

A Brief Analysis of Additions in Factory Law Under Code on Occupational Safety, Health And Working Conditions 2019

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Abstract: Need for regulating the working conditions, health & safety aspects in factories was paramount for a long time. The government took the first step towards its regulation in 2018 and then in 2019. The government intends to implement the concept of the welfare state concerning the deprived class i.e, labour. Code of 2019 is a good example of such initiative on the part of government whereby they have tried to protect the labour from dangers prevailing in their different kinds of occupations. The code not has made several amendments to the existing factory law by adding and removing several provisions. This paper tends to highlight the additions brought by the Code of 2019 regarding the existing factory law.

Index Terms: Factory, Worker, Occupier, Occupational safety & Health

In 2018, the Government of India came up with a proposal in the form of a legislative bill for consolidation of the various laws in force regulating the safety, health and working conditions of the workers in different kinds of establishments. Recently on July 23, 2019, also the NDA government has introduced a bill in Lok Sabha for the same purpose. Major part of it is related to the Factory Law, Law relating to Mines & Law relating to Contract Labour in India. Talking about the Factory law, this bill has proposed to repeal the existing Factories Act, 1948 and enact The Occupational Safety, Health and Working Conditions Code, 2019 in place of that. By this Code, Government has tried to establish a balance between the necessity of health & safety provisions on the one hand & ease of doing business on another. But whether the proposed bill covers all the relevant aspects and addresses the burning issues of factory management? This paper tends to answer the question by having a brief but effective analysis of the additions brought by this Code in the context of the new Factory Law which it proposes to enact.

Definition Clause

The first major addition to the existing factory law is that the definition of “employee”¹ has been introduced in addition to the existing definition of “worker”. Persons engaged for doing different kinds of work like technical, operational, clerical, etc., for different kinds of incentives with different nature of employment terms have been included therein.

The second addition is that a person employing employees has been proposed to be treated as “employer” and in the case of factories “occupier” of the factory shall be treated as the employer².

The third addition is regarding the definition of “establishment”³ which includes the factories if more than ten workers are employed therein.

The fourth addition is defining “family”⁴ as including spouse and dependent children below the age of eighteen years.

The fifth major addition is the inclusion of clause (vii) in the definition of “manufacturing process”⁵ which empowers the Central Government to declare or notify any process as “manufacturing process” even if it is not falling within any of the categories mentioned in the definition.

¹ THE OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS CODE, 2019, 2(s) (2019), http://164.100.47.4/BillsTexts/LSBillTexts/Asintroduced/186_2019_LS_Eng.pdf.

² *Id.* at 2(t).

³ *Id.* at 2(u).

⁴ *Id.* at 2(w).

The Sixth noteworthy addition is an amendment in the definition of “worker”⁶. Unlike the Factories Act, 1948, the scope of this definition is not limited to the persons engaged in the “manufacturing process” only rather it includes the persons engaged in different capacities. Barring some additions, this definition is similar to the definition of “workman” provided under the Industrial Disputes Act, 1947.

Registration⁷

(1) Under the draft code of 2019, compulsory registration has been proposed for the establishments employing ten or more employees (2) It also contains provisions for intimation about any change in the ownership of the establishment (3) Besides that, it also mandates the communication about closure of the establishment by the employer within thirty days of closing (4) Power has been granted to the registering authority to revoke the registration of the establishment in case of contravention of the provisions of the code or misrepresentation of facts (5) Prohibition of employment of employees if the establishment has not been registered or the registration has been cancelled.

Duties of Employer⁸

(1) To ensure that work place is free from hazards capable of causing injury or occupational disease (2) Periodical medical examination & tests (3) Employer must furnish a letter of appointment to every worker on his appointment.

Notice of certain accident⁹

Employer of the factory shall send notice of every accident to the authorities if it disables the worker to work for forty-eight hours after the accident and an inquiry shall also be conducted by the authorities if the accident has caused the death of any of the worker.

Notice of certain diseases¹⁰

Where any worker contracts any disease specified in the Third Schedule of the Code, notice shall be served by the employer to the authorities prescribed.

Duties of Employee¹¹

(1) To comply with standard health & safety requirements (2) To report unsafe or unhealthy situations to his employer.

National Occupational Safety and Health Advisory Board¹²

The code has proposed the establishment of the National Occupational Safety and Health Advisory Board (consisting of 25 Members) for advising the central government regarding standard rules and regulations, policy issues relating to occupational safety & health and implementation of the provisions of the code.

State Occupational Safety and Health Advisory Board¹³

The code also provides for the establishment of the State Occupational Safety and Health Advisory Board and empowers the State Government to appoint Technical committees or Advisory committees if required.

Occupational Safety & Health Standards¹⁴

Under the Code of 2019, Central Government has retained the power to declare standards against the employment of persons with a probability of exposure to various kinds of hazard, monitoring & medical examination of the persons so employed.

⁵ *Id.* at 2(zf).

⁶ *Id.* at 2(zze).

⁷ *Id.* at 3.

⁸ *Id.* at 6.

⁹ *Id.* at 10.

¹⁰ *Id.* at 12.

¹¹ *Id.* at 13.

¹² *Id.* at 16.

¹³ *Id.* at 16.

