

**Report  
of the  
Expert Committee**

**on**

**Amendment to the Factories Act, 1948**

*( June 2011 )*

# Content

<i>Executive Summary</i> .....	<i>(i) to (x)</i>
<i>I. Background</i> .....	<i>1</i>
<i>II. Proceedings of the Committee</i> .....	<i>3</i>
<i>III. Recommendations</i> .....	<i>5</i>
<i>IV. Proposed Amendments</i> .....	<i>26</i>
<i>Annexure I</i> .....	<i>39</i>
<i>Annexure II</i> .....	<i>41</i>
<i>Annexure III</i> .....	<i>46</i>
<i>Annexure IV</i> .....	<i>62</i>
<i>Annexure V</i> .....	<i>67</i>

# **Report of the Expert Committee on Amendments to the Factories Act, 1948**

## **I Background**

1.1 The Factories Act, 1948 is one of the most important Central legislation designed to regulate the working conditions in factories. It lays down the essential provisions relating to working conditions, hazardous processes, health, safety and welfare of the workers and provision and procedures for penalties in case of contraventions of provisions of the Factories Act. The Factories Act, 1948 was last amended in 1987. Since then there has been several changes and developments in matters relating to safety, health and welfare of workers in factories. Accordingly, the need for effective implementation of various provisions, duly amended, has been felt. The amendments to the Act have also been necessitated following the ratification by India of the ILO Convention No. 174 relating to industrial accident and protocol and Convention No. 89 relating to night work by women. The need for amendments to the Act has also been raised at various conferences, meetings of Expert Committees and has also been reflected in some judgments of the Hon'ble Supreme Court.

1.2 In view of these developments, the Ministry of Labour & Employment (MoLE) had proposed amendments to the Factories Act, 1948 for consideration of the Cabinet. In October 2008, the Cabinet directed the Ministry to place the matter before the Committee of Secretaries (CoS) for its consideration. The Committee of Secretaries in its meeting held in 2009 made a set of recommendations. In particular, it recommended to the Ministry of Labour & Employment to consider suggestions of the Department of Industrial Policy and Promotion (DIPP) for revising the

definition of hazardous processes; re-examining the issue of division / vesting of powers to make rules between Centre and States; examination of definitions by Department of Legal Affairs; inclusion of licensing provision for expansion creating hazardous conditions inside the factories; unhygienic practices inside the factories; re-examination of provisions to gauge their impact on factories as well as compounding of provisions for less serious offences.

1.3 The Ministry of Labour & Employment (MoLE) while re-drafting the Cabinet Note modified some of the proposed amendments and deleted some as per the CoS directions. A revised Cabinet Note was submitted by the Ministry of Labour & Employment containing amendments to the Factories Act, 1948 for consideration of the Cabinet in November, 2010. Subsequently, the Prime Minister's Office (PMO) constituted an Expert Committee to examine the revised MoLE proposals and make specific recommendations regarding the proposed amendments to the Factories Act, 1948.

1.4 In pursuance of the orders of the Prime Minister's Office, the Ministry of Labour & Employment notified constitution of an Expert Committee to examine the amendments to the Factories Act, 1948, vide order dated December 30, 2010

**(Annexure-I).** The composition of the Committee was as under :-

- |       |  |             |
|-------|--|-------------|
| (i)   | Dr. Narendra Jadhav<br>Member, Planning Commission                       | Chairperson |
| (ii)  | Dr. Kaushik Basu<br>Chief Economic Adviser, Ministry of Finance          | Member      |
| (iii) | Shri Prabhat C. Chaturvedi<br>Secretary, Ministry of Labour & Employment | Member      |

1.5 The Expert Committee was asked to examine the proposed amendments to the Factories Act, 1948 and make its recommendations. In particular, the Expert Committee was asked to examine the following issues and suggest specific amendments:

- (i) Concerns arising out of disasters like the Bhopal gas tragedy, such as industrial disaster mitigation, rehabilitation and compensation for industrial workers and other affected persons, toxic waste disposal and site remediation, long-term health problems, criminal liability etc.;
- (ii) The role and accountability of public servants, like inspectors of factories and other stakeholders; and
- (iii) The general enforceability of the Act.

## **II. Proceedings of the Committee**

2.1 The first meeting of the Committee was held on 11<sup>th</sup> January, 2011, wherein the Directorate General of Factory Advice Services and Labour Institutes (DGFASLI) made a presentation on the proposed amendments.

The Committee decided to hold detailed discussions with the stakeholders viz. Trade Unions and Employers' Associations. Accordingly a second meeting was held on 19<sup>th</sup> January, 2011 wherein representatives of Workers' Trade Unions and Employers Associations participated. The Trade Unions were represented by Bharatiya Mazdoor Sangh (BMS), Indian National Trade Union Congress (INTUC), All India Trade Union Congress (AITUC), Hind Mazdoor Sabha (HMS), Centre of Indian Trade Unions (CITU) while the Employers' Associations were represented by Federation of Indian Chamber of Commerce and Industry (FICCI), All India Manufacturers' Organisation, Association Chambers of Commerce and Industry (ASSOCHAM), Indian Chemical Council and Confederation of Indian Industry (CII). Director Industrial Safety & Health (Maharashtra), Chief Inspector of Factories (Tamil Nadu), and Chief Inspector of Factories (Gujarat) were invited to the Meeting but they did not attend the same.

2.2 In the second meeting of the Expert Committee held under the Chairmanship of Dr. Narendra Jadhav with the representatives of Trade Unions and Employers' Associations, DGFASLI made a detailed presentation on the proposed amendments in the context of the terms of reference (ToR) of the Expert Committee. The Chairman invited the stakeholders to make their suggestions on the proposed amendments *vis-à-vis* the terms of reference. The stakeholders sought more time to examine the comprehensive amendments proposed with a view to make substantive contribution. Accordingly, it was decided to hold another meeting for detailed deliberations. A copy of the minutes of the second meeting is placed at **Annexure II**.

2.3 The third meeting of the Expert Committee was held on 10<sup>th</sup> February, 2011. The Chairman of the Expert Committee – Dr. Narendra Jadhav indicated that the deliberations could be done in three parts i.e. (i) focus on the amendments to the Factories Act, 1948 as proposed by the Ministry of Labour and Employment; (ii) discussions on those Sections of the Act which possibly needed amendments but were not included in the MoLE proposal under consideration; (iii) Suggestions, if any, regarding new provisions which should form part of the Factories Act keeping in view the present and emerging working scenario. While detailed deliberations took place on the proposed amendments, the second and third set of issues mentioned above could not be covered in the meeting. Accordingly, it was decided to hold yet another meeting for the same. A copy of the minutes of the third meeting is placed at **Annexure III**.

2.4 The fourth and final meeting of the Expert Committee with the stakeholders was held on 3<sup>rd</sup> March, 2011. Comments were received from some of the Trade Unions and Employers' Association. Participants gave suggestions in brief during the discussions. A copy of the minutes of the meeting is placed at **Annexure IV**.

### **III. Recommendations**

3. In all, 52 amendments and possible additions were examined by the Expert Committee. Existing provisions, proposed amendments or additions along with corresponding views of stakeholders and the assessment of the Expert Committee are presented *ad seriatim* in **Annexure V**. Recommendations of the Expert Committee following the Chapter Scheme

of the Factories Act, 1948 for expositional convenience, may be summarized, as under :

**A. Chapter – I : Preliminary (Sections 2, 6 and 7 of the Act)**

**1. Hazardous Process [Section 2(cb)]**

The Principal Act (i.e., the Factories Act, 1948) defines the term ‘Hazardous Process’ in terms industries specified in the First Schedule of the Act. The Expert Committee recommends that the term ‘Hazardous Process’ may be re-defined as a process in which a Hazardous Substance is used thereby affecting health of the workers or polluting the general environment. This amendment would facilitate identification of ‘Hazardous Process’ by use of ‘Hazardous Substance’. This amendment renders the First Schedule of the Act which provides a ‘List of Industries Involving Hazardous Processes’ to be unnecessary and as such, may be deleted. The Expert Committee also recommends that the term ‘Hazardous Substance’ be defined as per the Environment (Protection) Act, 1986 by introducing a new provision, i.e., Sub-Section 2(cc).

**2. Hazardous Substance [New Sub- Section 2(cc)]**

The Expert Committee recommends that a new sub-Section be inserted so as to define the term ‘Hazardous Substance’. The new Sub-Section 2 (cc) defines the term ‘Hazardous Substance’ as any substance which 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 on account of its chemical or physio-chemical properties or handling.

### **3. Disability [New Sub- Section 2(ee)]**

The Expert Committee also recommends that a new sub-Section (ee) be added in Section 2 to define the term ‘Disability’ as given in Clause (i) of Section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. This insertion is necessitated by proposed amendments concerning Persons with Disabilities in Section 22, 27 and 87 of the Factories Act, 1948, discussed below.

### **4. Week [Section 2(f)]**

The Expert Committee recommends that the definition of the term ‘Week’ be broadened so as to provide flexibility to factories to observe different weekly holidays. At present, the Chief Inspector of Factories can allow all factories located in one area to observe a day other than Sunday as weekly holiday. The proposed amendment would enable individual factories located in one area to observe different days as their weekly holidays.

### **5. Manufacturing Process [Section 2(k)]**

The Expert Committee recommends that the term ‘Manufacturing Process’ be broadened in respect of printing so as to also include processes for printing, offset printing, screen printing, flexography etc. This amendment is warranted on account of changes that have taken place in the printing technology.

### **6. Occupier [Section 2(n)]**

In the Principal Act, a person who has ultimate control over the affairs of the factory is considered to be the Occupier of the factory. Since the Central and State Government PSUs are managed by salaried

employees, the Expert Committee recommends that the provision regarding the person 'having ultimate control over the affairs of the factory' be deleted. Instead, the Expert Committee recommends that in respect of factories owned by the Government, definition of the 'Occupier' may be prescribed through the Rules to be notified.

#### **7. Prescribed [Section 2(p)]**

Presently, the term 'Prescribed' in Section 2 means 'prescribed by Rules made only by the State Governments. However, Rule making power is also proposed to be given to the Central Government, in addition to the State Governments. This would ensure uniformity and therefore the Expert Committee recommends that, definition of the term 'prescribed' be changed to include the 'Central Government or the State Government' under the Act.

#### **8. Approval, Licensing and Registration of Factories**

##### **[Explanation Clause to Section 6]**

Under the Principal Act, as per the Explanation Clause to Section 6, the Occupier of a factory is not required to take permission from the Government for extension of a factory within a certain prescribed limit. However, such an extension may involve hazards to the safety of workers as well as to the people in the vicinity. The Expert Committee recommends, therefore, amending the Explanation Clause making it obligatory for an Occupier to obtain permission of the State Government for extension beforehand. However, the Committee felt that it would be desirable to exempt the Occupier from submitting a certificate from the competent person relating to the duties of Occupier. Instead, the Expert Committee recommends that the concept of self certification prevalent in the States may be adopted.

**9. Notice by Occupier [Section 7(1)(e)]**

Under the Principal Act, the Occupier is required to give at least 15 days' notice to the Chief Inspector of Factories in writing detailing the total rated horse power installed or to be installed in the factory before using the premises. The Expert Committee recommends that the term 'horse power' be replaced by 'power in kilowatts'.

**10. General Duties of Manufactures etc. as regards Articles and Substances for Use in Factories [Section 7B]**

The Principal Act imposes a responsibility on the manufacturer to ensure *inter-alia* that plant & machineries are so manufactured as to be safe and without risk to the health of workers. The Expert Committee recommends that this provision be extended to cover Hazardous Substances as well. Such provisions exist in both developing and developed countries.

**B. Chapter III : Health ( Sections 18 and 20)**

**11. Drinking Water [Section 18]**

The Principal Act requires every factory employing more than 250 workers to provide cool drinking water to the workers during hot weather. The Expert Committee recommends that cool and safe drinking water must be provided to workers by every factory during hot weather.

**12. Spittoons [Section 20] :**

Under the Principal Act, spitting in factories is punishable with fine not exceeding Rupees five. The Expert Committee recommends that the provision regarding spittoon be retained but the penalty clause be deleted since it is clubbed with a new sub-Section (i.e. 92(B)(1)).

**C. Chapter IV: Safety [Sections 22, 27, 35, 36, 37]**

**13. Work on or Near Machinery in Motion [Section 22(2)]**

The Principal Act provides that no woman or young person shall be allowed to work on or near machinery in motion. The Expert Committee recommends that such employment may be restricted only in the case of pregnant women, persons with disability and young persons (below the age of 18). This is in consonance with the recommendations by Task Force on Women & Child Development and could be expected to promote gender equality at the work place. The Expert Committee also recommends that a certification / training clause to operate specific machines by women and men should be appropriately addressed in the Rules.

**14. Prohibition of Employment of Women and Children near Cotton-openers [Section 27]**

Under the Principal Act, all women and children are prohibited from employment in any part of a factory for pressing cotton. Considering the recommendation of Task Force on Women and Child Development, the Expert Committee recommends that such employment be prohibited for only pregnant women, young persons (below the age of 18) and persons with disability, in a factory for pressing cotton in which a cotton-opener is at work.

**15. Personal Protective Equipment [New Section 35-A]**

The Principal Act, provides measures only to protect eyes of the workers under certain circumstances. The Expert Committee recommends that the coverage of provision be extended to include measures for protection of other parts of the body as well. The Expert Committee also recommends that the responsibility for maintaining the personal protective equipment (PPE) should rest with the management.

**16. Precautions against Dangerous Fumes, Gases, etc.**

**[Section 36 (1) & (2), insertion of Sub-Section 3, 4, 5]**

The Principal Act provides precautionary measures against dangerous fumes, gases etc. The Expert Committee recommends that this provision be strengthened by providing a manhole of 'adequate size' or other effective means of egress. The proposed amendment appropriately defines adequate size and probable spaces such as boiler furnace, etc and also makes it obligatory to keep an inventory of suitable breathing apparatus, reviving apparatus and safety harness and ropes in every factory and in every confined space for instant use.

**17. Explosive or Inflammable Dust, Gas, etc. [Section 37(1)(a,b,c)]**

The Principal Act provides for precautions in the plant and machinery used in the manufacturing process producing dust, gas, fume or vapour; removal or prevention of accumulation of gases and exclusion and effective enclosure of all possible sources of ignition. The Expert Committee recommends that these precautionary measures be strengthened further, *inter-alia*, by extending them to also cover storage or handling of raw material, intermediate product or finished products. The Expert

Committee felt that this amendment would make the workplace safer for all workers and would help avoidance of Bhopal gas tragedy type of incidents.

**D. Chapter – IVA : Hazardous Processes [Section 41]**

**18. Compulsory Disclosure of Information [Section 41-B(4)]**

The Principal Act requires the Occupier to draw up on-site emergency plan and detailed disaster control measures for the factory and make known to the workers employed therein and to the general public living in vicinity of factory the safety measures required to be taken in the event of accidents. The Expert Committee endorses the proposed amendment which defines the processes to which the provision of this Section applies and puts the responsibility on the Occupier of a factory involved in manufacture, storage or handling of hazardous substances. The Committee felt that the amended provision would enhance safety of workers as well as the general public in the context of incidents like Bhopal gas tragedy and Chernobyl nuclear mishap in Russia.

**19. Section 41-B(5)**

The Principal Act makes it mandatory on the part of the Occupier of the factory engaged in hazardous process or proposes to be engaged in hazardous processes to inform Chief Inspectors of Factories about the nature and details of the process. The Expert Committee recommends a minor correction substituting the words ‘factory engaged’ by ‘factory is engaged’ and an amendment replacing the words ‘within a period of 30 days’ by ‘at least 30 days’.

## **20. Specific Responsibility of the Occupier in relation to Hazardous Processes [Section 41-C]**

The Principal Act lays specific responsibility on the Occupier in relation to ‘chemical, toxic or any other harmful substances’. The Expert Committee recommends that these words be substituted by the word with ‘hazardous substances’. The Expert Committee felt that this substitution is called for in view of proposed amendment defining chemical toxic or harmful substances as ‘Hazardous Substances’.

