

No. S-25012/1/96-ISH-II (Vol. X)
GOVERNMENT OF INDIA,
MINISTRY OF LABOUR AND EMPLOYMENT
SHRAM SHAKTI BHAVAN, RAFI MARG,
NEW DELHI – 110 001.

Dated:- 06.09.2011

OFFICE MEMORANDUM

Subject:- Inviting comments/suggestions on the proposed amendments to the
Factories Act, 1948.

The Ministry of Labour and Employment proposes to amend the
Factories Act, 1948. In this regard a three members Expert Committee was
constituted to examine the proposal in consultation with the Stakeholders. The
Expert Committee submitted its report on 23.06.11. The Ministry has revised the
proposal in accordance with the recommendations made by the Expert Committee.
The report of the Expert Committee on comprehensive amendments to the
Factories Act, 1948 alongwith the draft proposal has been uploaded on the website
of Ministry of Labour and Employment i.e. <http://labour.nic.in>.

2. It is requested that the comments on the proposed amendments may
be sent to Director (ISH), Ministry of Labour and Employment, Room No. 303,
Shram Shakti Bhawan, Rafi Marg, New Delhi, 110001 **with in 45 days**.

Vandana Sharma

(Vandana Sharma)

Director

Tele fax No. 23717275

Statement showing existing Provision, proposed amendments and reasons thereof.

Sr. No.	Existing Provision	Contents of proposed Amendments	Reason for proposed Amendments
1.	<p>2(cb) “hazardous process” means any process or activity in relation to an industry specified in the First Schedule where unless special care is taken, raw materials used therein or the intermediate or finished products, bye products, wastes or effluents thereof would -</p> <p>(i) cause material impairment to the health of the persons engaged or connected therewith, or</p> <p>(ii) result in the pollution of the general environment:</p> <p>Provided that the State Government may, by notification in the Official Gazette, amend the First Schedule by way of addition, omission or variation of any industry specified in the said Schedule.</p>	<p>1. The existing section 2(cb) shall be substituted by the following, namely -</p> <p>(cb) “hazardous process” means any process where, unless special care is taken, raw materials, hazardous substances used therein or the intermediate or finished products, bye products, wastes or effluents thereof would-</p> <p>(A) cause material impairment to the health of the persons engaged in or connected therewith; or</p> <p>(B) result in the pollution of the general environment;</p>	<p>The term “hazardous process” has to be redefined as a process in which a hazardous substance is used.</p> <p>The present definition of ‘hazardous process industry’ links it with the First Schedule under the Factories Act owing to the notation to the effect that “hazardous process means any process or activity in relation to a industry specified in the First Schedule”. The issues relating to the restrictive scope of the first Schedule and some of the hazardous process activities being left out of the First Schedule have been discussed at length in various Conferences of Chief Inspectors of Factories. Since the term ‘hazardous substance’ is also proposed to be defined as per the Environment (Protection) Act by introducing a new sub-section 2(cc). With this amendment, the hazardous process will be identified by use of hazardous substance which will be duly notified from time to time under new clause 2(cc). In view of the above, the First Schedule is deleted.</p>
2.	<p>Nil - New Section 2(cc)</p>	<p>After the clause 2(cb), a new clause 2(cc) is to be added, namely, -</p> <p>“2(cc) “hazardous substance” means any substance as prescribed or preparation of which by reason of its chemical or physio-chemical properties or handling is liable to cause physical or health hazards to human being or may cause harm to other living creatures, plants, micro-organisms, property or the environment;”;</p>	<p>The term ‘hazardous substance’ had not been earlier defined though it has been used at a number of places in Chapter IVA of the Act which was introduced by the Factories (Amendment) Act, 1987.</p> <p>It is now proposed to define it in a manner similar to that in the Environment (Protection) Act, 1986 approved by the 41st Conference of Chief Inspectors of Factories.</p>

3.	Nil-New Section 2(ee)	After the clause 2(e), a new clause 2(ee) is to be added, namely - ‘2(ee) “disability” shall have the meaning as assigned to it in clause (i) of section 2 of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995”;	Such a definition is necessary in view of proposed amendments concerning persons with disabilities.
4.	2(f) “week” means a period of seven days beginning at midnight on Saturday night or such other night as may be approved in writing for a particular area by the Chief Inspector of Factories.	In the existing clause (f), after the words “particular area”, the words “or a factory” shall be inserted;	At present under Section 2(f) the Chief Inspector of Factories may allow all factories located in one area to observe a day other than Sunday as the weekly holiday. The proposed amendment would enable factories located in one area to observe different days as their weekly holiday. This has become necessary in view of shortage of power.
5.	2(k) “manufacturing process” means any process for - (iv) composing types for printing, printing by letter press, lithography, photogravure or other similar process or book-binding; or	In Section 2(k), the existing sub-clause (iv) shall be substituted by the following, viz. (iv) composing and processing for printing, printing by letter press, lithography, offset, photogravure, screen printing, flexography, or other similar process or binding; or;”;	The Government of India set up an Empowered Committee to process the Recommendations of the Expert Committee for Newspaper Employees. One of the recommendations of the Expert Committee was to amend Section 2(k) (iv) of the Factories Act relating to the definition of ‘Manufacturing Process.’ This recommendation has been accepted by the Empowered Committee and accordingly, definition of the manufacturing process is proposed to be amended to also cover certain types of printing processes such as the off-set printing, Screen printing, flexography, and processes and operations incidental thereto as they are presently not covered.
6.	2(n) “occupier” of a factory means the person who has ultimate control over the affairs of the factory. Provided that – (i) xx xx xx (ii) xx xx xx (iii) in the case of a factory owned or controlled by the Central Government, or any	Clause (iii) of sub- section (n) may be substituted by the following :- “in the case of a factory owned or controlled by the Central Government, or any State Government, or any local authority, the person or persons appointed to manage the factory by the Central Government, the State Government or the local authority as may be prescribed, as the case may be shall be deemed to be the occupier;”.	Keeping in view the comments received from the Central Ministries of Government of India, the existing definition has been retained with only a modification in the proviso relating to the Government owned factories, prescribing the definition of the occupier through the Rules to be notified for such purposes.

	State Government, or any local authority, the person or persons appointed to manage the affairs of the factory by the Central Government, the State Government or the local authority, as the case may be, shall be deemed to be the occupier.		
7.	2(p) 'prescribed' means prescribed by rules made by the State Government under this Act.	After the word 'by' the words 'the Central Government or' shall be inserted.	This provision will also give power to the Central Government to frame Rules.
8.	<p>6. Approval, licensing and registration of factories.-</p> <p>(1) (2) (3)</p> <p>Explanation.- A factory shall not be deemed to be extended within the meaning of this Section by reason only of the replacement of any plant or machinery, or within such limits as may be prescribed, of the addition of any plant or machinery, if such replacement or addition does not reduce the minimum clear space required for safe working around the plant or machinery/or adversely affect the environmental conditions from the evolution or emission of steam, heat or dust or fumes injurious to health.</p>	<p>The explanation clause shall be substituted by the following, namely,</p> <p><i>“Explanation.—</i> A factory shall not be deemed to be extended within the meaning of this section by reason only of the replacement of any plant or machinery or within such limits as may be prescribed, or the addition of any plant or machinery, if such replacement or addition does not reduce the minimum clear space required for safe working around the plant or machinery or result in hazardous conditions likely to cause accident, dangerous occurrence or injuries to health of workers or public or adversely affect the environmental conditions from the evolution or emission of steam, heat or dust or fumes, or chemical or biological wastes injurious to health.</p> <p>Provided that a certificate in writing given by the occupier by himself may be accepted</p>	<p>In terms of Section 6 of the Act, an Occupier is not required to take permission from the State Government for expansion of a factory within certain prescribed limits. It is, however, possible that such expansion may involve hazards to the safety of workers as well as the people in the vicinity. It is, therefore, proposed to amend the Explanation to 6 so that it would be necessary for an Occupier to obtain permission of the State Government before making such an expansion.</p> <p>Further, as suggested by the Ministry of Health and Family Welfare the words, “biological wastes” were also added.</p> <p>Provision of self certification by the Occupier has also been introduced.</p>
9.	<p>7. Notice by occupier.-</p> <p>(1) The Occupier shall, at least fifteen days before he begins to occupy or use any premises as a factory, send to the Chief Inspector a written notice containing -</p>	In sub-section (1), in clause (e), for the words “horsepower” at both the places where it occurs, the words “power in Kilowatts” shall be substituted.	This is due to conversion of unit from the British to the Metric System.

