend to Rs. 5,000 for every day during which such failure or contravention continues after the conviction for the first such failure or contravention [Sec. 96-A(1)]. If this failure or contravention continues beyond a period of 1 year after the date of conviction, the offender shall be punishable with imprisonment for a term which may extend to 10 years [Sec. 96-A(2)].

PROVISIONS REGARDING THE WELFARE OF WORKERS

The State Government may prescribe the duties, qualifications and conditions of service of officers employed. Even if a factory employs over five hundred workers only for a few months in the year and not continuously throughout the year, the occupier must employ the specified number of welfare officers. [*Employers' Association of Northern India Vs. Secretary of Labour, AIR (1952)*].

1. **Washing** : In every factory, adequate and suitable facilities for washing shall be provided and maintained. They shall be conveniently accessible and shall be kept clean. There must be separate provisions for male and female workers - Sec. 42.

2. **Storing and Drying** : The State Government may make Rules requiring the provision of suitable facilities for storing and drying clothing.- Sec. 43.

3. **Sitting** : Sitting facilities must be provided for workers who have to work in a standing position, so that they may take rest when possible. When work can be done in a sitting position efficiently, the Chief Inspector may direct the provision of sitting arrangements- Sec. 44.

4. **First Aid** : Every factory must provide *first aid boxes* or cupboards. They must contain the prescribed materials and they must be in charge of persons trained in first aid treatment. *Factories employing more than 500 persons* must maintain an *ambulance van* containing the prescribed equipment and in charge of the prescribed *medical and nursing staff*.- Sec. 45.

5. **Canteens** : Where *more than 250 workers* are employed, the State Government may require the opening of *canteen or canteens for workers*. Rules may be framed regarding the food served, its management etc.- Sec. 46.

6. **Shelters** : In every factory where *more than 150 workers* are employed there must be provided adequate and suitable *shelters or rest rooms and a lunch room* (with drinking water supply) where workers may eat meals brought by them. Such rooms must be sufficiently lighted and ventilated and must be maintained in a cool and clean condition. The standards may be fixed by the State Government.- Sec. 47.

7. **Creches** : In every factory where *more than 30 women are employed*, a room shall be provided for the use of the children (below 6 years) of such women. The room shall be adequate size, well lighted and ventilated, maintained in a clean and sanitary condition and shall be in charge of a woman trained in the care of children and infants. The standards shall be laid by the State Government-Sec. 48.

8. **Welfare Officers** : Welfare officers must be appointed in every factory where 500 or more workers are employed. The State Government may prescribe the duties, qualifications etc. of such officers.- Sec. 49.

9. **Rules** : The State Government may make Rules regarding the welfare of workers.- Sec. 50.

MEASURES REGARDING WELFARE OF WORKERS

1. Washing facilities	5. Canteen
2. Storing and drying clothing	6. Rest room
3. Facilities for sitting	7. Creches
4. First-aid appliances	8. Welfare Officers

Duties of Welfare Officers : The duties of Labour Welfare Officers are listed below-

- To establish contact with a view to maintain harmonious relations between management and workers.
- To bring to the notice of management the grievances of workers with a view to secure redress of their grievances.
- To fulfil the statutory or non-statutory obligations of the Factories Act, 1948. To keep liaison with Factory Inspector, Medical Officer etc.
- To supervise the following activities:
 - (a) Medical examination of employees
 - (b) Maintaining health record
 - (c) Working of hazardous jobs
 - (d) Sick visiting and condolences
 - (e) Safety committees
 - (f) Systematic plant inspection
 - (g) Investigating of accidents
 - (h) Maternity benefits
 - (i) Workmen's Compensation
- To promote relations between various departments of the factory and workers to increase productive efficiency and improved working conditions.
- To help workers to adjust and adopt themselves to their working environment
- To encourage the formation of works and limit production Committees, Co-operative Societies, Safety, First-Aid and Welfare Committees.

- To advise the management in matters relating to transfer, promotion, information bulletins, control of notice boards and training of apprentices workers.
- To encourage management to the provisions of canteens, shelters, drinking water etc.

WORKING HOURS OF ADULT WORKERS

Weekly Hours : No adult worker shall be required or allowed to work in a factory for more than *forty-eight hours* in any week.

Daily hours : No adult worker shall be required or allowed to work in a factory for more than *nine hours* in any working day. The daily maximum may be exceeded with the previous approval of the Chief Inspector, to facilitate change of shifts.

Intervals for Rest : The periods of work of adult workers in a factory each day shall be so fixed that no period shall exceed five hours and that *no worker shall work for more than five hours before he has had an interval for rest of at least half an hour*. The State Government or the Chief Inspector may, by order in writing, and for reasons stated therein, increase the work period to six.