## **21. Power of Central Government about Inquiry Committee [Section 41-D]**

Section 41-D of the Principal Act empowers the Central Government to appoint an Inquiry Committee in the event of occurrences of an extra-ordinary situation to look into the standards of health and safety observed in the factory engaged in Hazardous Process with a purpose of finding out the causes of failure or negligence in adoption of safeguard measures for health and safety of workers or the general public. The Expert Committee recommends that the words ‘prevention and recurrence’ be substituted by ‘prevention of recurrence’. The Expert Committee felt that it is of utmost importance to prevent the recurrence of extraordinary situations in factories to safeguard both workers and residents of nearby localities.

## **22. Emergency Standards [Section 41-E]**

The Expert Committee recommends that the nomenclature ‘Directorate General of Factory Advice Service and Labour Institute’ (DGFASLI) be changed to ‘Director General Occupational Safety and Health’ (DGOSH).

### **23. Permissible Limits of Exposure of Chemical and Toxic Substances [Section 41-F]**

The Expert Committee recommends that the term 'threshold' in the provision relating to the limits for exposure of chemical and toxic substances in manufacturing process be deleted. This amendment is warranted by the fact that there is no reference to the expression 'threshold' in the Second Schedule of the Principal Act which defines the permissible levels of certain chemical substances in work environment.

### **24. New Section [41-I]**

Under Chapter 4-A of the Principal Act, the Central or State Governments do not have powers to formulate safety standards or to make rules for regulating the employment of young persons and women in Hazardous Processes. The Expert Committee recommends to confer the rule-making powers on the Central/State Governments. Further, in order to avoid conflicting situations, the Expert Committee recommends that the powers in respect of specific provisions be retained with the State Governments while for general rule making powers be assigned to the Central Government under a New Section 112-A discussed below.

## **E. Chapter V: Welfare [Section 46 and 47]**

### **25. Canteens [Section 46]**

The Principal Act empowers the State Governments to frame Rules for provision of a canteen by the Occupier in factories wherein more than 250 workers are ordinarily employed. The Committee recommends that the employment limit should be brought down from 250 workers to 200 workers as per the recommendation of National Commission of Labour.

**26. Shelters, Rest rooms and Lunch rooms [Section 47]**

Under the Principal Act, all factories employing more than 150 workers are required to provide adequate and suitable shelters, rest rooms and lunch rooms with adequate provision for drinking water. The Expert Committee recommends that the workers limit may be lowered from 150 to 75. The Committee felt that it was necessary to revise the workers limit for rest room, shelter and lunch room in the light of the proposed amendment to the provisions under Section 46 pertaining to canteen. The Committee also recommends providing suitable and separate shelters or rest rooms for male and female workers as recommended by Task Force on Women and Child Development. The need for having separate shelters, lunch room etc., would also be in line with separate facilities for urinals and washing places provided under Sections 19 and 42 of the Principal Act.

**F. Chapter VI : Working Hours for Adults [Section 64, 65, 66]**

**27. Power to Make Exempting Rules [Section 64]**

The Principal Act stipulates the permissible limit for hours of work for overtime to be 50 for any one quarter. It also indicates that the Rules made there under shall remain in force for no more five years. The Expert Committee recommends enhancement of the total number of hours of overtime per quarter from 50 to 100 hours.

**28. Power to Make Exempting Orders [Section 65]:**

The Principal Act empowers the State Government to issue exemption orders for periods of work of an adult worker depending on the nature of work. The Expert Committee recommends that for some exceptional work of very urgent nature the maximum permissible overtime

work could be enhanced up to 115 hours per quarter with exempting powers to State Governments/Chief Inspector of Factories.

## **29. Further Restriction on Employment of Women [Section 66]**

The Principal Act imposes restrictions on employment of women such as not allowing women to work in a factory beyond 7.00 p.m. in the evening; daily hours of work and change in shifts. It also empowers the State Governments to make Rules to provide exemptions from above restrictions for factories where women are required to work beyond the specified hours. The Expert Committee observed that many women organisations have filed writ petitions in State High Courts challenging the provisions contained in Section 66 and terming them as discriminatory and biased. Some of the High Courts have allowed employment of women during night shifts. The Committee also observed that ILO has adopted a protocol relating to Night Work (Women) Convention (Revised), 1948, which allows the national authorities to modify the duration of the night shifts or to introduce exemption from provisions within certain limits. The Expert Committee recommends that, flexibility be accorded in the matter of employment of women during the night shift, provided that adequate safeguards and security to the women workers in night is provided and that transportation is provided from the factory premises to the doorstep of their residence.

## **G. Chapter VII : Employment of Young Persons [Sections 70,76 and 77]**

### **30. Effect of Certificate of Fitness Granted to Adolescent [Section 70]**

The Principal Act allows adolescents who have been granted a certificate of fitness to work in a factory as an adult can work except between 6.00 a.m. and 7.00 p.m. The MoLE has proposed to substitute

this by 'except between 7.00 a.m. and 7.00 p.m.'. The Expert Committee does not agree with the proposed amendment and recommends that the existing provision may be retained since most industries follow the shift time from 6.00 a.m. due to climatic conditions.

**31. Power to Make Rules [Section 76]**

Under the Principal Act, the State Governments can make Rules under the provisions of the Act prescribing the physical standards to be attained by children and adolescents working in factories. The Expert Committee recommends that this provision be deleted.

**32. Certain Other Provisions of Law Not Barred [Section 77]**

The Expert Committee recommends that the reference in the Principal Act to "Employment of Children Act (XXVI of 1938)" be replaced with "the Child Labour (Prohibition and Regulation), Act 1986".

**H. Chapter VIII : Annual Leave with wages [Section 79]**

**33. Annual Leave with Wages [Section 79]**

Under the Principal Act, a worker who has worked for a period of 240 days or more in a calendar year in a factory is entitled to annual leave with wages as per the given procedure. The Expert Committee recommends that the permissible number of days worked be lowered from 240 to 90. The Expert Committee felt that currently many difficulties are caused to the 'Badli' workers who are unable to avail the annual leave with wages for not being able to perform the required number of days of work for no fault of theirs. For those workers whose service commences on any day other than the first day of January, the Principal Act stipulates that they would be entitled to annual leave with pay provided that they work for two-third of the total numbers of days in the remainder of the calendar

year. The Expert Committee recommends that this condition also be diluted to 'one-fourth' of the remaining days instead of 'two-thirds'.

## **I. Chapter IX : Special Provisions [Section 87, 89, 91]**

### **34. Dangerous operations [Section 87]**

Under the Principal Act, the State Governments are empowered to pass an order or make rules restricting the employment of 'women, adolescent or children' in any factory in which manufacturing process exposes any person employed in it to a serious risk of physical injury, poisoning or disease. The Expert Committee recommends that the words 'women, adolescent and children' be substituted by words 'young person or a woman or a person with disabilities'.

### **35. Notice of Certain Diseases [Section 89]**

The Principal Act provides for punishment to any medical practitioner who attends on a worker and finds that the worker is suffering from one of the diseases specified in the Third Schedule of the Act but fails to report the same in writing to the office of the Chief Inspector. The Expert Committee recommends that this provision be deleted in view of stronger penalties proposed elsewhere in the amendment.

### **36. Safety and Occupational Health Surveys [Section 91-A]**

Since Directorate General, Factory Advise Service and Labour Institute (DGFASLI) has been rechristened as Directorate General, Occupational Safety and Health (DGOSH), the Expert Committee recommends that appropriate change be made in Sub-Section 1 of Section 91-A.

**J. Chapter X : Penalties and Procedure**  
**[Section 92, 93, 94, 95, 96, 96A, 97, 98, 99, 102, 104 and 106]**

**37. General Penalty for Offences [Section 92]**

The Principal Act defines general penalty applicable for offences in terms of contravention of any provisions of the Act or Rules made thereunder that can be imposed on the Occupier and manager of the factory. The Expert Committee recommends a larger coverage and significant enhancement of the penalties for contravention of the provisions of the Act: (a) For violations that attracted a penalty of Rs. 1 Lakh, the amount be raised to Rs. 3 Lakhs with a lower bound of Rs. 30,000. (b) The fine amount be raised from Rs. One Thousand per day to Rs. Two Thousand per day if contravention continues even after conviction. The Expert Committee also recommends insertion of two more Sub-Sections to Section 92 defining the penalties in respect of offences by persons other than Occupiers such as manufacturers and suppliers, workers, medical practitioners and enabling compounding of offences. The penalties for such categories include upto Rs. Three Lakhs or six months imprisonment (manufacturer) or both, upto Rs. Three Thousand (medical practitioner), Rs. One Thousand Five Hundred (worker) and upto Rs. One Hundred for spitting. The Expert Committee felt that no distinction needs to be made in the Act with regard to its applicability based on the size of the factory. The Expert Committee felt that Section 92 of the Act may need to amended suitably regarding classification/compounding of offences. The Committee also felt that the provisions relating to penalties for violation of various provisions of Act by a person other than the Occupier need to be consolidated in order to avoid confusion. The Expert Committee generally recommended trebling of the amount of fines as it felt that the last

enhancement as was done in 1987 was inadequate under the changed circumstances.

### **38. Liability of Owner of Premises in Certain Circumstances**

#### **[Section 93]**

Under the provisions of the Principal Act, the owner of the premises is responsible for the provision and maintenance of common facilities even if separate buildings of the premises are leased to different Occupiers for use as factories. The Expert Committee recommends a stronger provision in this regard wherein if buildings or different parts of a building are rented or let out or given to different Occupiers, to be used as factories, the owner of the premises should be responsible for common facilities to be used by different/separate factories housed in those premises irrespective of size of the factory.

### **39. Enhanced Penalty After Previous Conviction [Section 94]**

The Principal Act has a provision to prevent recurrence of contravention of provisions in terms of enhanced penalty if the same person who is convicted of any offence under the Act is again guilty of an offence involving a contravention of the same provision. The current penalty includes imprisonment of upto three years or a fine not less than Rs. Ten Thousand which may extend upto Rs. Two Lakh or both. The Expert Committee recommends that the fine here be raised to Forty Thousand. There is also a provision of a fine of Rs. Thirty Five Thousand in case contravention results in death and Rs. Ten Thousand for serious bodily injury. The Expert Committee recommends that the fine in such cases causing death or serious bodily injury shall not be less than Rs. One Lakh.

**40. Penalty for Obstructing Inspector [Section 95]**

The Principal Act provides for penalty for willfully obstructing an Inspector to exercise any power conferred on him by the Act. Currently, the punishment involves six months' imprisonment or a fine of Rs. Ten Thousand or both. The Expert Committee recommends that the scope of the Section be enhanced so as to include non-cooperation also as a cause of imposing penalty. The Expert Committee felt that it is necessary for the Occupier, irrespective of the size of a factory, to provide necessary assistance to such an Inspector to carry out his duties. The Expert Committee also recommends enhancement of the fine amount from Rs.10000/- to Rs.30,000/-.

**41. Penalty for Wrongfully Disclosing Results of Analysis [Section 96]**

To maintain objectivity of the action taken for contravention of provisions, Section 96 of the Principal Act prohibits disclosure of any report pertaining to safety and health surveys of factories or analysis of any other sample taken by Chief Inspector of Factories if it is not required for prosecution. Currently, such an act is punishable with imprisonment of six months or a fine of Rs. 10,000/- or both. The Expert Committee recommends that, the penalty in this case be raised from Rs. Ten Thousand to Rs. Thirty Thousand. The Expert Committee felt that this is a consequential amendment arising from enhancement in fine amounts.

**42. Penalty for Contravention of the Provisions of Section 41-B, 41-C and 41-H [Section 96-A]**

The Section 96-A of the Principal Act, makes it a punishable offence if the Occupier does not disclose information regarding dangers, health hazards, does not maintain upto date health records and warn the workers about imminent danger. The Expert Committee recommends that the

penalty for contravention of provisions contained in Section 41-B, C and H be raised from Rs. Two Lakhs to Rs. Six Lakhs and from Rs. Five Thousand to Rs. Fifteen Thousand per day, if the contravention continues after conviction.

#### **43. Offences by Workers [Section 97]**

Under the Principal Act, there are provisions for imposing penalty on workers if they contravene the provisions of the Act (upto Rs. Five Hundred). The Expert Committee recommends that the fine amount may be deleted since the requisite provision has already been made under the proposed new Section 92 B.

#### **44. Penalty for Using False Certificate of Fitness [Section 98]**

The Principal Act provides for penalty for using false certificate of fitness upto Rs. One Thousand or Two Months imprisonment or both. The Expert Committee recommends that the liability in terms of the fine in this case be enhanced from Rs. One Thousand to Rs. Three Thousand.

#### **45. Penalty for Permitting Double Employment of Child [Section 99]**

The Principal Act imposes penalty upto Rs. One Thousand on parent or guardian of a child who forces the child to work in two establishments on the same day. The Expert Committee recommends that the penalty be enhanced from Rs. One Thousand to Rs. Three Thousand. The Expert Committee felt that such deterrent measures would serve a social cause of exploitation and child abuse.

#### **46. Power of Court to Make Order [Section 102]**

The Principal Act empowers the court to award punishment to the Occupier or manager of a factory for an offence punishable under the Act and also to direct him to take appropriate remedial measures in respect of the offence committed. The existing penalty under the Act is Rs. one hundred or six months' imprisonment or both. The Expert Committee recommends that the penalty amount be enhanced from Rs. One Hundred to Rs. Three Hundred.

#### **47. Onus as to Age [Section 10]**

Under the Principal Act, evidence of admissible age is entrusted to a certifying Surgeon. The Expert Committee recommends that this provision be broadened to any medical authority notified by State Government under Child Labour (Prohibition and Regulation) Act, 1986.

#### **48. Limitation of Prosecution [Section 106]**

The Principal Act lays down conditions under which court will take cognizance of any offence punishable under the Act. The Principal Act stipulates that the complaint be registered within three months of the date on which the alleged commission of the offence came to the notice of an Inspector. In case the offence consists of disobeying a written order of Inspector, complaint can be made within six months. The amendment proposes to enhance the time limit from three months to one year and to deleting the proviso clause. The Expert Committee felt that the provision under the Principal Act is reasonable and recommended that it may be

retained as such. The Expert Committee felt that enhancing the timeframe may result in delay in justice.

**K. Chapter XI : Supplemental [Section 107 to 120]**

**49. Obligation of Workers [Section 111]**

The Principal Act imposes some obligations on workers such as proper use of appliances, ensuring safety of himself and others etc. If any worker contravenes the provisions of this Section, the offence is punishable with imprisonment for three months or fine of Rs. One Hundred or both. The Committee recommends that the provision be deleted.

**50. Power to Make Rules by the Central Government [New Section 112A]**

The Principal Act (Section 112) empowers the State Governments to make Rules under the Act. Since Central Government also has industrial establishments of its own, the Expert Committee recommends that the Central Government may also be empowered to make Rules by inserting a new section 112-A as this would ensure greater uniformity.

**51. Miscellaneous Amendments** The Expert Committee recommends that the First Schedule be deleted and that words 'State Governments' be substituted with 'Central Government or State Governments' in Sections 13, 17, 21, 22, 23, 28, 29, 31, 34, 35, 37, 38, 40-B, 41-A, B, C, 45, 87, 88, 88-A, 89 and 90 of the Act and adding compoundable offence in the new schedule.

## **52. Other Miscellaneous Recommendations**

The Expert Committee has recommended a major simplification of Reports, Registers and Returns to be submitted under the Factories Act. Specifically, out of the prevailing 31 forms which need submission under the Act, it is recommended that seven forms (Number 6, 7, 8, 9, 14, 30 and 31) be omitted and the remaining 22 forms be merged together in terms of only seven forms.

The precise amendments proposed underlying the foregoing discussions, are reproduced below in the next Section.