	<p>(a) (b) (c) (d) (e) the total rated horse-power installed or to be installed in the factory, which shall not include the rated horse-power of any separate standby plant;</p> <p>(f) (g) (h) (i)</p>		
10.	<p>7-B General duties of manufacturers, etc., as regards articles and substances for use in factories.-</p> <p>(1) (2) (3) (4) (5) Where a person designs, manufactures, imports or supplies an article on the basis of a written undertaking by the user of such article to take the steps specified in such undertaking to ensure, so far as is reasonably practicable, that the article will be safe and without risks to the health of the workers when properly used, the undertaking shall have the effect of relieving the person designing, manufacturing, importing or supplying the article from the duty imposed by clause</p> <p>(a) of sub-section (1) to such extent as is reasonable having regard to the terms of the undertaking.</p> <p>(6) For the purpose of this Section, an article is not to be regarded as</p>	<p>1(5), the following sub-section shall be substituted, namely:—</p> <p>“(5) It shall be the duty of a person, —</p> <p>(a) who erects or installs any article for use in a factory, to ensure, so far as practicable, that such article so erected or installed does not make it unsafe or a risk to health when that article is used by the persons in such factory;</p> <p>(b) who manufactures, imports or supplies any substance for use in any factory –</p> <p>(i) to ensure, so far as practicable, that such substance is safe and has no risks involved to health of persons working in such factory;</p> <p>(ii) to carry out or arrange for carrying out of such tests and examination in relation to such substance as may be necessary;</p> <p>(iii) to take such steps as are necessary to secure that the information about the results of tests carried out in connection with the use of the substance as referred to in sub-clause (ii) is available in a factory along with conditions necessary to ensure its safe use and no risks to health;</p> <p>(c) who undertakes the manufacture of any substance for use in any factory to carry out or arrange for the carrying out of any necessary research with a view to discover and, so far as practicable, to ensure the elimination or minimisation of any risks to health or safety to which the</p>	<p>Section 7B imposes a responsibility on the manufacturer to ensure, inter alia, that plant and machineries are so manufactured as to be safe and without risk to the health of the workers. It is proposed to extend the provisions of the section to hazardous substances. In fact the title of the section mention both articles and substances though provisions of the section deal only with the article.</p> <p>The proposed amendment was examined with reference to provisions existing in other countries and was found that similar provisions in the safety and health statutes do exist in the developed as well as developing countries.</p>

	<p>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.</p> <p>Explanation.- For the purpose of this Section, “article” shall include plant and machinery.</p>	<p>substance may give rise out of such manufacture or research.”;</p> <p>(b) in sub-section (6), for the word “article” at both the place where it occurs, the words “article or substance” shall be substituted;</p> <p>(c) for the Explanation, the following Explanation shall be substituted, namely:—</p> <p>“Explanation.— For the purposes of this section -</p> <p>(a) “article” shall include plant and machinery;</p> <p>(b) “substance” means any natural or artificial substance whether in a solid or liquid form or in the form of a gas or vapour; and</p> <p>(c) “substance for use in any factory” means any substance whether or not intended for use by persons working in a factory.”</p>	
11.	<p>18. Drinking water.-</p> <p>(1)</p> <p>(2)</p> <p>(3) In every factory wherein more than two hundred and fifty workers are ordinarily employed, provision shall be made for cool drinking water during hot weather by effective means and for distribution thereof.</p>	<p>The sub-section (3) shall be substituted by the following -</p> <p>“(3) In every factory, provision shall be made for cool and safe drinking water during hot weather by effective means and for the distribution thereof.”</p>	<p>It is felt that this is a basic necessity which should be provided in every factory.</p>
12.	<p>20. Spittoons. -</p> <p>(1)</p> <p>(2)</p> <p>(3)</p> <p>(4) Whoever spits in contravention of sub-section (3) shall be punishable with fine not exceeding five rupees.</p>	<p>The sub-section (4) may be omitted.</p>	<p>This is consequential to introduction of a new Section 92-B consolidating the penalty provisions.</p>
13.	<p>22. Work on or near machinery in motion.</p> <p>(1) xx xx xx</p> <p>(2) No woman or a young</p>	<p>11. In section 22 of the principal Act, in sub-section (2), —</p> <p>(a) for the word “woman” at both the places where it occurs, the words “pregnant woman or a person with</p>	<p>The Sub Group I of Task Force on women and child development recommended for restricting the employment only for pregnant women, person with disability and young person below the age of 18</p>

	<p>person shall be allowed to clean, lubricate or adjust any part of a prime mover or of any transmission machinery while the prime mover or transmission machinery is in motion, or to clean, lubricate or adjust any part of any machine if the cleaning, lubrication or adjustment thereof would expose the woman or young person to risk of injury from any moving part either or that machine or of any adjacent machinery.</p>	<p>disability” shall be substituted;</p>	<p>years. This was suggested in order to promote gender equality at the work place.</p>
14.	<p>26. Casing of new machinery (1) xx xx xx (2) xx xx xx (3) xx xx xx</p>	<p>Section 26 may be omitted.</p>	<p>This aspect has been covered in the proposed amendment under Section 7 B</p>
15.	<p>27. Prohibition of employment of women and children near cotton-openers. - No woman or child shall be employed in any part of a factory for pressing cotton in which a cotton-opener is at work: Provided that 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 any particular case specify in writing, women and children may be employed on the side of the partition where the feed-end is situated.</p>	<p>For Section 27, following section shall be substituted namely-</p> <p>“No young person or pregnant woman or a person with disability shall be employed in any part of a factory for pressing cotton in which a cotton-opener is at work.”</p>	<p>The Sub Group I of Task Force on women and child development recommended for restricting the employment only for pregnant women, person with disability and young person below the age of 18 years. This was suggested in order to promote gender equality at the work place.</p>
16.	<p>Nil - New Section 35-A</p>	<p>After section 35 of the principal Act, the following section shall be inserted, namely: - “35A. (1) The occupier, having regard to the nature of the hazards involved in the work and processes being carried out, shall supply to the workers exposed to such hazards, suitable personal protective equipment and protective clothing as may be necessary.</p>	<p>Section 35 of the Act provides measures only to protect the eye of a worker in certain circumstances.</p> <p>It is proposed to extend the coverage of the provisions to include measures for protection of other parts of the body as well.</p>

		<p>(2) The personal protective equipment and protective clothing supplied to the workers as required under sub-section (1) shall conform to an international standard where national standard for such protective equipment or clothing is not available.</p> <p>(3) The occupier shall maintain all items of personal protective equipment and protective clothing referred to in sub-section (1) in a clean and hygienic condition and in good repair.</p> <p>(4) The State Government or the Central Government may make rules prescribing the standards of maintenance, issue of personal protective equipment and protective clothing with a view to ensure their effectiveness in relation to the conditions of use and conformity to their quality standards.”.</p>	
17.	<p>36. Precautions against dangerous fumes, gases, etc.-</p> <p>(1) No person shall be required or allowed to enter any chamber, tank, vat, pit, pipe, flue or other confined space in any factory in which any gas, fume, vapour or dust is likely to be present to such an extent as to involve risk to persons being overcome thereby unless it is provided with a manhole of adequate size or other effective means of egress.</p> <p>(2) No person shall be required or allowed to enter any confined space as is referred to in sub-section (1), until all practicable measures have been taken to remove any gas, fume, vapor or dust, which may be present, so as to bring its level within the permissible limits and to prevent any ingress of such gas, fume, vapour, or</p>	<p>For section 36 of the principal Act, the following section shall be substituted, namely :—</p> <p>“36. (1) No person shall be required or allowed to enter any chamber, tank, vat, pit, pipe, flue or other confined space in any factory in which any gas, fume vapour or dust is likely to be present such an extent as to involve risk to persons being overcome thereby, unless it is provided with a manhole of adequate size or other effective means of egress or wherein the oxygen content is less than the prescribed content of oxygen.</p> <p>“Explanation. – for the purpose of this sub-section, the expression “adequate size” means, —</p> <p>(a) in the case of rectangular shape manhole, of not less than 50 cms. x 30 cms;</p> <p>(b) in the case of oval shape manhole, of not less than 50 cms major axis and 30 cms minor axis;</p> <p>(c) in case of circular shape manhole, of not less than 50 cms diameter.</p> <p>(2) No person shall be required or</p>	<p>In the existing Section 36, there is no provision to prohibit a person from entering a confined space such as boiler, furnace, flue, etc., while it is hot.</p> <p>Also there is no provision for checking deficiency of oxygen in a confined space.</p> <p>The State Governments have also no power to make rules under this Section.</p> <p>It is proposed to remove these lacunae.</p>