Spread-over : The periods of work of an adult worker in a factory shall be arranged that inclusive of his intervals for rest under Section 55, they shall not spread-over more than *ten and half hours* in any day. The Chief Inspector may for specified reasons increase the spread over upto twelve hours.

Rules Regarding Employment of Adults (Secs. 57-65)

Night Shifts : Where a worker in a factory works on a shift which extends beyond midnight, (a) his weekly holiday and compensatory holiday means a period of holiday for 24 consecutive hours beginning when his shift ends and (b) the following day for him shall be deemed to be the period of 24 hours beginning when such shift ends and the hours he has worked after midnight shall be counted in the previous day.

Overlapping Shifts : 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. The State Government or the Chief Inspector may grant exemption from this Rule.

Double Employment : No adult worker shall be required or allowed to work in any factory on any day on which he has already been working in any other factory, save in such circumstances as may be prescribed.

Notice of Periods of Work : There must be displayed in every factory a notice showing periods of work of adults, classifications of workers in groups according to nature of their work, shifts and relays etc. Change made in the system of work must be notified to the Inspector before change. The manager of every factory must maintain a Register of Adult Workers showing the name of each worker, the nature of his work, the group in which he is included, the relay in which he is allotted etc. The hours of work of an adult worker must correspond with the notice referred to above and the Register. No adult worker shall be required or allowed to work in any factory unless his name and other particulars have been entered in the register of adult workers.

Exemptions : By Sections 64 and 65, the State Government has been given power to exempt for limited periods certain factories from compliance with some of the provisions relating to hours

of work and employment. Such exemptions are necessary in special cases, for example, in the case of workers engaged in urgent repairs or in preparatory and complementary work. In some industries, work is of an intermittent character and the enforcement of all the Rule stated above will create hardship. The nature of the work in certain industries requires exceptional treatment. e.g. workers engaged in engine rooms and boilers or in the printing of newspapers. The State Government may exempt persons holding positions of supervision and management or in confidential positions in a factory from the operation of the Rules regarding working hours (except the Rule against the employment of women at night).

Confidential Position : The State Government may empower the Chief Inspector to declare a person other than any person defined by such Rules, as a person holding position or supervision or management or employed in a confidential position in a factory, if the Chief Inspector is of opinion that he can be employed. If any such person does not get more than Rs. 750 p.m. as wages, he will be entitled to extra wages for overtime work.

Hours and Spread-over : Any exemption granted under Sec. 65(2) shall be subject to the following conditions, namely :

- (i) the total number of hours of work in any day shall not exceed twelve;
- (ii) the spread over, inclusive of intervals for rest, shall not exceed thirteen hours in any one day;
- (iii) the total number of hours of work in any week, including overtime, shall not exceed sixty;
- (iv) no worker shall be allowed to work overtime, for more than seven days at a stretch and the total number of hours of overtime work in any quarter a period of three consecutive months the 1st of January, the 1st of July and the 1st of October shall not exceed seventy-five-Sec.65(3),Factories (Amendment) Act, 1976.

RESTRICTIONS ON EMPLOYMENT OF WOMEN

The following restrictions have been imposed to women workers;

- (a) **Maximum daily work is 9 hours :** No exemption from the provisions of Section 54 (which lays down that the maximum daily hours of work shall be nine hours) can be granted in respect of any women.
- (b) **Prohibition of night shift work :** No women shall be required or allowed to work in any factory except between the hours of 6 a.m. and 7 p.m. The State Government may by notification in the *Official Gazette* vary the limits for any factory or group or class or description of factories. But such variation must not authorise the employment of women between the hours 10 p.m. and 5 a.m.

Note : The Act has been amended in 2005 permitting women to work in late-night shifts in some selected industries.

- (c) **Change of shift only after holiday :** There shall be no change of shifts for women except after a weekly holiday or any other holiday.

Exception : There is an exceptional case. The State Government may make Rules providing for the exemption from the aforesaid restrictions (wholly or partially or confidentially) of women working in fish-curing or fish-canning factories. In factories, mentioned above, the employment

of women beyond the hours specified is necessary to prevent to damage to or deterioration in any raw material. But such Rules shall remain in force for not more than three years at a time.

Other Restrictions : There are other restrictions on the employment of women workers:

1. **Work on or near machinery in motion :** No woman or young person shall be allowed to clean, lubricate or adjust any part of the machinery while the prime mover or transmission machinery is in motion or to work between moving parts, or between fixed and moving parts of any machinery which is in motion.

2. **Cotton openers :** No women or child shall be employed in any part of a factory for pressing cotton in which a cotton opener is at work. If the feed-end of a cotton opener is in a room separated from the delivery-end by a partition extending to the roof or to such height as the Inspector may in a particular case specify in writing, women and children may be employed on the side of the partition where the feed-end is situated.