## **IV Proposed Amendments**

### **Chapter I : Preliminary [Sections 2, 6 and 7]**

#### **1. Section 2(cb): Hazardous Process**

The existing Section 2(cb) shall be substituted by the following, namely - (cb) “hazardous process” means any process where, unless special care is taken, raw materials, hazardous substances used therein or the intermediate or finished products, by products, wastes or effluents thereof would- (A) cause material impairment to the health of the persons engaged in or connected therewith; or (B) result in the pollution of the general environment;

#### **2. New Section 2(cc)**

After the clause 2(cb), a new clause 2(cc) is to be added, namely, - ‘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;’

#### **3. New Section 2(e)**

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”;

#### **4. Section 2(f): Week**

In the existing clause (f), after the words “particular area”, the words “or a factory” shall be inserted;

#### **5. Section 2(k): Manufacturing Process**

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;”

#### **6. Section 2(n): Occupier**

Clause (iii) of sub- section (n) may be substituted by the following:- (iii) in the case of a factory owned or controlled by the Central Government, or any State Government, or any local authority, the person or persons appointed to manage the 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;”. The above proposal has been modified as given below:- “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;”. In this regard, the earlier provision of occupier as the one ‘having ultimate control over the affairs of the factory’ has been dropped.

**7. Section 2(p): Prescribed**

After the word ‘by’ the words ‘the Central Government or’ shall be inserted.

**8. Section 6: Approval, Licensing and Registration of Factories**

The explanation clause shall be substituted by the following, namely, “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, 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 and a certificate in writing shall be given by a competent person to this effect.”. Provided that till the certificate, as referred to in the Explanation, is given by a competent person a certificate in writing given by the occupier by himself may be accepted.

**9. Section 7: Notice by Occupier**

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.

**10. Section 7-B: General Duties of Manufacturers, etc., as regards articles and substances for use in factories**

(5), the following sub-section shall be substituted, namely:— “(5) It shall be the duty of a person, — (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; (b) who manufactures, imports or supplies any substance for use in any factory – (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; (ii) to carry out or arrange for carrying out of such tests and examination in relation to such substance as may be necessary; 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; (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 substance may give rise out of such manufacture or research.”; (b) in sub-section (6), for the word “article” at both the place where it occurs, the words “article or substance” shall be substituted; (c) for the Explanation, the following Explanation shall be substituted, namely:— “Explanation.— For the purposes of this section – (a) “article” shall include plant and machinery; (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 (c) “substance for use in any factory” means any substance whether or not intended for use by persons working in a factory.”

### **Chapter III : Health [Sections 18 and 20]**

#### **11. Section 18. Drinking water**

The sub-section (3) shall be substituted by the following - “(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.”

#### **12. Section 20: Spittoons**

The sub-section (4) may be omitted **since, this penalty clause is clubbed with newly created subsection 92(B) (1).**

#### **13. Section 22: Work on or Near Machinery in Motion.**

11. In section 22 of the principal Act, in sub-section (2), — (a) for the word “woman” at both the places where it occurs, the words “pregnant woman or a person with disability” shall be substituted;

#### **14. Section 27: Prohibition of Employment of Women and Children near Cotton-openers**

For Section 27, following section shall be substituted namely- “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.”

#### **15. New Section 35-A: Personal Protective Equipment (PPE)**

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. (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. (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. (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.”

#### **16. Section 36: Precautions Against Dangerous Fumes, Gases, etc.**

For section 36 of the principal Act, the following section shall be substituted, namely :— “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. “Explanation – for the purpose of this sub-section, the expression “adequate size” means, — (a) in the case of rectangular shape manhole, of not less than 50 cms. x 30 cms; (b) in the case of oval shape manhole, of not less than 50 cms major axis and 30 cms minor axis; (c) in case of circular shape manhole, of not less

than 50 cms diameter. (2) No person shall be required or 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 – (a) it has been sufficiently cooled, by ventilation or otherwise, and is safe for persons to enter; and (b) wherever there is likelihood of deficiency of oxygen, - (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 (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). (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. (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.

#### **17. Section 37: Explosive or Inflammable Dust, Gas, etc.**

In section 37 of the principal Act, - “ (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 : - “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—”; (b) after sub-section (4), the following sub-sections shall be inserted, namely : - “(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. (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.”.

### **Chapter IV-A : Hazardous Processes [Section 41]**

#### **18. Section 41-B.(4): Compulsory Disclosure of Information**

In section 41B of the principal Act,- For sub section (4), the following sub section shall be substituted namely:- (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. (b) The occupier of the factory shall make known to the workers 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.”.

**19. Section 41-B(5):**

In sub-section (5) - (a) in clause (a), for the words “factory engaged”, the words “factory is engaged” shall be substituted; 2. In clause (b), before the words ‘within a period of’” the words “at least” shall be inserted.

**20. Section 41-C: Specific Responsibility of the Occupier**

In Section 41C of the principal Act, in clause (a), for the words “chemical, toxic, or any other harmful substances”, the words “hazardous substances” shall be substituted.

**21. Section 41-D: Power of Central Government to Appoint Inquiry Committee**

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.

**22. Section 41-E: Emergency Standards**

In Section 41E of the principal Act, in sub-section (1), for the words “Directorate General, Factory Advice Service and Labour Institutes”, the words “Directorate General Occupational Safety and Health” shall be substituted.

**23. Section 41-F: Permissible Limits of Exposure of Chemical and Toxic Substances**

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.

**24. New Section 41 – I**

After section 41H of the principal Act, the following section shall be inserted, namely: - “41-I. The Central Government or State Government may make rules — (a) specifying standards of health and safety to be followed in hazardous process; (b) prohibiting or restricting employment of young persons, pregnant women, and any class of adult workers in manufacture, storage or handling involving hazardous process; (c) prohibiting, restricting or controlling the use of hazardous substances.”.

**Chapter V : Welfare [Sections 46 and 47]**

**25. Section 46: Canteens**

For the section 46 of the principal Act, the following section shall be substituted, namely: — “46. (1) In every factory wherein one 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. (2) The State Government may prescribe — (a) the standards in respect of construction, location, accommodation, furniture, cleanliness and other equipment of the canteen; (b) the foodstuffs to be served therein and the charges which may be made therefore; (c) the constitution of managing committee for the canteen and representation of the workers in the management of the canteen; (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; (e) the periodical medical examination of canteen employees; and (f) the delegation to the Chief Inspector, subject to such conditions, as may be prescribed, of the power to make rules under clause (b). (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.”

**26. Section 47: Shelters, Rest Rooms and Lunch Rooms**

In section 47 of the principal Act, — (a) in sub-section (1),— (i) for the words “one hundred and fifty”, the word “fifty” shall be substituted; (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; (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. (b) after sub-section (3), the following sub-section shall be inserted, namely : — “(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 of shelters, restrooms and lunch rooms.”

**Chapter VI : Working Hours of Adults [Sections 64, 65,66]**

**27. Section 64: Power to Make Exempting Rules**

In section 64 of the principal Act, — (a) in sub-section (4), in sub-clause (iv), for the word “fifty”, the words “one hundred shall be substituted; (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.

**28. Section 65: Power to Make Exempting Orders**

In section 65 of the principal Act, in sub-section (3), in clause (iv), — (a) for the words “seventy-five”, the words “one hundred and fifteen” shall be substituted; (b) after Explanation, the following proviso shall be inserted, namely: — “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.”

**29. Section 66: Further restriction on employment of women**

For section 66 of the principal Act, the following section shall be substituted, namely:— “66. The provisions of this Chapter shall, in their application to women in factories, be supplemented by the following further restrictions, namely,— (a) no exemption from the provisions of Section 54 may be granted in respect of any women; (b) there shall be no change of shifts except after a weekly holiday or any other holiday; and (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: “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 nearest point 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: 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: Provided also that the restriction 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."

## **Chapter VII : Employment of Young Persons [Sections 70, 76 and 77]**

### **30. Section 70: Effect of Certificate of Fitness Granted to Adolescent**

In sub-section (1A), for the words, figures and letters "except between 6 A.M. and 7 P.M.", the words, figures and letters "except between 7 A.M. and 7 P.M." shall be substituted.

### **31. Section 76: Power to Make Rules**

**The State Government may make rules -**

Clause (b) may be omitted.

## **Chapter VIII : Annual Leave with Wages**

### **32. Section 77: Certain other Provisions of Law not barred**

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".

### **33. Section 79: Annual Leave with Wages**

1. In Sub-section (1), for the words "240" the words "90" may be substituted. 2. In the last para below explanation 1(c) "240" shall be substituted with "90". 3. In Sub-Section (2), for the words "two third", the words "one fourth" may be substituted.

## **Chapter IX : Special Provisions [Sections 87, 89, 91]**

### **34. Section 87: Dangerous Operations**

For Clause (b) of Section 87 the following clause will be substituted: 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.

### **35. Section 89: Notice of Certain Diseases**

In Sub-Section (1) for the words “Directorate General, Factory Advice Service & Labour Institutes”, the words “Directorate General, Occupational Safety and Health” may be substituted.

### **36. Section 91A: ‘Safety and Occupational Health Surveys’**

In Sub-Section (1) for the words “Directorate General, Factory Advice Service & Labour Institutes”, the words “Directorate General, Occupational Safety and Health” may be substituted.

## **Chapter X : Penalties and Procedures [Sections 92, 93, 94, 95, 96, 96A, 97, 98, 99, 102, 104, and 106]**

### **37. Section 92: General Penalty for Offences**

1. The existing Section 92 may be substituted by the following :- **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: 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. (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. (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. Explanation.- 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. 2. After Section 92, the following sections may be inserted:- **92A. Penalties for offences by persons other than Occupier.** 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. **92B. Penalties in certain other cases.** (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. (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. (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 hundred rupees. 92 C. Compounding of certain offences (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: 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. (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.

### **38. Section 93: Liability of Owner of Premises in Certain Circumstances**

The existing Section 93 may be substituted by the following : **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 – (i) common facilities and services such as approach roads, drainage, water supply, lighting and sanitation; (ii) adequate staircases; (iii) precaution in case of fire; (iv) ensuring structural stability; (v) hoists and lifts; and (vi) any other common facilities. (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 – (i) latrines, urinals and washing facilities; (ii) safety of machinery and plant installed in the common place or location of an occupier; (iii) safe means of access to floors or flats, compartments, rooms, galas, sheds and maintenance and cleanliness of staircases and common passages; (iv) precautions in case of fire; (v) hoists and lifts; (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; (vii) ensuring structural stability; and (viii) any other common facilities provided in the premises. (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. (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. (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. (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. Explanation.—For the purposes of this section, “owner” shall include promoter, co-operative society, trust, receiver, special officer, as the case may be.”

### **39. Section 94: Enhanced Penalty After Previous Conviction**

In sub-section (1), — (i) for the words “ten thousand rupees but which may extend to two lakh rupees”, the words “forty thousand rupees which may be enhanced to six lakh rupees” shall be substituted; (ii) in the first proviso, for the words “ten thousand rupees”, the words “forty thousand rupees” shall be substituted; (iii) for the

second proviso, the following proviso shall be substituted, namely: - “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.” (b) after sub-section (1), as so amended, the following sub-section shall be inserted, namely— “(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,- (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 (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;”; (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.

#### **40. Section 95: Penalty for Obstructing Inspector**

Section 95 may be substituted as follows:- “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”.

#### **41. Section 96: Penalty for Wrongfully Disclosing Results of Analysis under Section 91**

Section 96. Penalty for wrongfully disclosing results of analysis under Section 91 In the last sentence of the provision, for the words “ten thousand rupees”, the words “thirty thousand rupees” may be substituted.

#### **42. Section 96-A: Penalty for Contravention of the Provisions of Section 41- B, 41-C and 41-H.**

Section 96-A. Penalty for contravention of the provisions of Section 41-B, 41-C and 41-H. 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.

#### **43. Section 97: Offences by Workers.-**

In Section 97, the existing sub-section (1) shall be substituted by the following, namely - (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”.

**44. Section 98: Penalty for Using False Certificate of Fitness**

Section 98. Penalty for using false Certificate of fitness. In the last sentence, for the words “one thousand rupees”, the words “three thousand rupees” may be substituted.

**45. Section 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.

**46. Section 102: Power of Court to Make Order**

In Sub Section (2) of Section 102 the words “one hundred rupees” may be substituted by the words “three hundred rupees”.

**47. Section 104: Onus as to Age**

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 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.”.

**48. Section 106: Limitation of Prosecution**

In Section 106 (i) for the words “three months” the words “one year” shall be substituted. (ii) The proviso clause shall be omitted.

**Chapter XI : Supplemental (Sections 111, 112A]**

**49. Section 111: Obligation of Workers**

In Section 111, sub-section (2) shall be omitted.

**50. New Section 112A: Power to Make Rules by the Central Government**

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 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.”

**51. Miscellaneous Amendments**

First Schedule may be omitted. In Sections 13, 17, 21, 22, 23, 28, 29, 31, 34, 35, 37, 38, 40B, 41A, 41B, 41C, 45, 87, 88, 88A, 89 and 90 the words “State Government” may be substituted by the words “Central Government or State Government”.

## **52. Other Miscellaneous Recommendations**

Simplifications of Forms, Registers, Reports and Returns to be submitted: - Existing Forms Nos. 1, 2, 3 and 4 may be merged into **New Form No. 1.** - Existing Forms Nos. 11, 12, 13 and Register of Examination of Gasholders may be merged into **New Form No.2.** - Existing Forms Nos. 25, 26, 27, 32 may be merged into **New Form No. 3.** - Existing Form No. 29 (Annual Return) may be merged into **New Form No. 4.** - Existing Forms Nos. 23 and 24 may be merged into **New Form No. 5.** - Existing Forms Nos. 10 and Schedule -5 may be merged into **New Form No.6.** - Existing Forms Nos. 15, 16, 17, 19, 20 and 21 may be merged into **New Form No. 7.** - Existing Forms Nos. 6, 7, 8, 9, 14, 30 and 31 may be omitted. All these proposed simplifications of Forms, Registers, Reports and Returns are detailed in Table I.

TABLE 3 : SIMPLIFICATION OF REPORTS, REGISTERS AND RETURNS

Sl. No.		Form No.	Title	Proposed title
1.	merged as new form 1	Form 1	Application For Permission Or Consent, Extend Or Have Also Use Any Building As a Factory	Application for Registration/Grant of Licence/ Amendment/ Renewal
2.		Form 2	Application For Registration and Grant Renewal Of Licence And Notice Of Occupation, Application	
3.		Form 3	License To Work A Factory	
4.		Form 4	Notice Of Change Of Manager	
5.	merged as new form 2	Form 13	Report Of Examination Of Water Sealed Gas-holder	Report of Examination/Test of Water-Sealed Gas-holder/ Pressure Vessels or Plant
6.		Form 12	Register Of Examination of Gas-holder	
7.		Form 11	Report Of Examination Or Test Of Pressure Vessels Or Plant	
8.		Form	Register Of Examination Of Gas-holders	
9.	merged as new form 3	Form 25	Report Of Accident Including Dangerous Occurrence Resulting in Death Or Bodily Injury	Report of Accident/ Dangerous Occurrence/ Poisoning or Disease
10.		Form 26	Report Of Dangerous Occurrence which does not Result in Death Or Bodily Injury	
11.		Form 27	Notice Of Poisoning Or Disease	
12.		Form 32	Register of Accident and Dangerous Occurrence	
13.	merged as new form 4	Form 29	Annual Return	Annual Return
14.	merged as new form 5	Form 21	Certificate Of Fitness	Certificate of Fitness / Health Register
15.	merged as new form 5	Form 24	Health Register	
16.	merged as new form 6	Form 10	Report Of Examination Of Hoists And Lifts	Report of Examination of Hoists and Lifts/ for Lifting Machines/ Chains/ Ropes/ Lifting Tackles
17.		Schedule 5	Report Of Examination For Lifting Machines/ Chains/ Ropes/ Lifting Tackles	
18.	Merged with new form 7	Form 21	Leave Book	Notice of Periods of Work/overtime register/Leave book
19.		Form 16	Notice Of Periods Of Work for adult Workers	
20.		Form 17	Register of Adult Workers	
21.		Form 15	Overtime Register for Exempted Workers	
22.		Form 19	Register Of Child Workers	
23.		Form 20	Register Of Leave With Wages	
24.		Form 31	Muste Roll	
25.	May be omitted	Form 8	Humidity Register	
26.	May be omitted	Form 7	Record of Lime washing, painting, etc	
27.	May be omitted	Form 9	Register of Workers Employed For Work On or Near Moving Machinery	
28.	To be omitted	Form 6	Record of Eye Examination	
29.	To be omitted	Form 14	Register of Compensatory Holidays	
30.	To be omitted	Form 30	Half Yearly Return	

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

Dated: - 30.12. 2010

**ORDER**

In pursuance of Prime Minister's Office ID note No. 590/31/C/19/2008 ES-II dated 1612.2010 Ministry of Labour & Employment has constituted an Expert Committee to examine and make specific recommendation on the amendment proposal to the Factories Act, 1948.