	<p>dust and unless -</p> <p>(a) certificate in writing has been given by a competent person based on a test carried out by himself that the space is reasonably free from dangerous gas, fume, vapour or dust; or</p> <p>(b) such person is wearing suitable breathing apparatus and a belt securely attached to a rope, the free end of which is held by a person outside the confined space.</p>	<p>allowed to enter in any boiler furnace, boiler flue, chamber, tank, vat, pipe or other confined space in any factory for the purpose of working or making any examination therein until –</p> <p>(a) it has been sufficiently cooled, by ventilation or otherwise, and is safe for persons to enter; and</p> <p>(b) wherever there is likelihood of deficiency of oxygen, -</p> <p>(i) a certificate in writing has been given by a competent person, based on test carried out by himself, that the space is not deficient in oxygen so as to be unsafe for persons to enter; or</p> <p>(3) No person with disability, or, any pregnant woman, shall be required or allowed to enter any chamber, tank, vat, pit, pipe, flue or other confined space in any factory as referred to in sub-section(1) and in any boiler furnace, boiler flue, chamber, tank, vat, pipe or other confined space in any factory as referred to in sub-Section(2).</p> <p>(4) The suitable breathing apparatus, reviving apparatus and safety harness and ropes, shall be kept for instant use in every factory and in every such confined space as referred to in sub-section (1) or in clause (b) of sub-section (2), which any person may enter, and all such apparatus shall be periodically examined and certified by a competent person to be fit for use; and a sufficient number of persons employed in every factory shall be trained and practiced in the use of all such apparatus and in the method of restoring respiration.</p> <p>(5) The State Government may, by order in writing, exempt, subject to such conditions as it may think fit to impose, any factory or class or description of factories from compliance with any of the provisions of this section.</p>	
18.	<p>Section 37. Explosive or inflammable dust, gas, etc. -</p> <p>(1) Where in any factory any manufacturing process produces dust, gas, fume or vapour of such character and to such extent as to be</p>	<p>In section 37 of the principal Act, - “</p> <p>(a) in sub-section (1), for the opening portion beginning with the words “any manufacturing process produces” and ending with the words “any such explosion by—”, the following shall be substituted, namely : -</p>	<p>The provisions of sub-section (1) of Section 37 require that all practical measures should be taken in any factory carrying on manufacturing process which products dust, gas, fume or vapour of such character and to such an extent to be likely to explode on ignition. There are situations in which vapours or</p>

	<p>likely to explode on ignition, all practicable measures shall be taken to prevent any such explosion by-</p> <p>(a) effective enclosure of the plant or machinery used in the process;</p> <p>(b) removal or prevention of the accumulation of such dust, gas, fume or vapour;</p> <p>(c) exclusion or effective enclosure of all possible sources of ignition.</p> <p>(2) xx xx xx (3) xx xx xx (4) xx xx xx (5) xx xx xx</p>	<p>“any manufacturing process, storage or handling of, raw material, intermediate product or finished product produces dust, gas, fumes or vapour to such an extent as to be likely to result in fire or explosion on ignition or otherwise, all practicable measures shall be taken to prevent any such fire or explosion by—”;</p> <p>(b) after sub-section (4), the following sub-sections shall be inserted, namely : -</p> <p>“(4A) In any factory if any flammable gas, fume or dust is likely to be present in any area, the electrical equipment, apparatus and fittings in that area shall be selected, installed and maintained as per the National Electrical Code and shall conform to the relevant National Standards, or to an International Standard where National Standard is not available.</p> <p>(4B) The electrical equipment, apparatus and fittings referred to in sub-section (4A), shall be duly approved before use in factories by the “Directorate General of Occupational Safety and Health.”.</p>	<p>fumes or even flammable dusts on contact with hot surface may catch fire without an explosion. Such accidents have occurred in some factories. As difficulties are experienced to apply the provisions of this Section 37, if it does not result in an explosion, but only fire, owing to the lack of legal validity of applying the provisions for situations involving fire, the necessity has arisen to amend sub-section (1) of Section 37 to include in its scope fire also. The above amendment was considered during the 41st Conference which decided that the provisions of Section 37(1) need to be amended</p> <p>Presently there is no provision stating clearly that the use of flameproof equipment in hazardous areas should be tested and certified and approved by competent authorities. As a result, the users are not aware of such certification.</p> <p>The inspecting authority is not aware of such equipment being used in hazardous locations till their inspection. As such it cannot be fully ensured that only certified and approved equipment are used. In view of the above, the amendment is proposed.</p>
19.	<p>41-B.(4) Compulsory Disclosure of Information by the occupier.-</p> <p>(1) (2) (3) (4) 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 and make known to the workers employed therein and to the general public living in the vicinity of the factory the safety measures required</p>	<p>In section 41B of the principal Act,-</p> <p>(i) For sub section (4), the following sub section shall be substituted namely:-</p> <p>“(4) (a). The occupier of a factory involved in manufacture, storage or handling such hazardous substances in quantities equal to or more than such quantities as may be prescribed, shall draw up in consultation with workers representatives an on-site emergency plan and detailed disaster control measures for his factory and submit the same for information of Chief Inspector and other authorities as may be prescribed.</p> <p>(b) The occupier of the factory shall make known to the workers</p>	<p>Section 41B requires submission of emergency plans for all hazardous factories irrespective of the quantity of the hazardous substances handled by them. It is proposed to limit the requirement of emergency plan to the factories using hazardous substance beyond a prescribed threshold quantity. Consultations with workers’ representative is envisaged under the ILO Convention No.174 which has been recently ratified by the Government of India.</p>

	to be taken in the event of an accident taking place.	employed in the factory and to the general public in the vicinity of the factory, the safety measures required to be taken in accordance with the on-site emergency plan and detailed disaster control measures drawn under sub-clause (a) above in the event of an accident taking place. Provided that the Central Government or the State Government or the Chief Inspector may, subject to the prior approval of the Central Government or the State Government, by order in writing, require any factory carrying on hazardous process, irrespective of the quantity of hazardous substances in the premises, to draw up an on-site emergency plan and disaster control measures.”.	
20.	<p>41-B(5)</p> <p>(5) Every occupier of a factory shall, -</p> <p>(a) if such factory engaged in a hazardous process on the commencement of the Factories (Amendment) Act, 1987 within a period of thirty days of such commencement; and</p> <p>(b) if such factory proposes to engage in a hazardous process at any time after such commencement, 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.</p> <p>(6)</p>	<p>In sub-section (5) -</p> <p>(a) in clause (a), for the words “factory engaged”, the words “factory is engaged” shall be substituted;</p> <p>2.In clause (b), before the words ‘within a period of’” the words “at least” shall be inserted.</p>	<p>This was an inadvertent error in the Act amended in 1987.</p> <p>The purpose of clause (b) of sub-section (5) is to inform the Chief Inspector 30 days prior to the commencement of the hazardous process. As such the amendment is necessary.</p>
21.	<p>41-C. Specific responsibility of the occupier in relation to hazardous processes.-</p> <p>Every occupier of a factory involving any hazardous</p>	<p>In section 41 C of the principal Act, in clause (a), for the words “chemical, toxic, or any other harmful substances”, the words “hazardous substances” shall be substituted.</p>	<p>Since the term ‘hazardous substance’ is proposed to be defined, the section should be recast accordingly.</p>

	<p>process shall -</p> <p>(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 and such records shall be accessible to the workers subject to such conditions as may be prescribed.</p> <p>(b)</p> <p>(c)</p>		
22.	<p>41-D. Power of Central Government to appoint Inquiry Committee.-</p> <p>(1) The Central Government may, in the event of the occurrence of an extra-ordinary 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 with a view to finding 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 extra-ordinary situations in future in such factory or elsewhere.</p> <p>(2)</p> <p>(3)</p>	<p>In section 41D of the principal Act, in sub-section (1), for the words “prevention and recurrence”, the words “prevention of recurrence” shall be substituted.</p>	<p>This was an inadvertent error in the Act Amendment in 1987.</p>