¹⁴ *Id.* at 18.

Research related activities¹⁵

Under the Code, institutions, as notified by the Central Government, have been imposed with the obligation to cause to conduct research, experiments & demonstrations relating to occupational safety and health and thereafter submit their recommendations.

Safety and occupational health surveys¹⁶

This code empowers the Chief Inspector-cum-Facilitator, Director General of Factory Advice Service and Labour Institute, the Director-General of Health Services and other authorised officers to survey the factory. At the same time, it obliges occupier or manager or other responsible people to afford all facilities for such a survey, including facilities for the examination and testing of plant and machinery and collection of samples and other data relevant to the survey. Power to examine workers medically and to require the disclosure of information has also been given to these persons under the Code of 2019.

Safety Committee and Safety Officers¹⁷

The code creates an obligation for the employer to constitute a Safety Committee consisting of equal representatives of employer and worker in every factory wherein five hundred workers or more are employed.

Responsibility of employer for maintaining health and working conditions¹⁸

This code makes the employer responsible to maintain the health and working conditions and provide them a working atmosphere of prescribed standard. The code under the same provision empowers the Central Government to prescribe standards for issues relating to health and safety like cleanliness, drinking water, lighting, ventilation, urinals, etc.

Welfare facilities in the establishment¹⁹

This code makes the employer responsible to maintain welfare facilities of prescribed standards. Additionally, it empowers the Central Government to prescribe standards for welfare measures like washing, bathing places, sitting arrangements, the ambulance room, medical facilities, etc. The employment of a welfare officer has also been proposed for factories employing two hundred fifty or more workers.

Annual leave with wages²⁰

The code has reduced the minimum working requirement to 180 days in a calendar year as compared to the 240 days as provided under the Factories Act, 1948 for calculating the eligibility.

Appointment of Inspector-cum-Facilitators²¹

Unlike the Factories Act, 1948, this code tends to appoint Inspector-cum- Facilitators instead of Inspectors. Appropriate Government under the Code has been empowered to appoint Chief Inspector-cum- Facilitators, Additional Inspector-cum- Facilitators, Joint Inspector-cum- Facilitators & Deputy Inspector-cum-Facilitators.

Powers of Inspector-cum-Facilitators²²

To implement the provisions of the Code, Inspector-cum- Facilitators have been granted various kinds of powers like the power to enter, the power to examine plant and machinery, inquire into any accident, search or seize, take samples, etc. Most of the powers granted to the Inspector-cum-Facilitators under this code are similar to that of an Inspector under the Factories Act, 1948.

¹⁵ *Id.* at 19.

¹⁶ *Id.* at 20.

¹⁷ *Id.* at 22.

¹⁸ *Id.* at 23.

¹⁹ *Id.* at 24.

²⁰ *Id.* at 32.

²¹ *Id.* at 34.

²² *Id.* at 35.

Medical Officer²³

Under the code, appropriate Government has been empowered to appoint qualified medical practitioners for the examination and certification of workers, the exercise of medical supervision for adolescents, etc.

Prohibition of employment of women in dangerous operation²⁴

The code empowers the appropriate Government to prohibit the employment of women if the employment of women is dangerous for their health and safety.

Liability of owner of premises in certain circumstances²⁵

If separate buildings in any premises are used as factories by different occupiers, the owner of the premises and occupiers of the factories shall be jointly and severally responsible for common facilities like safety, fire prevention, hygiene, occupational health, ventilation, temperature, canteens, shelter, etc.

Appeal against the order of Inspector-cum-Facilitator in case of factory²⁶

If the employer or the manager or the occupier of the factory is not satisfied with an order passed by Inspector-cum-Facilitator, he may appeal to the authority prescribed by the appropriate government.

Effect of law and agreements inconsistent with this Code²⁷

This code shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law or the terms of any award, agreement or contract of service whether made before or after the enactment of the code. But where such award, agreement, contract of service is more favourable, the employee shall continue to be entitled to the such more favourable benefits nor it shall preclude any employee from entering into an agreement with an employer for granting him rights or privileges which are more favourable to him.

Jurisdiction of civil courts barred²⁸

This code bars the jurisdiction of civil courts in respect of any matter to which any provision of this Code applies.

Power to exempt in special cases²⁹

Under this code, appropriate Government can exempt an establishment or class of establishments from the provisions of this Code or the rules or the regulations made thereunder. But while doing so, the appropriate government can also impose restrictions or limit the exemption for a particular period only.

Conclusion

The Government of India, by proposing the number of additions in the existing factory law, has tried to impart security to the workers in various establishments. But at the same time, it has also increased the burden of the occupiers regarding maintenance of health & safety in their factories. Further, instead of subject-based regulations, the Code of 2019 has generalised the protection to be made available to the workers. The relevance and applicability of the provisions like Contract labour and Inter-State migrant workers in the factory regulation are yet to be examined regarding their practicability.

References

[1] The Occupational Safety, Health and Working Conditions Code, 2019.

²³ *Id.* at 40.

²⁴ *Id.* at 43.

²⁵ *Id.* at 75.

²⁶ *Id.* at 85.

²⁷ *Id.* at 112.

²⁸ *Id.* at 117.

²⁹ *Id.* at 119.