1. The Composition of the Committee shall be as under;
  - (i) Shri Narendra Jadhav Chair  
Person  
Member , Planning Commission
  - (ii) Dr. Kaushik Basu Member  
Chief Economic Adviser
  - (iii) Shri Prabhat C. Chaturvedi Member  
Secretary, Ministry of Labour & Employment.
2. The Committee shall examine the proposed amendments to the Factories Act, 1948 and make its recommendations. It may in particular, examine the following issues and suggest specific amendments as may be necessary;
  - (i) Concerns arising out of disasters like the Bhopal gas tragedy, such as industrial disaster mitigation, rehabilitation and compensation of industrial workers and other affected persons , toxic waste disposal and site remediation, long-term health problems, criminal liability etc.
  - (ii) The role and accountability of public servants, like inspectors of factories and other stakeholders; and
  - (iii) The general enforceability of the Act.
4. The Committee may associate labour law specialists, trade union experts, industrial safety experts etc, as may be required, while examining the matter and making its recommendations.
5. The Committee will be serviced by the Ministry of Labour & Employment.

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6. The Committee will submit its report to the Prime Minister within four weeks.

Vandana Sharma

(Vandana Sharma)

Director

Tele fax No. 2377275

Copy to:

O/C

- 1. Shri Narendra Jadhav, Member, Planning Commission, Yojana Bhawan, New Delhi.
- 2. Dr. Kaushik Basu, Chief Economic Adviser
- 3. Shri. Prabhat C. Chaturvedi, Secretary, Ministry of Labour & Employment,
- 4. Shri Amit Agrawal, Director, PMO, with ID note No. 590/31/C/10/2008 ES-II dated 16.12.2010.
- 5. Shri K.L. Sharma, Director, Cabinet Secretariat with OM No. 341/3/6/2010-Cab. Dated 27.12.10

## ANNEXURE-II

**THE MINUTES OF THE MEETING OF THE EXPERT COMMITTEE, HELD IN THE MAIN COMMITTEE ROOM, SHRAM SHAKTI BHAVAN, MINISTRY OF LABOUR AND EMPLOYMENT, NEW DELHI ON 19-01-2011 AT 1300 HRS, TO REVIEW THE PROPOSED AMENDMENTS TO THE FACTORIES ACT, 1948.**

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2. A Meeting was held in the Main Committee Room, Shram Shakti Bhavan, New Delhi on 19<sup>th</sup> Jan. 2011 at 1300 hrs under the chairmanship of Shri Narendra Jadhav, Member, Planning Commission to review the proposed amendments to the Factories Act, 1948.

The list of participants is given in the **Annexure**.

3. In the opening remarks, the Chairman of the Committee, Shri Narendra Jadhav, Member, Planning Commission, welcomed all the members and thanked the office of the Prime Minister for appointing him as a Chairman of the Committee to examine the proposed amendments to The Factories Act, 1948, which is an important law concerning safety, health and welfare at work place. He then drew the attention of the Members to the following three important issues which need special examination and deliberations by the Committee, in the context of the proposed amendments to the Act.

(i) The issues arising out of disasters like the Bhopal gas tragedy, such as industrial disaster mitigation, rehabilitation and compensation for industrial workers and other affected persons, toxic waste disposal and site remediation, long-term health problems, criminal liability etc.

(ii) The role and accountability of public servants, like Inspector of Factories and other stakeholders; and

(iii) The general enforceability of the Act.

4. The Chairman requested Shri A.C. Pandey, Joint Secretary to the Government of India, Ministry of Labour & Employment to make a detailed

presentation on the subject so that the Members would get a holistic perspective on the proposed amendments to the Act.

5. At the outset, Shri Pandey welcomed the Members and informed them that the presentation has two parts. The first part of the presentation is, on the proposed amendments to the Factories Act, 1948 followed by a brief presentation the important issues spelt out in the terms and references of the Committee. He then requested Shri H. Vishvanathan, Director (Safety), DGFASLI, Mumbai to make the presentation. Shri Vishvanathan made a detailed power point presentation on the salient features of the proposed amendments covering the important sections of the amendment and the terms of reference. After the presentation, the Chairman requested the Members to express their views and offer comments on various Sections of the proposed amendments.

6. The representative of the All India Trade Union Congress (AITUC), was of the opinion that the existing definition of the 'factory' does not reflect the present situation. According to him, the definition of the 'factory' should be redefined by incorporating the factories which employ less than 10 workers so that the social security benefits such as ESI, PF, etc. could be availed by a large number of workforce employed in these factories. Further, he also wanted that layout and approach to the factory should be given due consideration in the amendments.

7. The representative of the Bhartiya Mazdoor Sangh (BMS) requested the Chairman to have a re-look at three Sections namely, Section 66: Restriction on Employment of Women, Section 79: Annual leave with wages, Section 92: General penalty for offences. As regards, the proposed changes in the Section 66, he opined that safety and security of the working women in the Country is not conducive, hence, giving relaxation to women to work in the night would jeopardize their safety and security. Therefore, he requested the Chairman to retain the existing provision. As regards Section 79, Annual Leave With Wages, he advocated to delete the condition of 90 days for becoming eligible to annual leave with wages. He also pointed out that the enforcement machinery in the

country is weak and there is an urgent need to bring about more accountability on the part of enforcement officials.

8. A Member from Hind Mazdoor Sabha (HMS) desired that The Factories Act, 1948, should be a stand-alone Act incorporating all the provisions within the Act itself, without giving references to various other Acts like The Environment (Protection) Act, 1986, The Workmen Compensation Act, 1923, and other relevant Acts. While agreeing with the spirit of the suggestions, the representatives from the Employers Organization opined that this would pose practical difficulties during implementation, in case of Amendments to other referred Acts.

9. A representative of Centre of Indian Trade Union (CITU) requested the Chairman to provide more time to the Members to read and understand various proposed Sections of the Act, so that the Members could get a holistic and comprehensive understanding of all the proposed amendments. According to him, this would help the Members to participate effectively in the deliberations process. The Chairman agreed with the suggestion of the Member.

10. A representative of the Employers Association, Associated Chambers of Commerce and Industry (ASSOCHEM) stated that the enforcement authorities under the Act have been vested with enormous powers and they often harass the owners of the factories for trivial matters. To this effect, he gave several examples and advocated more sensitivity and understanding on the part of the enforcement authorities, as the owners of the factories are also responsible citizens of the country. He was also of the strong opinion that the records maintained by the factories should be reduced to the minimum and there should be uniformity with regard to implementation of Factories Rules in different States.

11. The representative of the Confederation of Indian Industry (CII), advocated for more accountability on the part of enforcement authorities in the deregulated business environment.

12. The representative of the Council of Industrial Employees stated that in the present era of globalization, there should not be restrictions for the women to

work in the night, as it is done in countries like Philippines. He opined that, there should not be any discrimination between the genders as regards the working hours.

13. The Director General, National Safety Council, Mumbai, was of the view that The Factories Act, 1948, should consist of only the technical issues such as safety and health provisions and the non-technical provisions like welfare, working hours etc, could be clubbed with other Labour Laws. He also cited examples of duplicity in the enforcement of some non technical provisions by different enforcement authorities. He also brought to the notice of the Committee, that the issue of compensation is not adequately covered in all the existing Acts concerning OSH, and this issue needs a special consideration.

14. The representative of the HMS opined that a time-limit should be specified under Section 6: Approval, Licensing and Registration of the factories for submitting a certificate in writing by the Occupier, until a certificate is issued by a competent person. The Chairman requested the Committee to further examine this issue. After due deliberations, the Committee felt that the proposed amendment of submitting a certificate may be deleted as this would not make any significant difference to the existing provision by a competent person relating to duties of Occupier.

15. The representative of the CII requested the Committee to revisit the definition of "Occupier" to make it uniformly applicable to public and private sector companies without any distinction. While concurring with this view, a Member from CITU stated that the Occupier in the public sector companies should not be a lower functionary, but should be part of the Board of Directors as this would bring in more accountability with regard to safety and health. Many of the Members across the spectrum concurred with this view.

16. The representatives from the Employees and Employees Organizations were of the strong view that the examination of the proposed amendments in the Act, should not be done in haste and adequate time should be given to deliberate thoroughly, all the amendments that could have profound impact on the safety and health of a large workforce in the country. The Chairman agreed with the

suggestion of the Members and it was unanimously decided by the Committee to hold the next meeting on 10<sup>th</sup> February, 2011 at the same venue from 1300 hrs to have wider & thorough consultations on the subject. The Chairman requested the Members to offer their comments section / clause-wise to the Ministry of Labour & Employment in 10 days time so that the same would be circulated to all other Members. He was of the view that this would enable the Members to have fruitful deliberations in the next meeting to be held on 10<sup>th</sup> Feb. 2011.

17. In the end, the Chairman thanked the Secretary and the officials of the Ministry of Labour and Employment for making all the necessary arrangements for smooth conduct of the meeting. He further requested the Ministry, to initiate action to hold the next meeting as decided. He also thanked all the Members for their effective participation in the deliberations of the meeting.

The meeting came to an end with thanks to the Chair.

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## Annex

### List of Participants

<b>Sl.No</b>	<b>Name of the Participants</b>	<b>Organization</b>
1.	Shri Prabhat C. Chaturvedi,	Secretary, Ministry of Labour & Employment.
2.	Dr. Ashok Sahu	Senior Adviser, Planning Commission.
3.	Shri A.C. Pandey,	Joint Secretary, Ministry of Labour & Employment, Govt. of India.
4.	Shri B. K. Sinha	Additional Economic Advisor
5.	Ms. Sunita Songhi	Adviser, Planning Commission
6.	Shri G.M.E.K. Raj	Dy. Director General & HOD, DGFASLI, Ministry of Labour & Employment.
7.	Shri Swadesh Dev Roy	CITU
8.	Shri R.A Mital	HMS
9.	Shri K. Lakshma Reddy	BMS
1.	Shri V. Murali	Dy. CLC
2.	Shri Michael Das	CII
3.	Shri M.K.Garg	ASSOCHAM
4.	Shri Anil Gaur	ASSOCHAM
5.	Shri Shitangshu Taye	CIE
6.	Shri V.B. Sant,	Director General, National Safety Council
7.	Shri S.N. Sharma	All India Trade Union Congress
8.	Ms. Vandana Sharma	Director, Ministry of Labour & Employment, Govt. of India
9.	Dr.A.Singh	Director (Ind. Psychology), RLI Faridabad DGFASLI, Ministry of Labour & Employment, Govt. of India
10.	Shri H. Vishvanathan	Director (Safety), DGFASLI, Ministry of Labour & Employment, Govt. of India
11.	Shri M.R.Rajput,	Director(IH), RLI Faridabad, DGFASLI, Ministry of Labour & Employment, Govt. of India
12.	Dr. E. Laxminarayana,	Dy. Director (ST/P), DGFASLI, Ministry of Labour & Employment, Govt. of India
13.	Shri Subhash Chand	Under Secretary, Ministry of Labour & Employment
14.	Shri A.K. Mallik	Section Officer (ISH-II), Ministry of Labour & Employment

**THE MINUTES OF THE MEETING OF THE EXPERT COMMITTEE, HELD IN THE COMMITTEE HALL OF SHRAM SHAKTI BHAVAN, MINISTRY OF LABOUR AND EMPLOYMENT, NEW DELHI ON 10.02.2011 AT 1300 HRS, TO EXAMINE THE PROPOSED AMENDMENTS TO THE FACTORIES ACT, 1948.**

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2. A Meeting was held in the Main Committee Room, Shram Shakti Bhavan, New Delhi on 10<sup>th</sup> Feb. 2011 at 1300 hrs under the chairmanship of Shri Narendra Jadhav, Member, Planning Commission to review the proposed amendments to the Factories Act, 1948.

The list of participants of the meeting is given in the **Annex**.

3. In the opening remarks, the Chairman of the Committee, Shri Narendra Jadhav, welcomed all the participants. He thanked them for support in the deliberations of the last meeting and sought similar co-operation in the present meeting. He then informed the participants that the deliberations on the proposed amendments would be held in three parts. In the first category, the amendments proposed by the Ministry of Labour & Employment in the existing Act would be deliberated upon. In the second category, the deliberations would be held on those sections and clauses of the Factories Act of 1948, on which no amendments have been proposed but are essential in the present context. In the third category, the deliberations would be held on issues that should become part of the Factories Act in future, in view of the changed technological scenario and the work environment. He then requested the participants to express their general comments about various sections and clauses of the proposed amendments to the Factories Act, 1948.

4. The representative of BMS drew the attention of the Chairman about the need for declaring the violations under the Factories Act, 1948, as cognizable offences, since safety and health issues have implications on precious human lives.

5. The representative of AITUC felt that the present amendments are not comprehensive. He was of the opinion that the spirit of the National Policy on Safety, Health & Environment at workplace and the relevant ILO Conventions on Occupational Safety and Health (OSH) such as Convention - 155 : Concerning Occupational Safety and Health, Convention -174 concerning Prevention of Major Accidents etc. should form the basis for carrying out any amendments in the Act. He also stressed the need to consider the safety and health issues of Special Economic Zones (SEZ) in the Country, while suggesting amendments to

the Act. He also emphasized the need to update the list of occupational diseases enlisted in Schedule III of The Factories Act, 1948 in line with the list of Occupational Diseases enlisted by the ILO. He was of the strong opinion that a proactive and preventive approach for promotion of safety and health should form the basis for amendments to the Act, rather than a regulatory approach.

6. The representative of CITU was of the strong opinion that the limit of accumulation of earned leave should be increased from the present 30 days in the Factories Act, to an adequate level, in view of the increase in the limit of leave accumulation to 300 days for the Central Government Employees. He also felt that the tripartite deliberations on the proposed amendments should have been held before the matter was referred to the Cabinet Committee, so that there would have enough time for the members to deliberate on such an important subject.

7. While advocating a positive approach in the process of amendments, the representative of ASSOCHAM, felt that the approach for amendments should not be punitive but should be reformative in nature, specially in the case of small and medium sized industries which provide huge employment generation in the country. According to him, the enforcement officials need to adopt an approach of a philosopher and guide rather than a negative regulatory approach in effective implementation of the provisions of the Act.

8. The representative of CIE felt that the Factories Act, is a Policy Documents which should help in employment generation and should take care of the safety & health aspects simultaneously. He also opined that in the changed circumstances the designation of the Inspector of Factories needs to be rephrased as a Counselor / Educator to bring about a positive outlook to the enforcement machinery. Further, he advocated that the Act should be made simple and implementable so that the owners of the small and medium scale industries are encouraged to implement the provisions of the Act.

8. Shri A.K.Dongre, Jt. Director Industrial Safety and Health, Maharashtra stated that most of Industrial Workers are not covered under Employee's State Insurance Corporation i.e. ESIC Scheme and these workers are at the mercy of occupier for Medical Expenditure or Accident Insurance. He therefore stressed the need for inclusion of a separate provision in the Act, to meet Medical Expenditure and to Provide Accident Insurance Coverage to the workers, by the Occupier of the factory.