23.	<p>41-E Emergency Standards</p> <p>(1) Where the Central Government is satisfied that no standards of safety have been prescribed in respect of a hazardous process or class of hazardous processes, or where the standards so prescribed or inadequate, it may direct the Directorate General Factory Advice Service & 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.</p> <p>(2) x x x</p>	<p>In section 41E of the principal Act, in sub-section (1), for the words “Director-General of Factory Advice Service and Labour Institutes”, the words “Director General of Occupational Safety and Health” shall be substituted.</p>	<p>A change in the name of the organisation is necessitated in view of the following:</p> <p>1) The names DGFASLI, CLI and RLIS do not reflect properly the activities undertaken by them resulting in erroneous understanding of the functions of the organisation. At times, the functions of the Labour Institutes are associated with matters concerned with labour relations for which separate institutions are available.</p> <p>Various National and International agencies of repute referred to this organisation, other labour related matters not concerning with Safety, Health as the existing name gives a different perception altogether and does not truly reflect the nature or activities carried out by the organisation.</p> <p>If the name of the organisation is changed to reflect properly the activities and functions of the organisation, then the services of the organisation can be utilised by all who need safety-related services thereby fulfilling the purpose and objectives of the organisation.</p>
24.	<p>41-F.-Permissible limits of exposure of chemical and toxic substances.-</p> <p>(1) The maximum permissible threshold limits of exposure of chemical and toxic substances in manufacturing processes (whether hazardous or otherwise) in any factory shall be of the value indicated in the Second</p>	<p>In section 41F of the principal Act, in sub-section (1), for the words and brackets “threshold limit of exposure of chemical and toxic substances in manufacturing processes (whether hazardous or otherwise)”, the words “limits of exposure of chemical and toxic substances in manufacturing process” shall be substituted.</p>	<p>The term “hazardous process” is presently defined in relation to industries specified in the First Schedule. The scope of Section 41-F goes beyond “hazardous process” and encompasses all toxic substances included in the Second Schedule irrespective of whether it is used in a “hazardous process”. Since it is proposed to define the term “hazardous process” more broadly as one in</p>

	Schedule. (2)		which any hazardous substance is used, this amendment becomes necessary.
25.	Nil - New Section 41-I	<p>After section 41H of the principal Act, the following section shall be inserted, namely:-</p> <p>“41-I. The Central Government or State Government may make rules —</p> <p>(a) specifying standards of health and safety to be followed in hazardous process;</p> <p>(b) prohibiting or restricting employment of young persons, pregnant women, and any class of adult workers in manufacture, storage or handling involving hazardous process;</p> <p>(c) prohibiting, restricting or controlling the use of hazardous substances.”.</p>	<p>At present, under Chapter IVA of the Act, the State Governments have no power to formulate safety standards or to make rules for regulating the employment of women or young persons in hazardous processes.</p> <p>It is proposed to confer rule making power on the Central/ State Governments for these purposes.</p> <p>Further, it was opined that giving powers to state and central government on same subject or under the same enabling provisions, may lead to conflicts. Therefore, it is proposed to retain the power with State Governments in respect of specific provision and empower Central Government with general rule making powers under New Section 112-A.</p>
26.	Section 46 Canteens	<p>For the section 46 of the principal Act, the following section shall be substituted, namely: —</p> <p>“46. (1) In every factory wherein two hundred or more workers are ordinarily employed, there shall be provided and maintained a canteen or canteens by the occupier for the use of the workers.</p> <p>(2) The State Government may prescribe —</p> <p>(a) the standards in respect of construction, location, accommodation, furniture, cleanliness and other equipment of the canteen;</p> <p>(b) the foodstuffs to be served therein and the charges which may be made therefore;</p> <p>(c) the constitution of managing committee for the canteen and representation of the workers in the management of the</p>	<p>The National Commission on Labour in its report submitted to the Govt. of India in 1969, had observed that in a unit where there is an established demand for a canteen from majority of workers, the employment limit should be brought down to 200 workers.</p> <p>The Section 46(1) requires State Government to issue notification in the Official Gazette specifying the factories, where canteen facilities are to be provided. The notification as well as alteration if any in the notification require considerable time and administrative formalities and workers are deprived of such facilities till then.</p> <p>In other welfare provisions such</p>

		<p>canteen;</p> <p>(d) the items of expenditure in the running of the canteen which are not to be taken into account in fixing the cost of foodstuffs and the expenditure of the items shall be borne by the occupier;</p> <p>(e) the periodical medical examination of canteen employees; and</p> <p>(f) the delegation to the Chief Inspector, subject to such conditions, as may be prescribed, of the power to make rules under clause (b).</p> <p>(3) The Chief Inspector may, subject to such conditions as may be specified by him, after recording the reasons in writing relax the requirement of sub-section (1) for a period not exceeding twelve months for existing factories to provide the facility of canteen.”.</p>	<p>as those under Sections 45, 47 and 48 of the Act in respect of ambulance room, shelter, rest room, lunch room and creche, the Act itself stipulates the requirement in specified factories.</p>
27.	<p>47. Shelters, rest rooms and lunch rooms.</p> <p>(1) In every factory wherein more than one hundred and fifty workers are ordinarily employed, adequate and suitable shelters or rest rooms and a suitable lunch room, with provision for drinking water, where workers can eat meals brought by them, shall be provided and maintained for the use of the workers;</p> <p>Provided that any canteen maintained in accordance with the provisions of section 46 shall be regarded as part of the requirements of the sub-section:</p> <p>Provided further that where a lunch room exists no worker shall eat any food in the workroom.</p>	<p>In section 47 of the principal Act, —</p> <p>(a) in sub-section (1),—</p> <p>(i) for the words “one hundred and fifty”, the word “seventy five” shall be substituted;</p> <p>(ii) for the words “suitable shelters or rest rooms”, the words “suitable and separate shelters or rest rooms for male and female workers” shall be substituted;</p> <p>(iii) in the first proviso, for the words “as part of the requirements”, the words “as part of the lunch room requirement” shall be substituted.</p> <p>(b) after sub-section (3), the following sub-section shall be inserted, namely : —</p> <p>“(4) The Chief Inspector may, subject to such conditions as may be specified by him, after recording the reasons, relax the requirement of sub-section (1), for a period not exceeding twelve months for existing factories to provide the facility</p>	<p>In light of the proposed amendments to the provisions under Section 46, reducing the applicability of canteen requirement from the present 250 or more workers to 200 or more workers, it was felt necessary to revise the limit, for rest room, shelter and lunch room.</p> <p>The Sub-Group I of Task Force on women and child development recommended separate shelters / rest rooms for male and female workers to ensure privacy and better relaxation amongst the workers of both sex. This is also in line with the separate facilities for urinals, washing places as provided under Sections 19 and 42 of the Factories Act.</p> <p>The expression ‘as part of the requirement was not explanatory enough to specify it as ‘lunch room’.</p>

		of shelters, restrooms and lunch rooms.”.	
28.	<p>64. Power to make exempting rules.-</p> <p>(1) xx xx xx</p> <p>(2) xx xx xx</p> <p>(3) xx xx xx</p> <p>(4) (i) xx xx xx</p> <p>(ii) xx xx xx</p> <p>(iii) xx xx xx</p> <p>(iv) the total number of hours of overtime shall not exceed fifty for any one quarter.</p> <p>(5) Rules made under this section shall remain in force for not more than five years.</p>	<p>In section 64 of the principal Act, —</p> <p>(a) in sub-section (4), in sub-clause (iv), for the word “fifty”, the words “one hundred” shall be substituted;</p> <p>(b) in sub-section (5), for the words “Rules made”, the words, brackets and figures “Rules made before the commencement of the Factories (Amendment) Act, 2010” shall be substituted.</p>	<p>The need for increasing the limit of overtime work beyond 50 hours per quarter as it was felt that the existing limit was inadequate for urgent/seasonal work. did not cover season</p> <p>The need for deleting the validity period of the Rules made under Section 64(5) was discussed during the 41st Conference and 42nd Conference of CIFs. The delay caused due to administrative exigencies in renotifying the set of Rules at the end of five years or making changes in that and the legal implications of the delay resulting in the rules losing its force of law was deliberated.</p>
29.	<p>65. Power to make exempting orders.-</p> <p>(1) xx xx xx</p> <p>(2) xx xx xx</p> <p>(3) (i) xx xx xx</p> <p>(ii) xx xx xx</p> <p>(iii) xx xx xx</p> <p>(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 shall not exceed seventy-five.</p>	<p>In section 65 of the principal Act, in sub-section (3), in clause (iv), —</p> <p>(a) for the words “seventy-five”, the words “one hundred and fifteen” shall be substituted;</p> <p>(b) after <i>Explanation</i>, the following proviso shall be inserted, namely: —</p> <p>“Provided that the State Government or the Chief Inspector may, subject to the prior approval of the State Government, by order further enhance the total number of hours of overtime work in any quarter to one hundred and twenty-five in the public interest.”.</p>	<p>The maximum permissible overtime work up to 75 hours per quarter was felt inadequate for some exceptional work such as in Govt. press where the workers are pressed in service for completion of urgent jobs like printing of ballot papers, budget books, annual plan and five year plan documents, etc. within a short period of time. It was decided to enhance the limit under Section 65(3) from 75 up to 115 hours per quarter with exempting powers to State Governments/ CIFs, subject to the control of State Govt. Further, extension of overtime up to 125 hours per quarter for the purpose of national imperative as prescribed was also proposed in the Act.</p>
30.	<p>Section-66 Further restriction on employment of women. –</p> <p>(1) The provisions of this chapter shall, in their application to women in factories, be supplemented by the following further</p>	<p>For section 66 of the principal Act, the following section shall be substituted, namely:—</p> <p>“66. The provisions of this Chapter shall, in their application to women in factories, be supplemented by the following further restrictions, namely,—</p> <p>(a) no exemption from the provisions of</p>	<p>Many women’s organisations have filed writ petitions in High Courts of Chennai, Andhra Pradesh, Maharashtra challenging that the provisions contained in Section 66 are discriminatory and biased. Some of the High Courts have allowed employment of women during night shifts. The ILO had adopted a protocol relating to Night Work (Women) Convention</p>