3. **Excessive weights :** The State Government may make Rules prescribing the maximum weights which may be lifted, carried, or moved by adult men, adult women, adolescents and children employed in factories or in any class or description of factories or in carrying on any specified process.

4. **Creches :** 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.

5. **Dangerous operations :** The State Government is empowered to make special Rules for the purpose of controlling and regulating factories which carry on operation exposing women, young persons and other workers to a serious risk of physical injury, poisoning or disease.

6. **Effect of Certificate of Fitness granted to female adolescent (Sec. 70):** An adolescent who has been granted a certificate of fitness to work in a factory as an adult and who carries a token giving reference to the certificate shall be deemed to be an adult for the purposes of hours of work of an adult and the annual leave [Sec. 70(1)].

No female adolescent or a male adolescent who has not attained the age of 17 years but who has been granted a certificate of fitness to work in a factory as an adult shall be required or allowed to work in any factory except between 6 A.M. and 7 P.M. [Sec. 70(1-A)] as introduced by the Amendment Act of 1987].

EMPLOYMENT OF YOUNG PERSONS (Sec. 67 & 68)

Employment of children : No child who has not completed his fourteenth year shall be required or allowed to work in any factory.

Certificate of fitness and token : A child who has completed his fourteenth year or an adolescent shall not be required or allowed to work in any factory unless (a) he has been granted a certificate of fitness, which is in the custody of the manager, and (b) such child or adolescent carries a token giving a reference to such certificate.

The *Certificate of Fitness* is a certificate granted to a child or adolescent by a Certifying Surgeon after examination. The certificate is given to a child if the surgeon is satisfied that he has completed his fourteenth year and has attained the prescribed *physical standards*. The certificate is granted to an adolescent if the surgeon is satisfied that he has completed his fifteenth year

and is fit for a full day's work in a factory. The certifying surgeon must have personal knowledge of the intended place of work and of the manufacturing process involved. *The certificate is valid only for a period of 12 months.* It may be granted subject to conditions (e.g., that of periodical re-examination). The certificate may be renewed and, if necessary, revoked. Any fee payable for the certificate must be paid by the occupier of the factory and must not be recovered from the young person or his parents or guardian.

An adolescent who has been granted a certificate of fitness and who carries a token is deemed to be an adult for the purpose of the hours of work of an adult and annual leave. But not an adolescent who has not attained the age of seventeen year shall be employed or permitted to work in any factory during night. "Night" means a period of at least 12 consecutive hours which shall include an interval of at least seven consecutive hours falling between 10 p.m. and 7 a.m. An adolescent who has not been granted a certificate of fitness, shall be deemed to be a child for the purpose of the Act.

Working hours for children : The law regarding working hours for children are stated below:

1. **No Night Shift to Children :** No child shall be employed or permitted to work in any factory- (a) for more than *four and a half hours in any day* and (b) during the night.
2. **Limited to Two Shifts :** 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 five hours* each, and each child shall be *employed in only one of the relays* which shall not, except with the previous permission in writing of the Chief Inspector be changed more frequently than once in a period of thirty days.
3. **No Double Employment :** 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.

Notice and Register : A notice must be displayed showing clearly the periods of work of children. The manager of every factory must maintain a register of child workers showing the name of each child worker, the nature of his work, the group (if any) in which he is included, the relay to which he is allotted and the number of his certificate of fitness. No child worker shall be required or allowed to work in any factory unless his name and other particulars have been entered in the register of child workers. The hours of work of a child must correspond with the notice and the register.

Medical examination : Where an Inspector is of opinion, that a person working as a adult is a young person, or that a young person is not fit to work, he may direct the manager of the factory to have the person medically examined by a certifying surgeon - Sec. 75.

Other Rules regarding the employment of young persons : No young person shall work at any dangerous 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 a thorough knowledge and experience of the machine. The State Government is to prescribe what machines are dangerous for the purpose of this section.

Dangerous operations: Where the State Government is of opinion that any operation carried on in a factory exposes any person employed in it to a serious risk of bodily injury, poisoning or disease, it may make Rules prohibiting or restricting the employment of women in that operation [Sec. 87(b)] .

Display of scheme for grant of leave : The scheme shall be displayed at some convenient and conspicuous places in the factory. It shall be in force in the first instance for 12 months, and may be renewed for a further period of 12 months at a time. A notice of renewal shall be sent to the Chief Inspector before it is renewed [Sec. 79(9)].

The State Government may make Rules regarding the forms of the certificate of fitness, the procedure relating to their issue, and the physical standards to be attained by children and adolescents - Sec. 76. The provisions relating to the employment of young persons shall be in addition to and not in derogation of, the provisions of the Children Act of 1938, 1960, 1978 and 1986.