9. The representative of CII was of the opinion that the present Act, represents the old mind-set of the license Raj and it needs to be re-examined in the context of the changed business scenario. He drew the attention of the Chairman to the need to attune our Act in line with other

parallel legislations on OSH prevalent in other countries such as Singapore, China, Germany etc. However, he strongly advocated the need for making the enforcement officials more accountable in administration of the Act.

10. While stressing the importance of increased accountability on the part of the enforcement authorities, Dr. Kaushik Basu, the Chief Economic Adviser drew the attention to the stringent safety regulations prevalent in the United States with a number of provisions similar to that of India. According to him the safety regulations should benefit both the workers and employers and the inspectors should not get undue advantage of system. Therefore, he was the view that there must be a system to inspect the inspectors to prevent the misuse of the system and improve their accountability.

11. The Chairman, while appreciating the views expressed by various participants assured them that more time would be made available to them to have detailed deliberations on all the Sections and Clauses of the proposed amendments that may have significant implications on the safety and health of our workforce. He then requested Shri H. Vishvanathan, Director (Safety), DGFASLI, Mumbai to provide brief explanation of the proposed amendments, so that the participants would get a holistic perspective of the proposed amendments to the Act.

12. The section-wise discussions and deliberations held in the meeting are summarised as under:-

### **1. Section 2(cb): Hazardous Process**

The representative of Bharatiya Mazdoor Sangh (BMS) was of the view that the definition does not address the issue of public safety. Shri VB Sant, Director General, National Safety Council clarified that section 41- B of the Act incorporates a provision of disaster management plan and hence, addresses this issue. After due deliberations the Committee agreed with the proposed amendment to the definition of hazardous process.

### **2. New Section 2(cc): Hazardous Substance**

There was a difference of opinion with regard to the proposed definition. However, after detailed deliberations, the proposed amendment was agreed to.

### **3. New Section 2(ee): Disability**

The representative of CII felt that the definition of disability should be mentioned in the Factories Act without referring it to other Act. Shri Prabhat C. Chaturvedi, the Secretary, Ministry of Labour and Employment clarified that amendment has been vetted by the Law

Ministry and in order. The representative of AITUC drew the attention of the Committee to the UN Convention on Rights of Persons on Disability & the Convention on Discrimination & Occupation, which India ratified, and felt that the proposed definition is in order.

**4. Section 2 (f): Week**

The proposed amendments were agreed to.

**5. Section 2(k): Manufacturing Process**

The proposed amendments were agreed to.

**6. Section 2(n): Occupier**

There was a diverse opinion as regards the proposed definition of the Occupier. The representative of ASSOCHAM was of the view that the approach for the defining the term Occupier should be the same for both the private and public sector companies and there should not be discrimination on this account. The representatives of CITU and AITUC were of the view that a senior person not less than a Member of the Board should be the Occupier of the factory for better accountability. While agreeing with the suggestion of appointing a senior person as an Occupier, the representative of CII opined that the term Occupier should be so drafted that it should not deter the foreign investors in establishing their units in our Country. Shri Palve, the Law officer of the Directorate of Industrial Safety, Maharashtra, drew the attention of the Committee to the decision of the Honorable Supreme Court (JK Industries Vs Union of India) making the Director of the company responsible for safety.

**7. Section 2(p): Powers to the Central Government**

The proposed amendment was agreed to.

**8. Section 6: Approval, Licensing and Registration of Factories**

There was a difference of opinion as regards the Approval, Licensing and Registration of Factories. The representative of INTUC opined that the number of employees should be indicated / classified, category wise such as, mangers, fitters, skilled / unskilled workers etc.at the time of obtaining licence from the authorities. The representative from the employers' organizations were not in the favour of the suggestion as it would be difficult to pre-define the number of employees, categorywise, while obtaining licence. However, the Committee felt that the proposed amendment of submitting a certificate by a competent person relating to the duties of Occupier may be deleted.

## **9. Section 7: Notice by Occupier**

The proposed amendment was agreed to.

## **10. Section 7-B (5): General Duties of the Manufacturers, etc. as regards articles and substances for use in factories.**

There was a difference of opinion as regards the proposed amendment to the Section. The representative of AITUC opined that the proposed amendments should be consistent with the Article 12 of ILO Conventions -155 & Article 9 of the Convention – 170, which provide for the general duties & responsibility of the manufacturers and designers. The representative of ASSOCHAM stated that the proposed amendment is in order. The representative of HMS and CITU did not agree with proposed amendment and desired to have the matter further examined, in detail. Shri Sant, Director General, NSC informed the Committee that the Law Ministry had examined the matter and opined that the person means the legal entity such as an establishment / company group of associations and not the individual. However, there was no consensus on this proposed amendment.

## **11. Section 18: Drinking Water**

The proposed amendment was agreed to.

## **12. Section 20(4): Spittoons**

During the course of deliberations, diverse views were expressed with regard to retention of the Sub –Section (4) of Spittoons. The representative of CII did not agree with the proposed amendment where as the employees representatives insisted that the spittoons must be retained for hygienic reasons. However, Shri V.B. Sant, informed, that the Committee of the Secretaries appointed by the Government, to examine the amendment proposal, had detailed deliberations on the issue of deletion of Spittoons from the provisions of the Act. He further stated that keeping in view the educational levels of our workers and our cultural ethos, the Provision – Spittoons has been retained.

In the end, the proposed amendment was agreed to.

### **13. New Section 20A: Prohibition of Smoking in the Factory Premises (OMITTED)**

The representative of NSC drew the attention of the participants that there was no law earlier prohibiting the smoking in the public place. In view of the enactment of a law prohibiting smoking in the public place under the directions of the Supreme Court, it has become essential to Prohibit Smoking in the Factory Premises, as the factory is treated as any other public place. In view of this statute no separate amendment was required in Factories Act, 1948. Accordingly it was omitted from the amendment proposal.

### **14. Section 22: Work on or Near Machinery in Motion**

There was a diverse opinion amongst members about the proposed amendment. The employer's representatives supported the amendment as it promotes gender equality and provides equal opportunities to women. Some of the representatives of the employee's organizations disagreed with the proposed amendment. The representative of HMS and CITU and were of the view that women should not be allowed to work in the hazardous work places. While, commenting on the suggestion the Chairman opined that gender equality should be promoted and equal opportunities should be provided to women without discrimination, as a forward step. Director, Ministry of Labour and Employment also advocated gender equity. The representative of ASSOCHAM, while supporting the cause of gender equality, suggested to include a certification / training clause to operate specific machines by women and men in the proposed amendments.

### **15. Section 26: Casing of New Machinery**

The proposed amendment was agreed to.

### **16. Section 27: Prohibition of Employment of Women and Children Near Cotton-Openers**

The proposed amendment was agreed to.

### **17. New Section 35 –A: Personal Protective Equipment (PPE)**

The representative of ASSOCHAM stated that the responsibility for maintaining the PPE should rest with the workers not with the Management. Where as, Shri Sant argued, that the responsibility for maintaining the PPE's should rest with the employers as they are in a better position to maintain the same. The representatives of the Trade Unions also agreed with the amendment.

18. **Section 36: Precautions against Dangerous Fumes, Gases, etc.**

The proposed amendment was agreed to.

19. **Section 37: Explosive or Inflammable Dust, Gas, etc.**

The representative of ASSOCHAM was of the opinion that there is no need for approval by DGFASLI once the electrical equipment is made of the National Standard. The Secretary, Ministry of Labour agreed with the suggestion of the member. Since, the manufacturer of the electrical equipment, not the Occupier has to obtain the approval from DGFASLI, the Committee felt there is a need to rephrase the wording under subsection 4(B) of 37: of the proposed amendment. Accordingly, the Chairman directed DGFASLI to effect the change of wording to bring about more clarity.

20. **Section 41-B (4): Compulsory Disclosure of Information**

After due deliberations, the proposed amendment was agreed to.

21. **Section 41-B (5) : Compulsory Disclosure of Information**

The proposed amendment was agreed to.

22. **Section 41-C: Specific Responsibility of the Occupier in Relation to hazardous processes.**

The proposed amendment was agreed to.

23. **Section 41-D: Power of Central Government to Appoint Inquiry Committee:**

The proposed amendment was agreed to.

24. **Section 41-E: Emergency Standards**

The proposed amendment was agreed to.

25. **Section 41-F: Permissible Limits of Exposure of Chemical and Toxic Substances**

The proposed amendment was agreed to.

26. **New Section 41-I-Enabling provisions to the Central & State Governments.**

After due deliberations, the proposed amendment was agreed to.

## **27. Section 46:Canteen**

The representative of CII and ASSOCHAM did not concur with the proposed amendment to reduce the number of employees from 250 to 100 for operating a canteen. According to the representative of ASSOCHAM the canteens have to be run on no profit and no loss basis and the Government should not intervene into the micro management of running the canteens as this is the prerogative of the Canteen Committee to Manage the Canteens. The representative of CITU was of the opinion that canteen facilities contribute to the healthy ambiance and industrial peace in the company resulting in enhanced productivity. He hence, advocated the need for the proposed amendment. The representative of AITUC was of the view that the limit of the employees for establishing canteens should be reduced to (fifty) 50 in the changed circumstances.

## **28. Section 47: Shelters, Rest Rooms and Lunch Rooms**

The deliberations on the Section took place on similar lines to that of Section- 46: Canteens. There was a difference of opinion amongst the members of employers organizations about the proposed amendment to substitute 50 workers for the present 150.

## **29. Section 64: Power to Make Exempting Rules**

The representative of ASSOCHAM and CII stated that it should not be made compulsory to seek prior approval from the enforcement authorities for working overtime during exigencies. Hence, he proposed for ratification of the same by the enforcement authorities after completion of the job.

The representative of ASSOCHAM was in favour of the proposed amendment. Most of the Members felt the need for collecting more facts and further examination of the issue of increased overtime in-depth, before accepting the proposed amendment.

The representative of AITUC advocated a 6 hours shift amounting to four shifts per day as prevalent in some countries. According to him, this would increase our economic growth and provide more employment opportunities in the Country. The representatives of the employers did not agree with the suggestion.

The Secretary informed the Members that the proposed amendment is in line with the ILO Convention No-1: Concerning Working Hours, which India has ratified and hence, we should honour the spirit of the Convention.

**30. Section 65: Power to Make Exempting Orders.**

The deliberations on the Section took place on similar lines to that of Section-64. There was a diverse opinion with regard to the proposed amendment. The representative of AITUC was not in favour of the proposed amendment, whereas the representatives of CII and ASSOCHAM agreed with the amendment.

**31. Section 66: Further Restriction on Employment of Women**

The representative of ASSOCHAM was of the view that it is not practicable for the employers to comply with the provisions such as providing transportation and security to the women working in the night shift and hence, the proposed amendment will discourage the employers from employing women workers. He was of the strong view that the restrictions are of anti – women in nature.

The Secretary clarified that the proposed provision is in the interest of the women workers. He informed that women are not permitted to work in the night shift at present and the proposed amendment provides an opportunity for the women to work in the night with certain safe guards and hence, it is no way discriminatory and anti- women.

The representative of AITUC while opposing the proposed amendment, stated that the exemptions in the provisions should not become a law. He was of the strong view, that it is not the right time to introduce such amendments as many problems are encountered with regard to women employed in the night shifts even in the organized sectors, such as, the IT and Telecom Sector employing educated women.

The Chairman desired to know from the participants about the prevailing International Practices on the employment of women in the night shift, including the spirit of ILO Convention No: 89, concerning Night Work (Women).

The representative of CII, was in concurrence with the proposed amendment of permitting the women to work in the night shifts with certain safeguards.

While supporting the proposed amendment as the need of the hour, The representative of HMS, strongly advocated for deletion of the para “Provided also that the restriction 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” to make the proposed amendment more practicable and viable.

In view of the diverse opinion expressed by the participants, representing the employers and employees organizations, there was no consensus on the proposed amendment.

The representative of HMS concurred with the proposed amendment but strongly advocated for deletion of the para “ Provided also that the restriction 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”.

### **32. Section 70: Effect of Certificate of Fitness Granted to Adolescent**

After due deliberations, the proposed amendment was agreed to.

### **33. Section 76: Power to Make Rules**

After due deliberations, the proposed amendment was agreed to.

### **34. Section 77: Certain Other Provisions of Law not Barred**

After due deliberations, the proposed amendment was agreed to.

### **35. Section 79: Annual Leave with Wages**

There was a diverse opinion on the proposed amendment amongst the participants. The representatives of employees' organizations have agreed with the proposed amendment whereas the representatives of employers Organizations have not supported the proposal to reduce the present limit from 240 days to 90 days to get a worker qualified for entitlement of annual leave with wages. Sri Sant stated that as per the Section 78 of the Act, this Chapter shall not operate to terms of any award, agreement (including settlement) or contract of service. Alleviating the fears of the employers' representatives, he further stated, that adequate safe guards against the misuse of this provision are built in the Industrial Dispute (ID) Act, which is also applicable to the factories.

However, after detailed deliberations there was a request from the Members to reexamine the matter in-depth before arriving at consensus on the proposed amendment.

### **36. Section 87: Dangerous Operations**

After due deliberations, the proposed amendment was agreed to.

### **37. Section 89: Notice of Certain Diseases**

After due deliberations, the proposed amendment was agreed to.

### **38. Section 91A: Safety and Occupational Health Surveys**

After due deliberations, the proposed amendment was agreed to.

### **39. Section 92: General Penalty for Offences**

13. The representatives of CII strongly opposed the proposal to increase the quantum of penalties. According to him, the present penalties under Section -92, General penalty for offences, stood the test of times and there is no need to bifurcate the penalties in to different classes. He requested the Chairman to effect change in Para : "*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”*

**and the para :**

*“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”.*

14. The representatives of ASSOCHAM emphasized the need for a change of mindset on the part of the inspecting officials in tune with the changing times. He further stated that increasing the penalty to three times would impact the small and medium scale industries, who are likely to contravene the provisions of the Act, unintentionally, owing to various constraints under which these industries operate. He also stated that criminal proceedings against the employers’ will jeopardize the basic philosophy of promotion of safety and health in industries.
15. The representatives of CITU advocated further increase of penalties to act as deterrent for violation of the provisions of the Act.
16. Shri Palve, Law Officer, DISH, Maharashtra felt that a uniform fine of Rs. 75,000/ for both bodily injury and death is not justifiable and hence, he proposed a rate of Rs. 25,000/ for bodily injury Rs, 75000/ for death. Whereas, The representatives of NSC, supported the proposed enhancement of fine to Rs. 75,000/ for both bodily injury and death since at times bodily injury can cause greater suffering. He further drew the attention of the Committee for the need to revise the powers of the Judicial Magistrate /Metropolitan Magistrate or insertion of a Provision to award fine as stipulated under section 92 of the Factories, Act.
17. The representatives of NSC informed the Committee that the Law Ministry and the Committee of the Secretaries have approved the proposed enhancement of the penalties. However, there was a broad consensus amongst the Members, as regards the increase in penalty, keeping in view the devaluation of money value over the years.
18. The representatives of AITUC drew the attention to the inadequate strength of the enforcement officials. He strongly advocated for strengthening of the enforcement machinery and adequate training to the enforcement officials for effective enforcement of the provisions

the Act. He also informed that there is a provision of worker Inspectors apart from the Government Inspectors, in Britain, for enforcing the provisions of Safety & Health Regulations. He requested the Chairman to consider this proposal in our Act.