<p>restrictions, namely:-</p> <p>(a) no exemption from the provisions of Section 54 may be granted in respect of any women.</p> <p>(b) no women shall be required or allowed to work in any factory except between the hours of 6 A.M. and 7 P.M.</p> <p>Provided that the State Government may, by notification in the Official Gazette, in respect of any factory or group or class or description of factories, vary the limits laid down in clause (b), but so that no such variation shall authorize the employment of any woman between the hours of 10 P.M. and 5 A.M.</p> <p>(c) there shall be no change of shift except after a weekly holiday or any other holiday.</p> <p>(2) The State Government may make rules providing for the exemption from the restrictions set out in sub-Sec.(1), to such extent and subject to such conditions as it may prescribe, of women working in fish-curing or fish-canning factories, where the employment of women beyond the hours specified in the said restrictions is necessary to prevent damage to, or deterioration in, any raw material.</p>	<p>section 54 may be granted in respect of any women;</p> <p>(b) there shall be no change of shifts except after a weekly holiday or any other holiday; and</p> <p>(c) no woman shall be required or allowed to work in any factory except between the hours of 6 A.M. and 7.P.M:</p> <p>“Provided that where the State Government or any person, authorised by it in this behalf, is satisfied that adequate safeguards exist in a factory as regards occupational safety and health, provision of shelter, rest rooms, lunch rooms, night crèches and ladies’ toilets, equal opportunity for women workers, adequate protection of their dignity, honour and safety, protection from sexual harassment, and their transportation from the factory premises to the doorstep of their residence, it may, by notification in the Official Gazette, after due consultation with, and obtaining the consent of, the women workers, workers, the employer, representative organisation of the employer and representative organisation of workers of the concerned factory, allow women to work between 7.00 P.M. and 6.00 A.M. in such factory subject to such conditions as may be specified therein:</p> <p>Provided further that no such permission shall be granted to a woman worker during a period of sixteen weeks before and after her childbirth, of which at least eight weeks shall be before the expected childbirth, and for such additional period, if any, as specified in the medical certificate stating that it is necessary for the health of the woman worker or her child:</p> <p>Provided also that the restriction</p>	<p>(Revised), 1948, under the provision of the protocol the competent authority is a country under the national law and regulation is authorized to modify the duration of the night shifts or to introduce exemption from provisions within certain limits.</p> <p>This will also provide flexibility in the matter of employment of women during night.</p>
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	<p>(3) The rules made under sub-section (2) shall remain in force for not more than three years at a time.</p>	<p>contained in the preceding proviso may be relaxed at the express request of a woman worker on the basis of the medical certificate stating that neither her health nor that of her child will be endangered.”</p>	
31.	<p>76. Power to make rules.- The State Government may make rules -</p> <p>(a) prescribing the forms of certificates of fitness to be granted under section 69, providing for the grant of duplicates in the event of loss of the original certificates, and fixing the fees which may be charged for such certificates and renewals thereof and such duplicates;</p> <p>(b) prescribing the physical standards to be attained by children and adolescents working in factories;</p> <p>(c) regulating the procedure of certifying surgeons under this Chapter;</p> <p>(d) specifying other duties which certifying surgeons may be required to perform in connection with the employment of young person in factories and fixing the fees which may be charged for such duties and the persons by whom they shall be payable.</p>	<p>Clause (b) may be omitted.</p>	<p>The issue relating to the prescription of physical standards to be attained by children and adolescents working in factories, have been carefully examined in the light of the need expressed during the 41st Conference of CIFs. Based on the medical opinion, the 42nd Conference decided that it would not be possible to prescribe such physical standards in view of the differing nature of work in factories and diverse anthropological and physiological conditions existing in the country.</p> <p>Accordingly, the clause (b) of Section 76 is proposed to be deleted.</p>
32.	<p>77. Certain other provisions of law not barred.- The provisions of this Chapter shall be in addition to, and not in derogation of, the provisions of the Employment of Children Act, 1938 (XXVI of 1938).</p>	<p>In the existing provision, the words, figures and bracket “Employment of Children Act, 1938 (XXVI of 1938)” may be substituted by the words, figures and bracket “the Child Labour (Prohibition and Regulation) Act, 1986”.</p>	<p>‘Employment of Children Act, 1938’ has been repealed and the new Act has come into force.</p>

33.	<p>79. Annual Leave with wages.- (1) 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 -</p> <p>(i) if an adult, one day for every twenty days of work performed by him during the previous calendar year;</p> <p>(ii) if a child, one day for every fifteen days of work performed by him during the previous calendar year.</p> <p>Explanation 1.- For the purpose of this sub- Section -</p> <p>(a) any days of lay-off by agreement or contract or as permissible under the standing orders;</p> <p>(b) in the case of female worker, maternity leave for any number of days not exceeding twelve weeks; and</p> <p>(c) the leave earned in the year prior to that in which the leave is enjoyed;</p> <p>shall be deemed to be days on which the worker has worked in a factory for the purpose of computation of the period of 240 days or more, but he shall not earn leave for these days.</p> <p>(2) 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 in clause (i) or, as the case may be, clause (ii) of Sub-</p>	<p>1. In Sub-section (1), for the words “240” the words “90” may be substituted.</p> <p>2. In the last para below explanation 1(c) “240” shall be substituted with “90”.</p> <p>3. In Sub-Section (2), for the words “two third”, the words “one fourth” may be substituted.</p>	<p>It was decided that lot of difficulties are caused to the Badli workers who are unable to enjoy the leave with wages for not being able to perform the required number of days of work for no fault of theirs.</p> <p>Accordingly, the qualifying period has been reduced to 90 days from 240 days.</p>
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	Section (1) if he has worked for two thirds of the total number of days in the remainder of the calendar year.		
34.	<p>Section 87. Dangerous operations.- Where the State Government is of opinion that any manufacturing process or operation carried on in a factory exposes any persons employed in it to a serious risk of bodily injury, poisoning or disease, it may make rules applicable to any factory or class or description of factories in which manufacturing process or operation is carried on -</p> <p>(a) specifying the manufacturing process or operation and declaring it to be dangerous;</p> <p>(b) prohibiting or restricting the employment of women, adolescents or children in the manufacturing process or operation;</p>	<p>For clause (b) of Section 87 the following clause will be substituted:</p> <p>In clause (b) for the words “women, adolescents or children” the words, “young person or a woman or a person with disabilities” shall be substituted.</p>	<p>The Sub Group I of Task Force on women and child development recommended for restricting the employment only for pregnant women, person with disability and young person below the age of 18 years. This was suggested in order to promote gender equality at the work place.</p> <p>However, it is felt that the power for restriction / prohibition may be in respect of all women workers rather than only for pregnant women workers.</p>
35.	<p>89. Notice of certain diseases.-</p> <p>(1)</p> <p>(2)</p> <p>(3)</p> <p>(4) If any medical practitioner fails to comply with the provisions of sub-section (2), he shall be punishable with fine which may extend to one thousand rupees.</p> <p>(5)</p>	Sub-section (4) may be omitted.	This is consequential to introduction of new Section 92-B where consolidated penal provisions are available.

