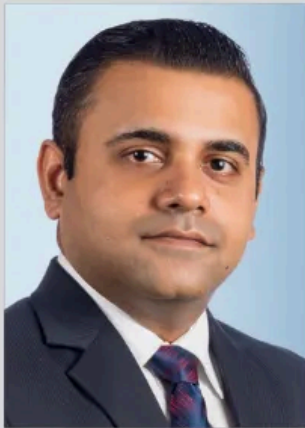


Non-Traditional Manufacturing Processes and the Need for Organizations to Revisit Coverage under Factories Act

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the classification of a process as a 'manufacturing process' depends on the predominant nature of the activities performed by the establishment. As India is growing to become a hub of global capability centres, the compliance / regulatory teams of an establishment should carefully evaluate the definition of 'manufacturing process' to understand if a process apparently not involving transformation of an article from raw material to a finished product or not entailing commercial gain can still be construed as being covered under the Factories Act.

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Despite the existence of the Factories Act, 1948 (Factories Act) for a very long time, there remains confusion across industries as to its applicability to certain operations. This is perhaps because the law has gone far and beyond the traditional notion of a 'manufacturing process' to also cover establishments in its purview that may not, for instance, be deploying end-to-end processes for converting raw material into a finished product. In this article, we aim to identify and examine some of the processes, particularly assembly of parts, packaging of products, and research and development, that may carry the potential of falling within the fold of the Factories Act. We undertake this assessment through a review of the judicial pronouncements on this subject, thus prompting a closer assessment of the licensing requirements and the health and safety standards under the Factories Act that may become applicable to such processes.

Overview of employment laws in India

In India, the terms and conditions of employment are largely driven by the nature of work undertaken at the premises of an establishment. For factories in India, a Central enactment, namely, the Factories Act sets out provisions relating to obtaining a factory license, working hours, leave entitlements, and health, safety and welfare measures to be taken on the premises. This is unlike non-manufacturing commercial establishments where the above-mentioned employment terms and service conditions are governed by state-specific shops and establishments statutes (state-specific S&E Acts).

Ambit of ‘manufacturing process’

Statutory definition of ‘manufacturing process’

The Factories Act states that all establishments where a ‘manufacturing process’ is undertaken with the aid of power and at least 10 workers, and all establishments where a ‘manufacturing process’ is undertaken without the aid of power but with the aid of at least 20 workers, are required to obtain a factory licence. The Factories Act, under Section 2(k), defines a ‘manufacturing process’ as any process undertaken *inter alia* for making, repairing, packing, washing, or cleaning any article or substance for its use, sale, transport, delivery or disposal. Evidently, the definition is wide and comprehensive to include various activities separated by “or” and generally implies that each one of these activities has an independent meaning and by itself can constitute a ‘manufacturing process’ [reference *East West Hotels Limited v Employees’ State Insurance Corporation Bangalore* (1984 SCC ONLINE KAR 217)].

In the following paragraphs, we discuss few identified activities and how they can be covered within the ambit of a ‘manufacturing process’ despite seemingly appearing to be non-manufacturing in conventional sense of the term.

Research and development

Though the definition of ‘manufacturing process’ under the Factories Act does not expressly include ‘research and development’, some establishments where research and development (R&D) activities are carried out may fall under the purview of the Factories Act. For instance, if the operations in a facility entail drug formulations intended only to facilitate R&D work and not meant for transfer or sale, the same may still qualify to be a ‘manufacturing process’ because the definition covers the ‘making...of any article or substance with a view to its use, sale, transport, delivery or disposal’. The general understanding that for a process to be covered under the Factories Act, the end product must be marketable may therefore not be accurate [reference *Lal Mohammad and Others v Indian Railway Construction Company Limited and Others* (AIR 1999 SC 355)].

Having said so, not all activities involving research or analysis would be deemed to constitute a ‘manufacturing process’. Consider a pathology laboratory where various medical tests are conducted, and the outcome of these tests is recorded through various electronic or manual mechanisms and subsequently analysed to reach a diagnosis. Because these operations do not involve the activities set out in the definition of ‘manufacturing process’ (namely, making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or

adapting), such operations may not qualify as a ‘manufacturing process’ under the Factories Act [reference *Employees State Insurance Corporation v Central India Institute of Medical Sciences* (2017 SCC ONLINE BOM 9920)].