19. The representatives of HMS, AITUC, CII and others across the spectrum strongly advocated for improving the accountability of the enforcement officials under the Factories Act, 1948. 40 -52: The Committee agreed with the proposed amendment to the Section 93: 94:95:96; 96-A: 97: 98: 99:104/106,111,112(A) and other new proposals.
20. After completion of the deliberations, the Chairman requested the participants to send their comments to the Ministry of Labour & Employment on the remaining two categories of amendments, namely, those amendments which are necessary in the present context but do not form the part of the proposed amendments and the New Provisions that can become part of the Act in future, within 10 days so that the same could be circulated to all other Members.
21. The Chairman decided to meet in the first week of March, 2011 to further deliberate on these issues of category 2&3. The Chairman, as desired by the participants across the spectrum, decided to have in-depth discussions and deliberations in the next meeting, on the issue of enhanced accountability on the part of the enforcement officials. He requested the participants to come out with concrete suggestions to address the issue of accountability adequately.
22. In the end, the Chairman thanked the Secretary and the officials of the Ministry of Labour and Employment for making all the necessary arrangements for the smooth conduct of the meeting. He further requested the Ministry, to initiate action to hold the next meeting latest before 15<sup>th</sup> March, 2011. He also thanked all the participants for the productive and friendly discussions and for their effective participation in the deliberations of the meeting.

The meeting ended with thanks to the Chair.

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Annex

LIST OF PARTICIPANTS

Sl.No	Name of the Participants	Organization
1.	Dr. Kaushik Basu	Chief Economic Adviser.
2	Shri Prabhat C. Chaturvedi,	Secretary, Ministry of Labour & Employment.
3	Shri Ravi Mathur,	Additional Secretary, Ministry of Labour & Employment.
4	Shri A.C. Pandey	Joint Secretary, Ministry of Labour & Employment.
6	Dr. Ashok Sahu	Adviser, Planning Commissioner.
7.	Shri Anil K. Sharma	Dy. Director, Planning Commission
8	Shri G.M.E.K. Raj	Dy. Director General & HOD, DGFASLI.
9	Shri A.A. Gilani	Deputy CLC.
10	Shri M.C. Sharma	RLC (c).
11	Shri A.C. Palve	Law Officer, DISH, Maharashtra
12	Shri A.K. Dongre	Jt. Director, Indl. Safety & Health, Maharashtra
13	V.B. Sant	Director General, National Safety Council
14	Shri K. Lakshma Reddy	BMS
15	Shri Vinod Kumar Sharma	INTUC
16	Shri Swadesh Dev Roye	CITU
17	Shri R.A Mital	HMS
18	Shri H. Mahadevan	AITUC
19	Shri B.P. Pant	CIE
20	Shri Michael Dias	CII
21	Shri M.K.Garg	ASSOCHAM
22	Anil Gaur	-do-
23	Shitangshu Taye	FICCI
24	Ms. Vandana Sharma	Director, Ministry of Labour & Employment.
25	Dr. M. Rajaram	Deputy Director General, DGFASLI.
26	Shri H. Vishvanathan	Director (Safety), DGFASLI.
27	Shri M.R.Rajput,	Director(IH), RLI Faridabad, DGFASLI.

<b>28</b>	<b>Dr. E. Laxminarayana,</b>	<b>Dy. Director (ST/P), DGFASLI.</b>
<b>29</b>	<b>Shri A.K. Mallik</b>	<b>Section Officer (ISH-II), Ministry of Labour &amp; Employment</b>

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**THE MINUTES OF THE MEETING OF THE EXPERT COMMITTEE,  
HELD IN THE COMMITTEE HALL OF SHRAM SHAKTI BHAWAN,  
MINISTRY OF LABOUR AND EMPLOYMENT, NEW DELHI ON  
03.03.2011 AT 1300 HRS, TO REVIEW THE PROPOSED  
AMENDMENTS TO THE FACTORIES ACT, 1948.**

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A Meeting was held in the Main Committee Room, Shram Shakti Bhawan, New Delhi on 03<sup>rd</sup> March 2011 at 1300 hrs under the Chairmanship of Dr. Narendra Jadhav, Member, Planning Commission to review the proposed amendment to the Factories Act, 1948.

2. The list of the participants who attended the meeting is enclosed as Annexure.

3. In the opening remarks, the Chairman welcomed all the participants. He thanked them for their effective participation in the deliberations of the last two meetings and sought similar co-operation in the present meeting. He requested the participants to give their final comments on the proposed amendments. He then opened the floor for discussion.

4. The representative of the Bharathiya Mazdoor Sangh (BMS) was of the view that the labour legislations should aim at protecting the workers, whereas the proposed amendments are aimed at protecting the employers. He requested to maintain status quo in the case of Section -66 concerning restrictions on women employment. He emphasized that there is no proper machinery/procedure to inform the appropriate authority in case of accidents. He was of the view that the penalties and punishments proposed are very inadequate.

5. The representative of the Confederation of Indian Industry (CII) was of the strong view that small and tiny sectors would face difficulties in view of the enormous powers entrusted to the inspecting staff. He

advocated encouraging manufacturing hubs with lesser inspecting laws. He also highlighted the disparity in defining the term Occupier in the Government undertakings such as Indian Oil Corporation (IOC) and the Private Sector companies such as Tata Steel. He emphasized that the process of approval, licensing and registration of factories should be made simple, online and with less interference by inspectors. He stated that the safety provisions being stringent and prosecution oriented need a cultural change. He also advocated for more accountability on the part of the Inspector and opined that the inspection regime should give way to self-certification through independent agency. While making an observation on chapter II – Section (8) & (9), he stated that the procedure of inspection is too old and it would be appropriate to outsource or grant exemptions from the inspection in case the factory is accredited with ISO certification. He opined that that the occupier and the manufacturer of machinery should be made jointly liable. He also made a specific remark that the workers, who violate the provisions of the Factories Act, should also be punished appropriately.

6. The representative of ASSOCHAM pointed that the tea dust generated in the Plantation Industry is not hazardous and hence, the provisions of Section 37 and Section 41(B) should not be made applicable. He also highlighted the fact that the concept of canteen has no relevance in the plantation industry as the plantation workers work at different timings from 7AM to 8AM. In view of this, he strongly advocated for exemption of canteen provision for the plantation industry. He also stated that the plantation industry should be exempted from the provision of rest rooms, shelters as their homes are situated nearby. He suggested adoption of working hours for female workers including leave with wages as per the ILO conventions. He made an observation that amendment to Section 91 and 92 would amount to granting immense powers to inspectors. He opposed the amendments of Section 95 and Section 106. He stated that the

number of registers maintained as per the Factories Act need to be reduced to the minimum.

7. The representative from All India Trade Union Congress (AITUC) was of the view that the proposed amendments are not comprehensive and suggested that they should be in line with the Action Programme stipulated in the National Policy on Safety Health and Environment at Work Place and the International Instruments such as ILO Conventions and recommendations. He also brought to the notice of the participants that there is a provision of trade union inspectors besides the Government inspectors in British Safety & Health Act. He suggested that the existing list of occupational diseases needs to be enlarged in line with the list of ILO recommendations on occupational diseases. He was of the strong view that sectors such as IT and SEZ (Special Economic Zones) should be brought under the purview of the Factories Act, 1948, as they are under No Laws Zones at present. He strongly felt that not providing minimum safety should be treated as an offence on similar lines to that of not providing minimum wages. He stated that Section 41 (H) has to be drafted in line with ILO convention 174 on Prevention of Major Industrial Accidents. He also emphasized that the Directive Principles enshrined in the Indian Constitution in respect of safety and health of the citizens should be respected in letter and spirit.

8. The representatives of Confederation of Indian Employers (CIE) and CII voiced their concern about the present scope of penalties and prosecutions proposed in the amendments and stated that this would not help in achieving the GDP growth rate envisaged by the Hon'ble Finance Minister.

9. While supporting the concept of online record maintenance on OSH matters, the representative of Hind Mazdoor Sabha (HMS) insisted that a copy of the online record should be provided to the unions, as the same are not confidential document. He did not agree with the

enhanced punishment to the workers for violation of the provisions of the Act. According to him the workers are the first victims in case of an accident and punishing them further is not a right step.

10. The representative of FICCI stressed that the inspectors should be made more accountable. The registration and returns should be done through electronic mode.

11. The representative of CITU stated that the objective of any amendment should be to further strengthen and improve the health and safety aspects of workers and suggested to make the principal employer more accountable for safety and health. He also stressed the need for strengthening of the inspection system.

12. The representative of the Indian Chemical Council suggested gradation of penalties according to the gravity. He mentioned that the concept of site appraisal committee should be dropped since it is not applicable in most of the States.

13. The representatives of the All India Manufacturers Organizations (AIMO) drew the attention of the participants that the employees of the pharmaceutical industries are caught between two types of Acts namely the factories Act and the drug act and not know which one to follow. He stated that the provision of canteen in the Medium and Small Scale Establishments is burden and the penalty clauses on MSME may result in their closing down.

14. The Chief Economic Advisor stated that the laws are enacted and amended basically to protect the workers and balancing efforts have to be made to protect the National interest in general and the safety and health interests of the workers in particular.

15. The Chairman stated that due to diversity of views and suggestions expressed, consensus may not be achieved on a number of

issues. However, he assured the participants that due care would be exercised to reflect their views in a pragmatic manner. He informed that a final draft report would be prepared by 24th March 2011, by incorporating the suggestions received in the three meetings held and the same would be submitted to the office of the Prime Minister.

In the end the Chairman thanked all the participants for their active participation in the deliberations and for providing valuable suggestions.. He also thanked the Secretary, and the officials of the Ministry of Labour and Employment for making all the necessary arrangements for the smooth conduct of the meeting.

The meeting ended with thanks to the chair.

**Annex**

**LIST OF PARTICIPANTS**

<b>Sl.No</b>	<b>Name of the Participants</b>	<b>Organization</b>
1.	Dr. Kaushik Basu	Chief Economic Adviser.
2.	Shri Prabhat C. Chaturvedi,	Secretary, Ministry of Labour & Employment.
3.	Dr. Ashok Sahu	Adviser, Planning Commission.
4.	Shri A.C. Pandey	Joint Secretary, Ministry of Labour & Employment.
5.	Shri B.K.Sinha	Department of Economic Affairs.
6.	Ms. Sunita Sanghi	Planning Commission.
7.	Shri G.M.E.K. Raj	Dy. Director General & HOD, DGFASLI.
8.	Ms. Vandana Sharma	Director, Ministry of Labour & Employment.
9.	A.K.Padmanabhan	CITU
10.	Shri R.A Mital	HMS
11.	Shyam Sundar Sharma	BMS
12.	Shri Vinod Kumar Sharma	INTUC
13.	Shri H. Mahadevan	AITUC
14.	Shri B.P. Pant	CIE
15.	Shri Michael Dias	CII
16.	Shri M.K.Garg	ASSOCHAM
17.	Shitangshu Taye	FICCI
18.	Vijay Bukkavar	ICC
19.	Amit Kumar Sen	AIMU
20.	Dr. M. Rajaram	Deputy Director General, DGFASLI.
21.	Shri H. Vishvanathan	Director (Safety), DGFASLI.
22.	Shri M.R.Rajput,	Director(IH), RLI, Faridabad, DGFASLI.
23.	Dr. E. Laxminarayana,	Dy. Director (ST/P), DGFASLI.
24.	Shri H.M. Bhandari	Asst. Director, DGFASLI.
25.	Shri A.K. Mallik	Section Officer (ISH-II), Ministry of Labour & Employment

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## ANNEXURE-V

### Proposed Amendments: Views of Stakeholders and Remarks by the Expert Committee

Sr. No	Existing Provision or New Section	Contents of Proposed Amendments / Additions	Views of Stakeholders	Remarks
1.	<p><b>Chapter I : Preliminary [Sections 2, 6 and 7]</b></p> <p><b>Section 2(cb): ‘hazardous process’</b> 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, 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, by 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 Bharatiya Mazdoor Sangh (BMS), was of the view that the definition does not address public safety. The Associated Chambers of Commerce and Industry (ASSOCHAM) was of the view that exemptions should be granted to the plantation industries from the section.</p> <p>The Indian Chambers of Commerce (ICC) was of the view that causing material impairment to the healthy needs clarification.</p> <p>Federation of Indian Chambers and Commerce and Industry (FICCI) was of the view that the proposed amendment would open a Pandora’s box for litigations.</p>	<p>The term “hazardous process” be redefined as a process in which a hazardous substance is used. It is also proposed to define the term ‘hazardous substance’ as per the Environment (Protection) Act by introducing a new sub-section 2(cc).</p> <p>With this amendment, the hazardous process will be identified by use of hazardous substance which will be duly notified from time to time under sub-section 2(cc).</p> <p>In view of the above, the First Schedule to the existing Act would be unnecessary and should therefore be deleted.</p> <p><b>The Expert Committee concurred with the above view.</b></p>
2.	<p><b>New Section 2(cc)</b></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>ICC suggested to include a word “immediately or in due course” after the last word “environment” in the proposed amendment. They were of the view that the word” property” needs to be defined.</p>	<p>The term ‘hazardous substance’ had not been defined though it was earlier used at a number of places in Chapter IVA of the Act. It is proposed to define it in a manner similar to that in the Environment (Protection) Act, 1986.</p> <p>The word environment is comprehensive and self explanatory and as such insertion of word “immediately or in due</p>

				course” after the environment becomes superfluous.  <b>The Expert Committee concurred with the above view.</b>
3.	<b>New Section 2(e)</b>	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”;	The Confederation of Indian Industries (CII), was of the view that the definition of ‘disability’ should be mentioned in Factories Act, 1948 without reference to other Acts.	Such a definition is necessary in view of proposed amendments concerning persons with disabilities in section 22, 27, and 87 of the Factories Act, 1948  As per the drafting procedure adopted by the Ministry of Law, wherever reference is made to provisions of the other Acts, it is mentioned accordingly.  <b>The Expert Committee concurred with the above view</b>
4.	<b>Section 2(f) : ‘week’</b> 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;	Employee representatives were of the view that the words ‘or a factory’ after the word ‘particular area’ should not 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.  <b>The Expert Committee concurred with the above view.</b>
5.	<b>Section 2(k) : ‘manufacturing process’</b> 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;”;		<b>The Expert Committee was of the view that the amendment is in order.</b>
6.	<b>Section 2(n) : ‘occupier’</b> of a factory means the person who has ultimate control over the affairs	Clause (iii) of sub- section (n) may be substituted by the following :-	The Center for Indian Trade Union (CITU) & AITUC, were of the	Keeping in view the comments received from the Central Ministries of

	<p>of the factory.</p> <p>Provided that –</p> <p>(i) xx xx xx</p> <p>(ii) xx xx xx</p> <p>(iii) in the case of a factory owned or controlled by the Central Government, or any State Government, or any local authority, the person or persons appointed to manage the affairs of the factory by the Central Government, the State Government or the local authority, as the case may be, shall be deemed to be the occupier.</p>	<p>(iii) in the case of a factory owned or controlled by the Central Government, or any State Government, or any local authority, the person or persons appointed to manage the 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;”.</p> <p>The above proposal has been modified as given below:-</p> <p>“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;”.</p> <p>In this regard, the earlier provision of occupier as the one ‘having ultimate control over the affairs of the factory’ has been dropped.</p>	<p>view that a senior person not less than a Board Member should be the occupier of the Factory.</p> <p>The ASSOCHAM &amp; CII was of the view that the definition of the occupier should be the same for both the public and private sector companies.</p> <p>The FICCI was of the view that the definition of the occupier should be amended suitably in view of the fact that the occupier (director) in a private sector company may not be stationed at the site of the factory all the times.</p> <p>The CII, was of the view that a senior person should be appointed as an occupier and the term occupier should be re-drafted so as not to deter the foreign investors investing in India.</p>	<p>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</p> <p><b>The Expert Committee concurred with the above view.</b></p>
7.	<p><b>Section 2(p) : Prescribed</b> means prescribed by rules made by the State Government under this Act.</p>	<p>After the word ‘by’ the words ‘the Central Government or’ shall be inserted.</p>	<p>ICC was of the view that this needs to be addressed in all other subsequent sections where the power was given to the State Governments.</p>	<p>This provision is already incorporated in the relevant sections</p> <p><b>The Expert Committee was of the view that the amendment is in order</b></p>
8.	<p><b>Section 6 : Approval, licensing and registration of factories.-</b></p> <p>(1) ... ..</p> <p>(2) ... ..</p> <p>(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</p>	<p>The explanation clause shall be substituted by the following, namely,</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, or the addition of any plant or machinery, if such replacement or addition does not reduce the minimum clear space required</p>	<p>The Indian National Trade Union Congress (INTUC), was of the view that the number of employees should be indicated /classified, category wise such as, manager, fitters, skilled/unskilled workers etc. at the time of obtaining licence from the authorities.</p> <p>FICCI, CII, ASSOCHAM, ICC and</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.</p> <p>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</p>