Child Labour : Rules regarding the child-labour are contained in the Factories Act, Mines Act, etc. There are also two general Acts on the subject. *The Children (Pledging of Labour) Act (Act 11 of 1933)* prohibits the making of agreements to pledge the labour of children and the employment of children whose labour has been pledged. *The Children Act of 1938, 1960, 1978 and 1986* prohibit the employment of a child who has not completed his fifteenth year of age in any occupation connected with the transport of passengers, goods or mails by railway or connected with a port authority within the limits of any port. The Act also prohibits the employment of a child, who has not completed his fourteenth year of age, in the process set forth in the schedule to the Act. Children between 15 and 17 years can be employed subject to certain restrictions as regards their periods of rest etc.

PROVISIONS RELATING TO HOLIDAYS AND LEAVE (Sec. 52 & 53)

The Factories Act provides for the following holidays, viz., Weekly holidays, Compensatory holidays and Annual leave with wages according to certain Rules. The provisions are explained below.

Weekly Holidays : Section 52 of the Act, provides that an adult worker shall have a holiday on the first day of the week. But the manager of the factory may fix the holiday on any other day which is within three days before or after the first day of the week. In case of such *substitution, notice must be given to the Inspector of Factories and displayed in the factory*. No substitution can be made which will result in any worker working for more than ten days consecutively without a holiday for a whole day. The State Government may make Rules providing for exemption from the above section in certain cases *e.g.*, for urgent repairs.

The Weekly Holidays Act (Act XVIII of 1942) provides for the grant of weekly holidays to person employed in shops, restaurants and theatres. The Act can be applied to a State by notification of the State Government.

Compensatory Holidays : Where as a result of the exemption of a factory from the operation of the Rule regarding weekly holidays, a worker is deprived from any weekly holiday he shall be allowed within the month in which the holidays were due, or within two months immediately following that month, compensatory holidays of equal number to the holidays lost.-Sec. 53.

Annual leave with wages : Every worker who has worked for a period of 240 days or more in a factory during a calendar year shall be allowed during the subsequent calendar year, leave with wages for a number of days calculated at the rate of (i) if an *adult, one day for every twenty days of work performed* by him during the previous calendar year; (ii) if a *child, one day for every fifteen days of work performed* by him during the previous calendar year. Rules regarding the Annual Leave are summarised below :

1. When counting the number of days of work performed by a worker, the *following are to be included* : (a) days of lay-off, (b) maternity leave to a female worker, not exceeding twelve weeks, and (c) the leave earned in the previous year.

2. The leave admissible under the aforesaid Rule shall be *exclusive of all holidays* whether occurring during or at either end of the period of leave.

3. A worker whose service commences otherwise than on the first day of January shall be entitled to leave with wages at the rate laid down above if he has worked for two-thirds of the total number of days in the remainder of the calendar year.

4. If a worker is *discharged or dismissed from service or quits employment is superannuated or dies while in service*, during his course of the calendar year, he or his heir or nominee, as the case may be, shall be entitled to wages *in lieu* of the quantum of leave to which he was entitled immediately before his discharge, dismissal, quitting of employment, superannuation or death calculated at the rates specified in sub-section (1), even if he had to worked for the entire period specified in sub-section (1) or sub-section (2) making him eligible to avail of such leave. Such payment shall be made -

- (i) where the worker is discharged or dismissed or quits employment - *before the expiry of the second working day* from the date of such discharge, dismissal or quitting; and
- (ii) where the worker is superannuated or dies while in service - *before the expiry of two months* from the date of such superannuation or death.

5. In calculating the leave period, *fraction of leave* for half a day or more shall be treated as one day and fractions of less than half a day amount shall be omitted.

6. *Leave earned*, but not taken, can be carried forward to a succeeding year subject to a limit of *thirty days* in the case of an adult and *forty days* in the case of a child. But earned leave not allowed because of any scheme for leave in operation, can be carried forward without limit.

7. *Application for leave* must be submitted to the manager *not less than 15 days before* the date of commencement of leave. In the case of public utility service it must be made *not less than 30 days before* such date. If a worker becomes ill and wants to avail himself of the annual leave during the period of illness, he shall be granted leave even though the application is not made before the period specified above.

8. The application for leave may be for the whole of the leave due or part of it. But *earned leave* cannot be taken more than three times during the same year.

9. For the purpose of ensuring the continuity of work, the occupier or manager of the factory may draw up a *Scheme for regulating the grant of leave*. *The Scheme must be agreed to by the Works Committee*, if any, or the representatives of workers. *It must be lodged with the Chief Inspector and displayed in the factory*.

10. An application for leave submitted in proper time *shall not be refused* unless the refusal is in accordance with any leave scheme in operation.

11. The *unavailed leave* of a worker shall not be taken into consideration in computing the period of any notice required to be given before discharge or dismissal.

12. The State Government may exempt a factory from the operation of the above Rules if it is satisfied that its own leave Rules provide benefits (the totality of benefits) which are not less favourable to the workers than the statutory leave Rules.