36.	<p>91A - Safety and Occupational Health Surveys</p> <p>(1) The Chief Inspector, or the Director General Factory Advice Service and Labour Institutes or the Director-General of Health Services, to the Government of India, or such other persons as may be authorised in this behalf by the State Government or the Chief Inspector or the Director General of Factory Advice Service and Labour Institutes or the Director-General of Health Services may, at any time during the normal working hours of a factory, or at any other time as is found by him to be necessary, after giving notice in writing to the occupier or manager of the factory or any other person who for the time being purports to be in charge of the factory, undertake safety and occupational health surveys and such occupier or manager or other person shall afford all facilities for such survey, including facilities for the examination and testing of plant and machinery and collection of samples and other data relevant to the survey.</p>	<p>In Sub-Section (1) for the words “Director General of Factory Advice Service & Labour Institutes”, the words “Director General of Occupational Safety and Health” may be substituted.</p>	
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37.	<p>92. General penalty for offences -Save as is otherwise expressly provided in this Act and subject to the provisions of Section 93, if in, or in respect of any factory there is any contravention of any of the provisions of this Act or of any rule made thereunder or of any order in writing given thereunder, the occupier and manager of the factory shall each be guilty of an offence and punishable with imprisonment for a term which may extend to (two years) or with fine which may extend to (one lakh rupees) or with both and if the contravention is continued after conviction, with a further fine which may extend to one thousand rupees for each day on which the contravention is so continued.</p> <p>Provided that where contravention of any of the provisions of Chapter IV or any rule made thereunder or under section 87 has resulted in an accident causing death or serious bodily injury, the fine shall not be less than twenty-five thousand rupees in the case of an accident causing death, and five thousand rupees in the case of an accident causing serious bodily injury.</p> <p>Explanation.- In this section and in section 94 “serious bodily injury” means an injury which involves, or in all probability will involve, the permanent loss of the use of, or permanent injury to, any limb or the permanent loss of, or injury to, sight or hearing, or the fracture of</p>	<p>1. The existing Section 92 may be substituted by the following : -</p> <p>92. General penalty for offences.- (1)Save as otherwise expressly provided in this Act and subject to the provisions of section 93, if in, or in respect of, any factory there is any contravention of the provisions of Chapters I, III (except sections 11, 18, 19 and 20), IV, IVA (except sections 41B, 41C and 41H), VII and IX (except section 89) of this Act or of any rules made thereunder or any order in writing given thereunder, the occupier and the manager of the factory shall each be guilty of an offence and punishable with imprisonment for a term which may extend to two years or with fine which may extend to three lakh rupees or with both, and in any case it shall not be less than thirty thousand rupees:</p> <p>Provided that where the contravention of any of the provisions of the Chapters referred to in sub-section (1) or rules made there under has resulted in an accident causing death or serious bodily injury, the fine shall not be less than seventy-five thousand rupees.</p> <p>(2)If the contravention is continued after conviction under sub-section (1), then the occupier and manager of the factory shall each be guilty of an offence and punishable with a further fine which shall not be less than two thousand rupees for each day on which the contravention is so continued.</p> <p>(3) In respect of any contravention of any of the provisions of this Act or of any rules made there under or any order in writing given there under, other than those mentioned under sub-section (1), for which no penalty has been provided the occupier and manager of the factory shall each be guilty of an offence and punishable with fine which may extend to one lakh fifty thousand rupees and if the contravention is continued after conviction, with a further fine which shall not be less than one thousand rupees for each day on which the contravention is so continued.</p>	<p>A Working Group was set up by the 42nd Conference. of CIFs. The Working Group discussed the criteria for classification of offences and corresponding penalties and it was decided that the offences should be classified into two categories – (1) with fine and (2) with fine and imprisonment. The Working Group drafted the proposed amendment, which was approved by the 43rd Conference of Chief Inspectors of Factories.</p> <p>In addition to the above, the Ministry of Labour constituted a Committee for review of administrative laws concerning Ministry of Labour. The Committee submitted its report regarding amendments to the Factories Act and recommended that Section 92 and 93 of the Factories Act may be amended suitably regarding classification/ compounding of offences.</p> <p>It is proposed to consolidate the provisions relating to penalties for violation of various provisions of the Act by a person other than an occupier in Chapter X (Penalties and Procedures).</p> <p>Similarly, penalty provision for contravention of Section 7B is also provided.</p> <p>The provision of compounding has been introduced for minor offences.</p>
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	<p>any bone, but shall not include the fracture of bone or joint (not being fracture of more than one bone or joint) of any phalanges of the hand or foot.</p>	<p><i>Explanation.</i>- For the purposes of this section “serious bodily injury” means an injury which involves, or in all probability will involve, the permanent loss of the use of, or permanent injury to, any limb or the permanent loss of, or injury to, sight or hearing, or the fracture of any bone, but shall not include the fracture of bone or joint (not being fracture of more than one bone or joint) of any phalanges of the hand or foot.</p> <p>2. After Section 92, the following sections may be inserted:-</p> <p>92A. Penalties for offences by persons other than occupier.</p> <p>If any person, who designs, manufactures, imports or supplies any article or substance for use in a factory and contravenes any of the provisions of section 7B, he shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to three lakh rupees or with both.</p> <p>92B. Penalties in certain other cases.</p> <p>(1) If any worker employed in a factory spits in contravention of sub-section (3) of section 20, he shall be punishable with fine not exceeding one hundred rupees.</p> <p>(2) If any medical practitioner fails to comply with the provisions of sub-section (2) of section 89, he shall be punishable with fine which may extend to three thousand rupees.</p> <p>(3) If any worker employed in a factory contravenes the provisions of sub-section (1) of section 97 or section 111 or of any rule or order made thereunder, he shall be punishable with fine which may extend to one thousand five</p>	<p>The word ‘and’ has been replaced with the word ‘or’ to correct the mistake.</p>
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		<p>hundred rupees.</p> <p>92 C. Compounding of certain offences</p> <p>(1) The Central Government and State Government may, by notification in the Official Gazette, prescribe in respect of the offences specified in the Fourth Schedule, which may before the institution of the prosecution, be compounded by such officers or authorities and for such amount as prescribed:</p> <p>Provided that the Central Government or the State Government, as the case may be, may, by notification in the official Gazette, amend the Fourth Schedule by way of addition, omission or variation of any offence specified in the said Schedule.</p> <p>(2) Where an offence has been compounded under sub-section (1), no further proceedings shall be taken against the offender in respect of such offence.</p>	
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38.	<p>93. Liability of owner of premises in certain circumstances:-</p> <p>(1)Where in any premises separate buildings are leased to different occupiers for use as separate factories, the owner of the premises shall be responsible for the provisions and maintenance of common facilities and services such as approach roads, drainage, water supply, lighting and sanitation.</p> <p>(2) The Chief Inspector shall have, subject to the control of the State Government, power to issue orders to the owner of the premises in respect of the carrying out of the provisions of sub-section (1).</p> <p>(3)Wherein any premises, independent or self contained, floors or flats are leased to different occupiers for use as separate factories, the owner of the premises shall be liable as if he were the occupier or manager of a factory, for any contravention of the provisions of this Act in respect of –</p> <p>(i) latrines, urinals and washing facilities in so far as the maintenance of the common supply of water for these purposes is concerned;</p> <p>(ii) fencing of machinery and plant belonging to the owner and not specifically entrusted to the custody or use of an occupier;</p> <p>(iii) safe means of access to the floors of flats and maintenance and cleanliness of</p>	<p>The existing Section 93 may be substituted by the following :</p> <p>93. Liability of owner of premises in certain circumstances – (1) Where in any premises separate buildings are leased to different occupiers for use as separate factories, the owner of the premises shall be responsible for provision and maintenance of –</p> <p>(i) common facilities and services such as approach roads, drainage, water supply, lighting and sanitation;</p> <p>(ii) adequate staircases;</p> <p>(iii) precaution in case of fire;</p> <p>(iv) ensuring structural stability;</p> <p>(v) hoists and lifts; and</p> <p>(vi) any other common facilities.</p> <p>(2) Where in any premises, independent or self-contained floors or flats, compartments, rooms, galas, sheds are used as separate factories, the owner of the premises shall be responsible for the provision and maintenance of –</p> <p>(i) latrines, urinals and washing facilities;</p> <p>(ii) safety of machinery and plant installed in the common place or location of an occupier;</p> <p>(iii) safe means of access to floors or flats, compartments, rooms, galas, sheds and maintenance and cleanliness of staircases and common passages;</p> <p>(iv) precautions in case of fire;</p> <p>(v) hoists and lifts;</p> <p>(vi) prohibition of the common passages, balconies, verandas, access space, staircases and such other common spaces for use of any activity not intended in such spaces;</p>	<p>The issue relating to inclusion of rented or otherwise let out or given buildings to different occupiers for use as ‘factory’ was discussed and a Working Group drafted the proposed amendment, to fix liability of owner of premises in certain circumstances.</p>
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<p>staircases and common passages;</p> <p>(iv) precautions in case of fire;</p> <p>(v) maintenance of hoists and lifts; and</p> <p>(vi) maintenance of any other common facilities provided in the premises.</p> <p>(4) The Chief Inspector shall have, subject to the control of the State Government, power to issue orders to the owner of the premises in respect of the carrying out the provisions of sub-section (3).</p> <p>(5) The provisions of sub-section (3) relating to the liability of the owner shall apply where in any premises independent rooms with common latrines, urinals and washing facilities are leased to different occupiers for use as separate factories:</p> <p>Provided that the owner shall be responsible also for complying with the requirements relating to the provisions and maintenance of latrines, urinals and washing facilities.</p> <p>(6) The Chief Inspector shall have, subject to the control of the State Government, the power to issue order to the owner of the premises referred to in sub-section (5) in respect of the carrying out of the provisions of section 46 or section 48.</p> <p>(7) Where in any premises portions of a room or a shed are leased to different occupiers for use as separate factories, the</p>	<p>(vii) ensuring structural stability; and</p> <p>(viii) any other common facilities provided in the premises.</p> <p>(3) The owner of premises shall be responsible for provision, maintenance or arrangement for any other facility which may be required but not specified in sub-sections (1) and (2) above.</p> <p>(4) The Chief Inspector shall have, subject to the control of the State Government, the power to issue orders to the owner of the premises referred to in sub-sections (1) and (2) in respect of the carrying out of the provisions of section 46 or section 47 or section 48.</p> <p>(5) In respect of sub-section (3) while computing for the purposes of any of the provisions of this Act, the total number of workers employed in the whole of the premises shall be deemed to be in a single factory.</p> <p>(6) The owner of the premises shall be liable for any contravention of any of the provisions of this section, as if he were the occupier or manager of a factory, and shall be punishable in accordance with the provisions of section 92.</p> <p><i>Explanation.</i>—For the purposes of this section, “owner” shall include promoter, co-operative society, trust, receiver, special officer, as the case may be.”.</p>	
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	<p>owner of the premises shall be liable for any contravention of the provisions of –</p> <p>(i) Chapter III, except sections 14 and 15;</p> <p>(ii) Chapter IV, except sections 22,23,27,34,35 and 36;</p> <p>Provided that in respect of the provisions of sections 21, 24 and 32 the owner’s liability shall be only in so far as such provisions relate to things under his control;</p> <p>Provided further that the occupier shall be responsible for complying with the provisions of Chapter IV in respect of plant and machinery belonging to or supplied by him.</p> <p>(iii) section 42</p> <p>(8) The Chief Inspector shall have, subject to the control of the State Government, power to issue order to the owner of the premises in respect of the carrying out the provision of sub-section (7).</p> <p>(9) In respect of sub-section (5) and (7) while computing for the purposes of any of the provisions of this Act the total number of workers employed, the whole of the premises shall be deemed to be a single factory.</p>		
39.	<p>94. Enhanced penalty after previous conviction.-</p> <p>(1) If any person who has been convicted of any offence punishable under</p>	<p>In sub-section (1), —</p> <p>(i) for the words “ten thousand rupees but which may extend to two lakh rupees”, the words “forty thousand</p>	<p>Consequential amendment to enhance fine amount.</p>