	<p>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>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 and a certificate in writing shall be given by a competent person to this effect.”.</p> <p>Provided that till the certificate, as referred to in the Explanation, is given by a Competent person a certificate in writing given by the occupier by himself may be accepted</p>	<p>Council of Indian Employers (CIE), were not in favour of the suggestion.</p> <p>The ASSOCHAM was of the view that the substances involving new materials which are dangerous and not used so far are to be included in the proposed amendment.</p> <p>The participants were, of the view that the sub clause of the proposed amendment “submit a certificate by the competent person relating to the duties of occupier” may be deleted.</p>	<p>Clause to Section 6 so that it would be necessary for an Occupier to obtain permission of the State Government before making such an expansion.</p> <p>It is not practicable to classify/ categorize the employees as skilled/ unskilled workers such as fitters, turners, welders etc. at the time of obtaining licence from the authorities. It would be desirable to exempt the occupier from submitting a certificate by the competent person relating to the duties of occupier to strengthen the concept of self certification prevalent in some States.</p> <p><b>The Expert Committee was of the view that the Explanation Clause be amended as proposed.</b></p>
9.	<p><b>Section 7 : Notice by occupier.-</b></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> <p>(a) ... ..</p> <p>(b) ... ..</p> <p>(c) ... ..</p> <p>(d) ... ..</p> <p>(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>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.</p>		<p><b>The Expert Committee was of the view that the amendment is in order.</b></p>
10.	<p><b>Section 7-B : General duties of manufacturers, etc., as regards articles and substances for use in factories.-</b></p> <p>(1) ... ..</p> <p>(2) ... ..</p>	<p>(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</p>	<p>The AITUC, was of the view that the proposed amendment should be consistent with the article -12: of ILO Convention-155 and Article- 9: of the Convention-170, which</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</p>

<p>(3) ... ..</p> <p>(4) ... ..</p> <p>(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 (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 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>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 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</p>	<p>provide for the general duties and responsibilities of the Occupier.</p> <p>The Hind Mazdoor Sangh (HMS) and CITU, did not agree with the proposed amendment.</p>	<p>proposed to extend the provisions of the section to hazardous substances as well.</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><b>The Expert Committee was of the view that the amendment is in order.</b></p>
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		form of a gas or vapour; and  (c) “substance for use in any factory” means any substance whether or not intended for use by persons working in a factory.”		
11.	<b>Chapter III : Health [Sections 18 and 20]</b>  <b>Section 18. Drinking water.-</b> (1) ... .. (2) ... .. (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.	The sub-section (3) shall be substituted by the following -  “(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.”	The ASSOCHAM was of the view that the exemptions may be granted to the plantation tea factories from providing cool drinking water in view of the cold weather prevailing at high altitudes.	The provision clearly mentions cool drinking water during hot weather.  <b>The Expert Committee was of the view that the amendment is in order.</b>
12.	<b>Section 20 : ‘Spittoons’ -</b> (1) ... .. (2) ... .. (3) ... .. (4) Whoever spits in contravention of sub-section (3) shall be punishable with fine not exceeding five rupees.	The sub-section (4) may be omitted <b>since, this penalty clause is clubbed with newly created subsection 92(B) (1).</b>	The CII, was of the view that the concept of the Spittoons may be deleted.	The provision spittoon should be retained keeping in view the educational levels of our workers and cultural ethos.  <b>The Expert Committee concurred with the above view.</b>
13.	<b>Section 22 : Work on or near machinery in motion.</b>  (1) xx xx xx  (2) No woman or a young 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.	In section 22 of the principal Act, in sub-section (2), —  (a) for the word “woman” at both the places where it occurs, the words “pregnant woman or a person with disability” shall be substituted;	The HMS, BMS and CITU, were of the view that women should not be allowed to work in the hazardous work places.  The ASSOCHAM, agreed with the proposed amendment and suggested to include a certification / training clause in the proposed amendments to operate specific machines by women and men.	The Sub Group I of Task Force on Women and Child Development recommended for restricting the employment only in the case of pregnant women, person with disability and young person below the age of 18 years. This amendment was suggested in order to promote gender equality at the work place.  The inclusion of a certification / training clause to operate specific machines by women and men should be addressed in the Rules.  <b>The Expert Committee concurred with the above view.</b>

14.	<p><b>Section 27 : Prohibition of employment of women and children near cotton-openers. -</b>          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-          “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 HMS, BMS and CITU, were of the view that women should not be allowed to work in the hazardous work places.</p>	<p>The Sub Group I of Task Force on Women and Child Development recommended for restricting the employment in respect of pregnant women, person with disability and young person below the age of 18 years.</p> <p><b>The Expert Committee was of the view that the amendment is in order</b></p>
15.	<p><b>New Section 35-A : ‘Personal Protective Equipment(PPE)’</b></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>(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>	<p>The ASSOCHAM, was of the view that the responsibility for maintaining the PPE’s should rest with the workers not with the management.</p>	<p>Section 35 of the Act provides measures only to protect the eyes of a worker in certain circumstances. 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>The responsibility for maintaining the PPE’s should rest with the management, as they are in a better position to maintain the same</p> <p><b>The Expert Committee concurred with the above views.</b></p>

16.	<p><b>Section 36 : Precautions against dangerous fumes, gases, etc.-</b></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 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>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 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</p>		<p>This amendment provides precautions against dangerous fumes, gases, etc.</p> <p><b>The Expert Committee was of the view that the amendment is in order.</b></p>
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17.	<p><b>Section 37 : Explosive or inflammable dust, gas, etc. -</b>  (1) Where in any factory any manufacturing process produces dust, gas, fume or vapour of such character and to such extent as to be 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</p>	<p>In section 37 of the principal Act, -</p> <p>“</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>“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>The ASSOCHAM was of the view that the plantation tea factories should be exempted from this section since, the fine graded tea dust may be mistaken by the inspector as flammable substance.</p>	<p>The amendment proposes precautions against explosive or inflammable dust, gas etc.</p> <p><b>The Expert Committee was of the view that the amendment is in order</b></p>

	<p>(3) xx xx xx (4) xx xx xx (5) xx xx xx</p>	<p>(b) after sub-section (4), the following sub-sections shall be inserted, namely : - “(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.  (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>		
18.	<p><b>Chapter IV-A : Hazardous Processes [Section 41]</b></p> <p><b>Section 41-B.(4) : Compulsory Disclosure of Information.-</b> (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 to be taken in the event of an accident taking place.</p>	<p>In section 41B of the principal Act,- (i) For sub section (4), the following sub section shall be substituted namely:-  “(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.  (b) The occupier of the factory shall make known to the workers 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</p>	<p>The ASSOCHAM was of the view that the plantation tea factories should be exempted from this section since, they do not handle hazardous substances.  The ICC suggested to insert a word “irrespective of quantity” in place of the word “ quantity is equal or more than”.</p>	<p>Exemptions are provided under various sections based on the merit of the case. This provision can be incorporated in the State Factories Rules.  The phrase quantity is equal to or more than” is in line with the provisions under the Environment (Protection) Act, 1986  <b>The Expert Committee concurred with the above views.</b></p>

		<p>on-site emergency plan and detailed disaster control measures drawn under sub-clause (a) above in the event of an accident taking place.</p> <p>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.”.</p>		
19.	<p><b>Section 41-B(5) :</b></p> <p>(5) Every occupier of a factory shall, -</p> <p>(a) if such factory engaged in a hazardous process 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>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>The ASSOCHAM was of the view that the factories processing natural products should be exempted from this section since, they do not come under hazardous process category.</p>	<p>Exemptions are provided under various sections based on the merit of the case. This provision can be incorporated in the State Factories Rules.</p> <p><b>The Expert Committee concurred with the above views.</b></p>
20.	<p><b>Section 41-C :</b> Specific responsibility of the occupier in relation to hazardous processes.- Every occupier of a factory involving any hazardous 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</p>	<p>In Section 41C 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><b>The Expert Committee was of the view that the amendment is in order.</b></p>

	<p>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>			
21.	<p><b>Section 41-D : Power of Central Government to appoint Inquiry Committee.-</b>  (1) 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 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 else where.....</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><b>The Expert Committee was of the view that the amendment is in order.</b></p>
22.	<p><b>Section 41-E : Emergency Standards</b>  (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 process, or where the standards so prescribed are inadequate, it may direct the Directorate General, Factory Advice Service &amp; 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>In Section 41E of the principal Act, in sub-section (1), for the words “Directorate General, Factory Advice Service and Labour Institutes”, the words “Directorate General Occupational Safety and Health” shall be substituted.</p>		<p><b>The Expert Committee was of the view that the amendment is in order.</b></p>

23.	<p><b>Section 41-F : Permissible limits of exposure of chemical and toxic substances.-</b></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 Schedule.</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 ICC suggested to modify the Second Schedule accordingly in view of the replacement of the word “threshold”.</p>	<p>There is no reference of the word “threshold” in the Second Schedule and as such modification not required in the Schedule.</p> <p><b>The Expert Committee was of the view that the amendment is in order.</b></p>
24.	<p><b>New Section 41-I</b></p>	<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>The ICC suggested to include the word “any person with disability in addition to young persons, pregnant women.</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. 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 provisions and empower the Central Government with general rule making powers under New Section 112-A.</p> <p>Any class of workers implies person with disability as well.</p> <p><b>The Expert Committee concurred with the above views.</b></p>

25.	<p><b>Chapter V : Welfare [Sections 46 and 47]</b></p> <p><b>Section 46 : ‘Canteens’</b>  (1) The state governments may make rules requiring that in any specified factory wherein more than two hundred and fifty workers are ordinarily employed, a canteen or canteens shall be provided and maintained by the occupier for the use of the workers.  (2) Without prejudice to the generality of the foregoing power.....  .....  .....</p>	<p>For the section 46 of the principal Act, the following section shall be substituted, namely: —  “46. (1) In every factory wherein one 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.  (2) The State Government may prescribe —  (a) the standards in respect of construction, location, accommodation, furniture, cleanliness and other equipment of the canteen;  (b) the foodstuffs to be served therein and the charges which may be made therefore;  (c) the constitution of managing committee for the canteen and representation of the workers in the management of the canteen;  (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;  (e) the periodical medical examination of canteen employees; and  (f) the delegation to the Chief Inspector, subject to such conditions, as may be prescribed, of the power to make rules under clause (b).  (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>The CITU, agreed with proposed amendment as the canteen facilities contribute to healthy ambience and industrial peace resulting in enhanced productivity.</p> <p>The AITUC, was of the view that the limit for providing canteen facilities should be reduced from the present 250 to 50 employees in view of the changed circumstances.</p> <p>The CII did not agree with the proposed amendment.</p> <p>The ASSOCHAM, was of the that the canteens have to run on no profit and no loss basis and the Government should not intervene in the micro aspects of running a canteen.</p> <p>The ICC was of the view that the proposed change under “food stuff charges” may lead to practical problems. It was also suggested to reduce the period from 12 months to six months for providing and maintaining canteen.</p> <p>The FICCI was of the view that the plantation factories should be given exemption from the section.</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>A draft amendment was prepared in the light of the recommendations of National Commission on Labour.</p> <p>In other welfare provisions such as those under Sections 45, 47 and 48 of the Act in respect of ambulance room, shelter, rest room, lunch room and crèche, the Act itself stipulates the requirement in specified factories.</p> <p>The issue related to exemptions for the plantation factories and the issue of food stuff charges could be addressed by the State Governments under the State Factories Rules</p> <p><b>The Expert Committee is of the view that the number of workers should be reduced from 250 to 200.</b></p>
26.	<p><b>Section 47: ‘Shelters, rest rooms and lunch rooms’</b>  (1) In every factory wherein more than one hundred and fifty workers are ordinarily employed, adequate and suitable shelters or rest rooms</p>	<p>In section 47 of the principal Act, —  (a) in sub-section (1),—  (i) for the words “one hundred and fifty”, the word “fifty” shall be substituted;</p>	<p>The ICC suggested to reduce the period from 12 months to six months for providing and maintaining shelter, and rest rooms and lunch</p>	<p>It was felt necessary to revise the limit, for rest room, shelter and lunch room in the light of the proposed amendments to the provisions under Section 46</p>

	<p>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>(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<sup>2</sup> shall be substituted.</p> <p>(b) after sub-section (3), the following sub-section shall be inserted, namely : — “(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 of shelters, restrooms and lunch rooms.”.</p>	<p>rooms.</p> <p>The ASSOCHAM was of the view that the plantation industry should be exempted from this section.</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.</p> <p>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 issue related to exemptions for the plantation factories could be addressed by the state Governments under the State Factories Rules</p> <p>Reduction of the period of implementation from 12 months to 6 months as suggested by ICC was deemed to be unnecessary.</p> <p><b>The Expert Committee is of the view that the number of workers should be 75 or more instead of 50 or more proposed</b></p>
27.	<p><b>Chapter VI : Working Hours of Adults [Sections 64, 65,66]</b></p> <p><b>Section 64 : Power to make exempting rules.-</b></p> <p>(1) xx xx xx (2) xx xx xx (3) xx xx xx (4) (i) xx xx xx (ii) xx xx xx (iii) xx xx xx (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 AITUC, advocated a Six (6) hours shift amounting to four shifts per day as prevalent in some countries, as this would increase the economic growth and provide more employment opportunities in the Country.</p> <p>The BMS was strongly opposed to enhance the OT hours as this adversely effect the workers health</p> <p>The ASSOCHAM and CII, were of the view that it should not be made compulsory to seek prior approval from the enforcement authorities for working</p>	<p>Further extension of overtime hours up to 100 hours per quarter for the purpose of work of very urgent nature was proposed in the Act</p> <p>Accordingly the OT limit is proposed to be increased from 50 hrs to 100 hrs</p> <p><b>The Expert Committee concurred with the above views and retain the proposed amendment.</b></p>