Packaging of products

The activity of packing has been expressly recognised as falling within the ambit of the ‘manufacturing process’ as defined in the Factories Act when such activity is undertaken with a view to the product’s use, sale, transport, delivery, or disposal. Even so, courts have not deemed every packing activity to be covered under the Factories Act. Few courts have been inclined towards the view that because the word ‘packing’ comes after the word ‘finishing’ in the definition of ‘manufacturing process’, it is only the packing of a finished product that would get covered under the Factories Act.

The following observations of the Allahabad High Court in *Shree Gopal Paper Mills Limited v Inspector of Factories*, Uttar Pradesh (1968 SCC ONLINE ALL 7), assume relevance here:

“It seems to us that the packing that is aimed at in Section 2(k)(i) is the packing of the finished manufactured article, which is done to facilitate or make possible its sale or transport for sale to customers. This form of packing is in effect the last operation in the series of operations that taken together constitute the manufacture of the article for sale...In the present case, however, the packing is not of a finished article but of the raw material, and this packing has nothing to do with making the article fit or convenient for sale. Many kinds of raw material have to be packed for delivery to the factory by being placed in sacks, baskets or packing cases or by being tied into bundles; but we do not think it was the legislature’s intention that such preliminary packing of the raw material should be treated as a ‘manufacturing process’.”

Assembly of parts

Though the definition of ‘manufacturing process’ does not include the word ‘assembly’, there have been instances where the courts have been of the view that the act of ‘assembly’ of products would qualify as ‘manufacturing process’ within the meaning of the Factories Act. In an instance where articles are assembled and arranged in a manner that they become adapted for a certain use in an establishment, the definition of ‘manufacturing process’ may get attracted.

The Supreme Court of India made the following key observations to hold that adapting (and not necessarily transforming) raw materials into another product is also manufacturing process [reference *Lal Mohammad and Others v Indian Railway Construction Company Limited and Others* (AIR 1999 SC 355)]:

“Bolts and loose railway rails, when bought by the respondent-company from the open market and brought on the site, were articles visible to the eyes and were moveable articles. These articles were adapted for use. Their use was for ultimately laying down a railway line. In that process, sleepers, bolts, and rails would get used up. If that happens, the definition of ‘manufacturing process’ dealing with adaptation of these articles for use would squarely get attracted.”

Similarly, in the case of *Premji Ghee Merchants, Agraharam, Guntur v Regional Inspector of Factories* (1959 SCC ONLINE AP 81), the Andhra Pradesh High Court noted as follows when it took the view that the process of sourcing ghee from different locations, pouring them into a big pan, heating the same with a view to make it uniform, pouring the uniform ghee into tins (which are then sealed and sent elsewhere) would amount to ‘manufacturing process’:

“Even if that very ghee which is brought from districts were to be poured into tins and packed with a view to sending them to Calcutta, though that would not involve any process of transformation, that by itself would be sufficient to bring it within the definition of manufacturing process.”

Predominant nature of activity at the premises

To assess the applicability of the Factories Act to a facility, the main purpose of the facility and the predominant nature of work carried out therein assumes relevance. An establishment would be a factory if the main work of the establishment would entail making, altering, repairing, finishing, packing, oiling, washing, cleaning, breaking up or generating, transforming power or composing types for printing, or preserving or storing any article in cold storage [*reference Employees State Insurance Corporation v Central India Institute of Medical Sciences* (2017 SCC ONLINE BOM 9920)].

Consequences of not obtaining a factory license

The Factories Act is a socially beneficial legislation largely aimed at addressing the health, safety, welfare measures, working hours and other important aspects concerning factory workers. Even so, notably, the Inspectors of Factories have not been conferred with an express power to halt operations if they determine that the establishment ought to have taken a factory license but failed to do so. That said, given that the non-compliance here may result in other multiple violations in relation to health, safety, and welfare provisions under the law, one needs to closely watch out for further developments in the jurisprudence particularly the position on ability of the authorities to impact the operations themselves. Also, failure to obtain a factory license may subject the establishment to a fine ranging up to INR 1,00,000, with further possibility of imprisonment of the occupier and the manager of the factory (although this is seldom invoked for such non-compliance). It is therefore advisable for entities to ensure compliance with the Factories Act after having thoroughly evaluated its applicability to such entities’ operations.

Conclusion

As discussed above, the classification of a process as a ‘manufacturing process’ depends on the predominant nature of the activities performed by the establishment. As India is growing to become a hub of global capability centres, the compliance / regulatory teams of an establishment should carefully evaluate the definition of ‘manufacturing process’ to understand if a process apparently not involving transformation of an article from raw material to a finished product or not entailing commercial gain can still be construed as being covered under the Factories Act.

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