<p>section 92 is again guilty of an offence involving a contravention of the same provisions, he shall be punishable on a subsequent conviction with imprisonment for a term which may extend to three years or with fine which shall not be less than ten thousand rupees but which may extend to two lakhs rupees or with both:</p> <p>Provided that the court may, for any adequate and special reasons to be mentioned in the judgement, impose a fine of less than ten thousand rupees:</p> <p>Provided further that where contravention of any of the provision of Chapter IV or any rule made thereunder or under section 87 has resulted in an accident causing death or serious bodily injury, the fine shall not be less than thirty-five thousand rupees in the case of an accident causing death and ten thousand rupees in case of an accident causing serious bodily injury.</p> <p>(2) For the purposes of sub-section (1), no cognizance shall be taken of any conviction made more than two years before the commission of the offence for which the person is subsequently being convicted.</p>	<p>rupees which may extend to six lakh rupees” shall be substituted;</p> <p>(ii) in the first proviso, for the words “ten thousand rupees”, the words “forty thousand rupees” shall be substituted;</p> <p>(iii) for the second proviso, the following proviso shall be substituted, namely: -</p> <p>“Provided further that where contravention of any of the provisions of the Chapters mentioned in sub-section (1) of section 92 or of any rules made there under has resulted in an accident causing death or serious bodily injury, the fine shall not be less than one lakh rupees.”</p> <p>(b) after sub-section (1), as so amended, the following sub-section shall be inserted, namely—</p> <p>“(1A) If any person who has been convicted of any offence punishable under section 92A is again guilty of an offence involving a contravention of the same provision, he shall be punishable on a subsequent conviction,-</p> <p>(i) in case of contravention of sub-section (1) of section 92A, with imprisonment for a term which may extend to one year or with fine which shall not be less than forty thousand rupees but which may extend to five lakh rupees or with both; and</p> <p>(ii) in case of contravention of sub-section (2) of section 92A, with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees or with both;”;</p> <p>(c) in sub-section (2), after the words, bracket and figure “sub-section (1)”, the words, bracket, figure and letter “and sub-section (1A)” shall be inserted.</p>	
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40.	<p>95. Penalty for obstructing inspector Whoever wilfully obstructs an Inspector in the exercise of any power conferred on him by or under this Act, or fails to produce on demand by an Inspector any register or other documents in his custody kept in pursuance of this Act or of any rules made thereunder, or conceals or prevents any workers, in a factory from appearing before, or being examined by, an inspector, shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to ten thousand rupees or with both.</p>	<p>Section 95 may be substituted as follows:-</p> <p>“Whoever wilfully obstructs an Inspector in the exercise of any power conferred on him by or under this Act or fails to produce on demand by an Inspector any registers or other documents in his custody kept in pursuance of this Act or of any rules made thereunder or conceals or prevents any worker in a factory from appearing before, or being examined by an Inspector, or does not provide reasonable and necessary assistance or co-operation to an Inspector in reaching the concern spot, branch, section, department in a factory, or conceals any fact or figures required for effective implementation of the provisions of the Act, shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to thirty thousand rupees or with both”.</p>	<p>It is necessary for the occupier to provide necessary assistance in carrying out the duties by the inspector.</p> <p>It is a consequential amendment, raising the fine amount.</p>
41.	<p>96. Penalty for wrongfully disclosing results of analysis under section 91 Whoever, except in so far as it may be necessary for the purposes of a prosecution for any offence punishable under this Act, publishes or discloses to any person the results of an analysis made under section 91, shall be punishable with imprisonment for a term, which may extend to six months or with fine, which may extend to ten thousand rupees or with both.</p>	<p>96. Penalty for wrongfully disclosing results of analysis under section 91</p> <p>In the last sentence of the provision, for the words “ten thousand rupees”, the words “thirty thousand rupees” may be substituted.</p>	<p>It is a consequential amendment, raising the fine amount.</p>
42.	<p>96-A. Penalty for contravention of the provisions of Section 41 B, 41 C and 41 H.</p> <p>(1) whoever fails to comply with or contravenes any of the provisions of sections 41B, 41C or 41H or the rules made thereunder, shall, in respect of such failure or contravention, be punishable with imprisonment for a term</p>	<p>96-A. Penalty for contravention of the provisions of Section 41 B, 41 C and 41 H.</p> <p>For the words “two lakh rupees” the words “six lakh rupees” may be substituted. And for the words “five thousand rupees;” the words “fifteen thousand rupees” may be substituted.</p>	<p>It is a consequential amendment, raising the fine amount.</p>

	<p>which may extend to seven years and with fine which may extend to two lakh rupees, and in case the failure or contravention continues, with additional fine which may extend to five thousand rupees for every day during which such failure or contravention continues after the conviction for the first such failure or contravention.</p> <p>(2) If the failure or contravention referred to in sub-section (1) continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which may extend to ten years.</p>		
43.	<p>97. Offences by Workers.-</p> <p>(1) Subject to the provisions of Section 111, if any worker employed in a factory contravenes any provision of this Act or any rules or orders made thereunder, imposing any duty or liability on workers, he shall be punishable with fine which may extend to five hundred rupees.</p>	<p>In Section 97, the existing sub-section (1) shall be substituted by the following, namely -</p> <p>“(1) Subject to the provisions of Section 111, no worker employed in a factory shall contravene any provisions of this Act or any rule or order made thereunder, imposing any duty or liability on the workers”.</p>	<p>All the penalty provisions are being brought under one Section, i.e. Section 92, 92-A & 92-B.</p> <p>The penalty provisions of this Section has also been incorporated there. In view of this it became necessary to recast this Section.</p>
44.	<p>98. Penalty for using false certificate of fitness</p> <p>Whoever knowingly uses or attempts to use, as a certificate of fitness granted to himself under section 70, a certificate granted to another person under that section, or who, having procured such a certificate, knowingly allow it to be used, at an attempt to use it to be made by, another person, shall be punishable with imprisonment for a term, which may extend to two months or with fine which may extend to one</p>	<p>98. Penalty for using false certificate of fitness</p> <p>In the last sentence, for the words “one thousand rupees”, the words “three thousand rupees” may be substituted.</p>	<p>It is a consequential amendment, raising the fine amount.</p>