			<p>overtime during exigencies. They suggested ratification of the same by the enforcement authorities after completion of the job.</p> <p>FICCI was of the view that the seasonal demands should be considered while progressively increasing the weekly and total overtime hours.</p> <p>Most of the participants were of the view that more facts may be collected and the matter may be examined in-depth before arriving at a consensus.</p>	
28.	<p><b>Section 65 : Power to make exempting orders.-</b>  (1) xx xx xx  (2) xx xx xx  (3) (i) xx xx xx  (ii) xx xx xx  (iii) xx xx xx  (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;  (b) after Explanation, the following proviso shall be inserted, namely: —  “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 AITUC and BMS, did not agree with the proposed amendment</p> <p>The FICCI was of the view that the seasonal demands should be considered while progressively increasing the weekly and total overtime hours.</p> <p>The ICC was of the view that the basis for arriving at figure 115 in place of 75 is not clear</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, textile industries where the workers are pressed in service for completion of urgent jobs within a short period of time. It was decided to enhance the limit from 75 up to 115 hours per quarter with exempting powers to State Governments/ CIFs</p> <p>Further extension of overtime up to 125 hours per quarter for the purpose of work of very urgent nature was also proposed in the Act.</p> <p><b>The Expert Committee concurred with the above views and retain the proposed amendment.</b></p>
29.	<p><b>Section 66 :</b> Further restriction on employment of women. —  (1) The provisions of this chapter shall, in their application to women in factories, be supplemented by the following further restrictions, namely:-</p>	<p>For section 66 of the principal Act, the following section shall be substituted, namely:—  “66. The provisions of this Chapter shall, in their application to women in factories, be supplemented by</p>	<p>The AITUC and BMS, did not agree with the proposed amendment and felt that women should be protected from sexual harassment in the night.</p>	<p>Many women’s organizations have filed writ petitions in High Courts of Tamil Nadu, Andhra Pradesh, Maharashtra challenging the provisions contained in Section 66 that</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>(3) The rules made under sub-section (2) shall remain in force for not more than three years at a time.</p>	<p>the following further restrictions, namely,—</p> <p>(a) no exemption from the provisions of 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 nearest point 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 contained in the preceding</p>	<p>The HMS, agreed with proposed amendment subject to deletion of the para “Provided also that the restriction 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> <p>The ASSOCHAM was of the view that it is not practicable for the employers to comply with the proposal to provide transportation and security to women employees in the night shift and as such this would discourage the employers not to employ women workers.</p> <p>The CII was of the view that restrictions on the night employment of the women workers to be removed subject to satisfactory transport arrangements.</p> <p>The FICCI was of the view that that women should be allowed to work in the night shifts with adequate safeguards to remove gender bias.</p>	<p>they 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 (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> <p><b>The Expert Committee was of the view that adequate safeguards and security to the women workers in night should be provided and that transportation to be provided from the factory premises to the doorstep of their residence.</b></p>
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		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.”		
30.	<p><b>Chapter VII : Employment of Young Persons [Sections 70, 76 and 77]</b></p> <p><b>Section 70 : Effect of certificate of fitness granted to adolescent.</b> (1) ... .. (1A) No female adolescent or a male adolescent who has not attained the age of seventeen 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. 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,- (i) vary the limits laid down in this sub-section so, however, that no such section shall authorise the employment of any female, adolescent between 10 P.M. and 5 A.M. (ii) grant exemption from the provisions of this sub-section in case of serious emergency where national interest is involved. (2) An adolescent who has not been granted a certificate of fitness to work in a factory as an adult under the aforesaid clause (b) shall, notwithstanding his age, be deemed to be a child for all the purposes of this Act.</p>	In sub-section (1A), for the words, figures and letters “except between 6 A.M. and 7 P.M.”, the words, figures and letters “except between 7 A.M. and 7 P.M.” shall be substituted.	<p>The ASSOCHAM was of the view that the period of twelve hours be fixed as 6.00 a.m to 6.00 p.m because the time 7.00 a.m cannot be construed as night hour in the tropical countries.</p> <p>The ICC was of the view that the shift timing for female workers should be changed from 6 A.M to 7 P.M instead of 7 A. M. to 7 P.M.</p>	<p>India being a tropical Country, most of the industries follow the shift timing from 6 AM.</p> <p><b>The Expert Committee was of the view that the existing timing of 6 A.M to 7 P.M may be retained and the amendment proposed may be deleted.</b></p>
31.	<p><b>Section 76 : Power to make rules.-</b> <b>The State Government may make rules -</b></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</p>	Clause (b) may be omitted.		<p><b>The Expert Committee was of the view that the amendment is in order.</b></p>

	<p>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 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>			
32.	<p><b>Chapter VIII : Annual Leave with wages</b></p> <p><b>Section 77 : Certain other provisions of law not barred.-</b> 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>After due deliberations the participants agreed with the proposed amendment.</p>	<p><b>The Expert Committee was of the view that the amendment is in order</b></p>
33.	<p><b>Section 79 : Annual Leave with wages.-</b> (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 Section -</p> <p>(a) any days of lay-off by agreement or contract or as</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>The ASSOCHAM, CII and FICCI did not agree with the proposed amendment</p> <p>The ICC suggested that the ceiling of 90 days should be substituted by 180 days.</p>	<p>The issues relating to the qualifying period of 240 days was discussed. It was felt that many difficulties are caused to the Badli workers who are unable to avail the leave with wages for not being able to perform the required number of days of work for no fault of theirs.</p> <p>It is also observed that adequate safe guards against the misuse of this provision are built in the Industrial Dispute (ID) Act.</p> <p><b>The Expert Committee was of the view that the amendment is in order.</b></p>

	<p>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-Section (1) if he has worked for two thirds of the total number of days in the remainder of the calendar year.</p>			
34.	<p><b>Chapter IX : Special Provisions</b> <b>[Sections 87, 89, 91]</b></p> <p><b>Section 87 : Dangerous operations.-</b> 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 order or 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 ICC suggested to replace the word “women” with that of “pregnant women”</p>	<p>In view of the nature of hazards associated with dangerous operations the suggestion to replace the word “women” with that of “pregnant women” cannot be agreed to.</p> <p><b>The Expert Committee concurred with the above views.</b></p>

35.	<p><b>Section 89 : Notice of certain diseases.-</b></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.		The Expert Committee was of the view that the amendment is in order.
36.	<p><b>Section 91A : ‘Safety and Occupational Health Surveys’</b></p> <p>(1) The Chief Inspector, or the Directorate General, Factory Advice Service and Labour Institutes or the Director-General 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 Directorate General 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>	In Sub-Section (1) for the words “Directorate General, Factory Advice Service & Labour Institutes”, the words “Directorate General, Occupational Safety and Health” may be substituted.		The Expert Committee was of the view that the amendment is in order.
37.	<p><b>Chapter X : Penalties and Procedures [Sections 92, 93, 94, 95, 96, 96A, 97, 98, 99, 102, 104, and 106]</b></p>			

<p><b>Section 92 : General penalty for offences.-</b> 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 <b>one lakh rupees</b> or with both and if the contravention is continued after conviction, with a further fine which may extend to <b>one thousand rupees</b> 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 <b>twenty-five thousand rupees</b> in the case of an accident causing death, and <b>five thousand rupees</b> 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 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>1. The existing Section 92 may be substituted by the following :-</p> <p><b>92. General penalty for offences.-</b> (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</p>	<p>The CITU and BMS were of the view to further increase the penalties to deter violations and be made cognisable and non bail able.</p> <p>The AITUC, emphasised the need for strengthening the enforcement machinery. They advocated the concept of worker inspectors besides the Govt. inspectors in our Acts, as prevalent in Britain.</p> <p>The CII and ASSOCHAM, did not agree with proposed amendment.</p> <p>The FICCI was of the view that the proposed provisions of penalties would effect the small scale industries adversely.</p> <p>The law officer from Maharashtra, was of the view that a uniform fine of Rs. 75,000/ for both bodily injury and death is not justifiable and proposed a rate of Rs. 25,000/ for bodily injury Rs, 75000/ for death. Also, it was emphasised the need to revise the powers of the Judicial Magistrate /Metropolitan Magistrate / or insertion of a Provision to award fine as stipulated under Section 92 of the Factories, Act.</p> <p>Indian Chemical Council was of the view that the penalties should</p>	<p>The issue regarding imposition of minor penalty by the Courts in the cases filed under Section 92 of the Factories Act was discussed and several stakeholders expressed desirability of prescribing enhanced minimum penalty in the case of contravention to certain provisions relating to safety and health of the workers. It was also felt that Section 92 and 93 of the Factories Act may be amended suitably regarding classification/ compounding of offences. 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 word ‘and’ has been replaced with the word ‘or’ to correct the mistake.</p> <p>No distinction is made in the Act with regard to its applicability based on the size of the factory. In view of this, small-scale industries cannot be exempted from the penalties.</p> <p>The amount of fines has been increased by approximately three times since the last enhancement done in 1987.</p> <p><b>The Expert Committee concurred with the above views.</b></p>
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		<p>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>Explanation.- 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><b>92A. Penalties for offences by persons other than Occupier.</b></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</p>	<p>be graded according to the seriousness of the offence.</p>	
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		<p>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 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: 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>		
38.	<p><b>Section 93 : Liability of owner of premises in certain circumstances.-</b></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</p>	<p>The existing Section 93 may be substituted by the following :</p> <p><b>93. Liability of owner of premises in certain circumstances – (1)</b></p> <p>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>The ASSOCHAM did not agree with the proposed amendment since, the owner of the premises cannot be expected to exercise day to day control of the activities of the factories and suggested to retain the original contents of the section.</p> <p>The FICCI was of the view that the proposed enhancement of penalties would effect</p>	<p>The issue relating to inclusion of rented or otherwise let out or given buildings to different occupiers for use as ‘factory’ was deliberated and felt that the owner of the premises must be made responsible for use by the different/ separate factories in regard to common facilities.</p> <p>No distinction is made in the Act with regard to its applicability based on the size of the factory. In view</p>

<p>premises in respect of the carrying out of the provisions of sub-section (12).</p> <p>(3) Where in any premises, independent or self-contained, floors or flats are leased to different occupiers for use as separate factories, the owner of the premises shall be liable as if he were the occupier or manager of a factory, of 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 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 of 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</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>(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</p>	<p>the small-scale industries adversely.</p>	<p>of this, small-scale industries cannot be exempted from the penalties.</p> <p><b>The Expert Committee concurred with the above views.</b></p>
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<p>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 or a room or a shed are leased to different occupiers for use as separate factories, the owner of the premises shall be liable for any contravention of the provisions of –</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>(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 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>	<p>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>Explanation.—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>39.</p>	<p><b>Section 94 : Enhanced penalty after previous conviction.-</b></p> <p>(1) If any person who has been convicted of any offence punishable under 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 <b>thirty-five thousand rupees</b> 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>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 rupees which may be enhanced 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: -  “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—  “(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>	<p>The FICCI was of the view that the proposed enhancement of penalties would effect the small-scale industries adversely.</p> <p>..</p>	<p>No distinction is made in the Act with regard to its applicability based on the size of the factory. In view of this, small-scale industries cannot be exempted from the penalties.</p> <p><b>The Expert Committee concurred with the above views.</b></p>
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40.	<p><b>Section 95 : Penalty for obstructing inspector</b></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 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 <b>ten thousand rupees</b> or with both.</p>	<p><b>Section 95 may be substituted as follows:-</b></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>The ASSOCHAM was of the view that the amendment was not necessary as the present section is adequate to serve the purpose.</p> <p>The FICCI was of the view that the proposed enhancement of penalties would effect the small scale industries adversely.</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> <p>No distinction is made in the Act with regard to its applicability, based on the size of the factory. In view of this, small-scale industries cannot be exempted from the penalties</p> <p><b>The Expert Committee concurred with the above views.</b></p>
41.	<p><b>Section 96 : Penalty for wrongfully disclosing results of analysis under Section 91</b></p> <p>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 <b>ten thousand rupees</b> or with both.</p>	<p><b>Section 96. Penalty for wrongfully disclosing results of analysis under Section 91</b></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>The ASSOCHAM was of the view that the increase in the amounts of the penalty is excessive.</p> <p>The FICCI was of the view that the proposed enhancement of penalties would effect the small-scale industries adversely.</p>	<p>It is a consequential amendment, raising the fine amount.</p> <p>No distinction is made in the Act with regard to its applicability based on the size of the factory. In view of this, small-scale industries cannot be exempted from the penalties.</p> <p><b>The Expert Committee concurred with the above views.</b></p>
42.	<p><b>Section 96-A : Penalty for contravention of the provisions of Section 41- B, 41-C and 41-H.</b></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</p>	<p><b>Section 96-A. Penalty for contravention of the provisions of Section 41-B, 41-C and 41-H.</b></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><b>The Expert Committee was of the view that the amendment is in order.</b></p>

	<p>punishable with imprisonment for a term which may extend to seven years and with fine which may extend to <b>two lakh rupees</b>, and in case the failure or contravention continues, with additional fine which may extend to <b>five thousand rupees</b> 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><b>Section 97 : Offences by Workers.-</b></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><b>The Expert Committee was of the view that the amendment is in order.</b></p>
44.	<p><b>Section 98 : Penalty for using false certificate of fitness</b></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 <b>one thousand rupees</b> or with both.</p>	<p><b>Section 98. Penalty for using false certificate of fitness</b></p> <p>In the last sentence, for the words “one thousand rupees”, the words “three thousand rupees” may be substituted.</p>		<p><b>The Expert Committee was of the view that the amendment is in order.</b></p>
45.	<p><b>Section 99 : Penalty for permitting double employment of child</b></p> <p>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</p>	<p><b>Section 99. Penalty for permitting double employment of child</b></p> <p>In the last sentence, for the words “one thousand rupees”, the words “three thousand</p>		<p><b>The Expert Committee was of the view that the</b></p>

	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 <b>one thousand rupees</b> , unless it appears to the Court that the child so worked without the consent or connivance of such parent, guardian or person.	rupees” may be substituted.		<b>amendment is in order</b>
46.	<b>Section 102 : Power of Court to make order</b>	In sub section (2) of Section 102 the words “one hundred rupees” may be substituted by the words “three hundred rupees”.		<b>The Expert Committee was of the view that the amendment is in order.</b>
47.	<b>Section 104 : Onus as to age.-</b> <b>(1)</b> 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 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.	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 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.”.	.	<b>The Expert Committee was of the view that the amendment is in order.</b>
48.	<b>Section 106 : Limitation of prosecution</b> No Courts shall take cognizance of any offence punishable under this Act unless complaint thereof is made within three months of the date on which the alleged commission of the offence came to the knowledge of an Inspector: Provided that where the offence consists of disobeying a written order made by an Inspector, complaint thereof may be made within six months of the date of which the offence is alleged to have been committed.	In Section 106 (i) for the words “three months” the words “one year” shall be substituted. (ii) The proviso clause shall be omitted.	The ASSOCHAM & CII did not agree with the proposed amendment and suggested to retain the existing proviso.  The FICCI was of the view that the limitation period for filing the complaints should not be enhanced.  The Law officer from Maharashtra suggested that the period of limitation of prosecution be reduced	At present the limitation of prosecution is three months from the date on which the alleged commission of offence came to the knowledge of the Inspector. It was felt necessary to revise the limit of prosecution in light of time involved in gathering of information, identification of witnesses etc.  <b>The Expert Committee is of the view that the existing provision under the Act is reasonable and may be retained as such.</b>

			to six months instead of proposed one year.	
49.	<p><b>Chapter XI : Supplemental (Sections 111, 112A]</b></p> <p><b>Section 111 : Obligation of workers.-</b>  (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>	In Section 111, sub-section (2) shall be omitted.		<b>The Expert Committee was of the view that the amendment is in order.</b>
50.	<p><b>New Section 112A : Power to make rules by the Central Government.</b></p>	<p>After Section 112, a new Section 112A to empower the Central Government to make rules may be inserted as follows:</p> <p><b>“112A. Power to make rules by the Central Government.-</b></p> <p>“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.</p> <p>(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 modification in the rule or both Houses agree that the rule should not be made, the rule</p>		<b>The Expert Committee was of the view that the amendment is in order.</b>

		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.”		
51	<b>Miscellaneous Amendments</b>	<p>First Schedule may be omitted.</p> <p>In Sections 13, 17, 21, 22, 23, 28, 29, 31, 34, 35, 37, 38, 40B, 41A, 41B, 41C, 45, 87, 88, 88A, 89 and 90 the words “State Government” may be substituted by the words “Central Government or State Government”.</p>		<b>The Expert Committee was of the view that the amendment is in order.</b>
52	<b>Other Miscellaneous Recommendations</b>	<p>Simplifications of Forms, Registers, Reports and Returns to be submitted:</p> <ul style="list-style-type: none"> <li>- Existing Forms Nos. 1, 2, 3 and 4 may be merged into <b>New Form No. 1.</b></li> <li>- Existing Forms Nos. 11, 12, 13 and Register of Examination of Gasholders may be merged into <b>New Form No.2.</b></li> <li>- Existing Forms Nos. 25, 26, 27, 32 may be merged into <b>New Form No. 3.</b></li> <li>- Existing Form No. 29 (Annual Return) may be merged into <b>New Form No. 4.</b></li> <li>- Existing Forms Nos. 23 and 24 may be merged into <b>New Form No. 5.</b></li> <li>- Existing Forms Nos. 10 and Schedule -5 may be merged into <b>New Form No.6.</b></li> <li>- Existing Forms Nos. 15, 16, 17, 19, 20 and 21 may be merged into <b>New Form No. 7.</b></li> <li>- Existing Forms Nos. 6, 7, 8, 9, 14, 30 and 31 may be omitted.</li> </ul>		