	<p>thousand rupees or with both.</p>		
45.	<p>99. Penalty for permitting double employment of child If a child works in a factory on any day on which he has already been working in another factory, the parent or guardian of the child or the person having custody of or control over him or obtaining any direct benefit from his wages, shall be punishable with fine which may extend to one thousand rupees, unless it appears to the Court that the child so worked without the consent or connivance of such parent, guardian or person</p>	<p>99. Penalty for permitting double employment of child In the last sentence, for the words “one thousand rupees”, the words “three thousand rupees” may be substituted.</p>	<p>It is a consequential amendment, raising the fine amount.</p>
46.	<p>New proposal</p>	<p>In section 102 the words “one hundred rupees” may be substituted by the words “three hundred rupees”.</p>	<p>In Section 102, relating to Power of Court to make orders, the subsection (2), stipulates that if the occupier or manager do not comply with the conditions specified in the Court Order, within the stipulated period, they shall be punishable with imprisonment for a term which may extend to six months or with a fine which may extend to one hundred rupees per day or both. Inadvertently, the amount of fine specified was not revised as done in other sections. Therefore, it is proposed to revise the amount under Section 102 (2) to rupees three hundred.</p>
47.	<p>104. Onus as to age.-(1) When any act or omission would, if a person were under a certain age, be an offence punishable under this Act, and such person is in the opinion of the Court prima facie under such age, the burden shall be on the accused to prove that such persons is not under such age. (2) A declaration in</p>	<p>Sub-section (2) of Section 104 may be substituted by the following - “(2) A declaration in writing by a certifying surgeon or any other medical authority notified in this behalf by State Government under sub-section (2) of section 16 of Child Labour (Prohibition and Regulation) Act, 1986 relating to a worker stating therein that he has personally examined such worker to be under or over the age stated as</p>	<p>This amendment was also discussed during the Working Group meeting and a draft amendment was examined by a core group and discussed during the 42nd Conference. It was further vetted by DGFASLI. This amendment is of very urgent nature as this relates to the employment of child labour and certificate of age, as courts in some instances did not accept the certificate of age issued by the Certifying</p>

	<p>writing by a certifying surgeon relating to a worker that he has personally examined him and believes him to be under the age stated in such declaration shall, for the purposes of this Act and the rules made thereunder, be admissible as evidence of the age of that worker.</p>	<p>such in the declaration shall, for the purposes of this Act and rules made there under, be conclusive evidence as to the age of that worker.”.</p>	<p>Surgeon as a final and conclusive proof as to the age of a child. A draft amendment was framed by the Working Group constituted by the 41st Conference of Chief Inspectors of Factories and the amendment has been approved by the 42nd Conference of Chief Inspectors of Factories.</p>
48.	<p>111. Obligation of workers.- (1) (2) If any worker employed in a factory contravenes any of the provisions of this section or of any rule or order made thereunder, he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one hundred rupees, or with both.</p>	<p>In Section 111, sub-section (2) shall be omitted.</p>	<p>This is consequential to introduction of new Section 92-B.</p>
49.	<p>Nil - New Section 112A</p>	<p>After Section 112, a new Section 112A to empower the Central Government to make rules may be inserted as follows: “112A. Power to make rules by the Central Government.- “112A. (1) The Central Government may, by notification, and subject to the condition of previous publication, make rules to carry out the provisions of this Act. (2) Every rule made by the Central Government shall be laid, as soon as, may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any</p>	<p>The Conference of State Labour Ministers held in November 7, 1988 felt that there should be uniform rules under the Act throughout the country on important aspects of occupational safety and health. The Central Government should, therefore, have the power to frame rules under the Act apart from the State Governments which have power under Section 112 of the Act. The Central Government should, however, finalise the Rules after consultation with the State Government. The Conference also recommended that provisions should be made to avoid conflict between the Central and the State Rules (in the same manner as legislation in the concurrent field).</p>

		modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.”	
50.	First Schedule	First Schedule may be omitted.	In light of the proposed amendment to the definition of hazardous process under Section 2(cb), the First Schedule is omitted.
51.	New proposal	In Sections 13, 17,21, 22, 23,28, 29,31, 34,35, 37, 38, 40B, 41 A,41 B,41 C,45,87,88,88 A,89 and 90 the words “State Government” may be substituted by the words “ Central Government or State Government”	The detailed explanation in this regard has already been provided at against 112A.
52.	New proposal	The Fourth Schedule on “Compoundable Offences” may be added.	This is consequential to amendment proposed in Section 92C.

“THE FOURTH SCHEDULE
(see section 92C)

List of Compoundable Offences

Serial number	Section and rules framed thereunder and orders issued thereunder	Nature of Offence
1.	Section 11 – Cleanliness	Not maintaining cleanliness as per the provisions.
2.	Section 18 – Drinking Water	Not providing and maintaining arrangements for drinking water as per the provisions.
3.	Section 19 – Latrines and Urinals	Not providing latrine and urinal accommodation as per the provisions.
4.	Section 20 - Spittoons	(a) Not providing the spittoons as per the provisions. (b) Spitting in contravention of sub-section (3) of section 20.
5.	Section 42 – Washing Facilities	Not providing and maintaining washing facilities as per the provisions.
6.	Section 43 – Facilities for storing and drying of wet clothing	Not providing facilities as per the provisions.
7.	Section 44 – Facilities for sitting	Not providing facilities as per the provisions.
8.	Sub-sections (1), (2) and (3) of section 45 – first-aid appliances	Not providing and maintaining first-aid appliances as per the provisions.
9.	Section 46 - Canteens	Not providing and maintaining canteen as per the provisions.
10.	Section 47 – Shelters, rest rooms and lunch rooms	Not providing and maintaining shelters, rest rooms and lunch rooms as per the provisions.
11.	Section 48 - Creches	Not providing and maintaining creches as per the provisions.
12.	Section 50 – Power to make Rules to supplement Chapter V	Not complying with the rules framed under section 50.
13.	Sub-Section (2) of section 53 – Compensatory Holidays	Not displaying the notice and not maintaining the register for compensatory holiday.
14.	Sub-section (5) of section 59 – Extra wages for overtime	Not maintaining the prescribed registers.
15.	Section 60 – Restriction on double employment	Allowing a worker double employment on any day.

16.	Section 61 – Notice of periods of work for adults	Not complying with the provisions.
17.	Section 62 – Register of adult workers	Not maintaining register as per the provisions.
18.	Section 63 – Hours of work to correspond with notice under section 61 and register under section 62.	Not complying with the provisions.
19.	Section 64 – Power to make exempting rules	Not complying with the rules framed under section 64.
20.	Section 65 – Power to make exempting orders	Not complying with the orders issued under section 65.
21.	Section 79 – Annual leave with wages	Not complying with the provisions.
22.	Section 80 – Wages during leave period	Not complying with the provisions.
23.	Section 81 – Payment in advance in certain cases	Not complying with the provisions.
24.	Section 82 – Mode of recovery of unpaid wages	Not complying with the provisions.
25.	Section 83 – Power to make Rules	Not maintaining registers as per rules and not complying with the provisions.
26.	Section 84 – Power to exempt factories	Not complying with the conditions specified in the exempting order.
27.	Section 93 – Liability of owner of premises in certain circumstances	Not complying with the provisions contained in sub-section (1) and clauses (i) and (vi) of sub-section (3).
28.	Section 97 – Offences by workers	Not complying with the provisions.
29.	Section 108 – Display of notices	Not complying with the provisions.
30.	Section 110 - Returns	Not complying with the provisions.
31.	Section 111 – Obligation of workers	Not complying with the provisions.
32.	Section 111A – Right of workers, etc.	Denial of rights of workers.
33.	Section 114 – No charge for facilities and conveniences	Demanding charge from worker for providing any facility under the Act.”.

