

# RGICS



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# RGICS LEGISLATIVE BRIEF

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## The Factories Act (Amendment) Bill

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### KEY MESSAGES

- Anti-worker: Doubling overtime will dilute the principal objective of the Act.
- The varying overtime limits given in the Bill are contradictory and can therefore be manipulated by industry.
- Inconsistent with the ILO convention.
- Strangling job creation through doubling overtime limit.
- Health and social responsibilities of workers could be impacted due to over work.
- The proposed amendment will affect more than 50% of the factories.
- On the one hand Government pushing for formalization of the economy but with these amendments they are reducing the number of workers who might benefit from formalization

### PART I. Introduction

Factories Act is a labour legislation that has existed since late 19<sup>th</sup> Century and was initially enforced to keep a check on the condition of Industrial workers<sup>1</sup>. Its prime objective was to protect the workers employed in factories against industrial and occupational hazards. It focused on regulating the working hours, weekly off, provisions regarding ladies and children. It imposes upon the owners and occupiers obligations to protect the workers. It was amended in 1911, 1923, 1935 and 1987. But the important amendments were made in 1948, which included safety of working place & machinery, health provision working hours, weekly off, paid leave, etc. It came into force on 1.4.1949 and is applicable to whole of India including Jammu and Kashmir. The last amendment to the Factories Act, 1948 was made in the year 1987, wherein a separate Chapter was inserted relating to the hazardous process. However, a comprehensive Factories (Amendment) Bill, 2014 including the amendments of sections 64 and 65 of the Act, was introduced in Lok Sabha on 7th August 2014. The said Bill was referred to the Department-related Parliamentary Standing Committee on Labour for examination and report, which presented its Report on the said Bill on 22nd December 2014 to Parliament, which is under examination<sup>2</sup>. The Factories (Amendment) Bill, 2016 was introduced in Lok Sabha on August 10, 2016 by the Minister of Labour and Employment on the ground that consideration and passing of the 2014 Bill in Parliament may take some more time, with a view to boost the manufacturing sector and to facilitate Ease of Doing Business so as to enhance employment opportunities. The Amendment Bill 2016 was passed in Lok Sabha. Now Government is planning a fresh proposal to push amendments to the Factories Act to create new jobs and make businesses easy to grow<sup>3</sup>.

The string of amendments proposed by the union government to various sections of the Factories Act have been endorsed by the Ministry to deliver on its promise to vastly improve India's position in the World Bank's Ease of

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<sup>1</sup>The first cotton textile factory was set up at Bombay as early as 1854. By 1870 a large number of factories were setup at Bombay, Nagpur, Kanpur & Madras. The first Iron & Steelwork started at Bihar in 1873. Jute spinning mill were started at Rishra in 1855. By 1881 there were 5000 power looms at work in Bengal. In 1870, Bally Paper mills were setup at Hoogly & several tanning & leather factories were also setup at Kanpur which led to factory establishment existence in India. This brought factories evils such as employment of women & children at tender age, excessive hours of work & hazardous & insanitary working conditions. Great need for protective labour legislations to fight the conditions of workers (especially women & children) was felt as early as 1850, but nothing was done by British Government (By this a series of Factories Act was already passed in Great Britain). Occasional notes of dissatisfaction were raised by philanthropist which were led by Sorabjee Shahpurjee Bengali. In 1878, Sasipad Bannerjee laid the foundation of Bara Bazar organization for the welfare of jute mill workers. There is also a record of a strike in Nagpur Empress Mill in 1877. Textile mills in India began competing with those many in Lancashire (Great Britain). As a result mill owners at Lancashire were worried. They alleged that inferior labour standards prevailed in Indian mills resulted in lower production cost & hence increased the competitive power of Indian Textile Mills. So they demanded in order to preserve competitive power increase the cost of production of mills by raising the labour standards. Thus protective labour legislations was embodied in Factory Act 1881. Thus joint efforts of philanthropist, social workers in India & Lancashire manufacturers in Great Britain resulted in Factory Act 1881 (though with different considerations). [<https://www.uniassignment.com/essay-samples/history/factories-act-is-a-labour-legislation-history-essay.php>]

<sup>2</sup>[http://164.100.47.4/BillsTexts/LSBillTexts/Asintroduced/216\\_2016\\_LS\\_Eng.pdf](http://164.100.47.4/BillsTexts/LSBillTexts/Asintroduced/216_2016_LS_Eng.pdf)

<sup>3</sup><http://www.thehindu.com/business/Industry/Trade-unions-oppose-changes-to-Factories-Act/article17302663.ece>

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Doing Business Index. But the proposed amendments go about this task by decreasing regulatory mechanisms that protect workers' rights, safety and health. This would only lead to a competitive easing of norms to facilitate investment without protecting the further erosion of labour rights.

### PART II: Major Provisions

The Factories Act (Amendment) Bill, 2016 amends the Factories Act, 1948. The Bill amends provisions related to overtime hours of work. The following are some of the major changes introduced by the Bill and other amendments that government planning to introduce.

- **Power to make rules on various matters (Amendment of Section 2):** The Act as it stands today permits only the state government to prescribe rules on a range of matters, including double employment, details of adult workers to be included in the factory's register, conditions related to exemptions to certain workers, etc. The Bill gives such rule making powers to the central government as well.
- **Powers to make rules for exemptions to workers (Amendment of Section 64):** Under the Act, the state government may make rules to (i) define persons who hold management or confidential positions; and (ii) exempt certain types of adult workers (e.g. those engaged for urgent repairs) from fixed working hours, periods of rest, etc. The Bill gives such rule making powers to both, the central and state governments.
- **Limitation of application of Rules for exemptions to workers (Amendment of Sub-section 5 of Section 64):** Under the Act, such rules will not apply for more than five years. The Bill of 2016 modifies this provision to state that the five-year limitation will not apply to rules made after the enactment of this Bill.
- **Overtime hours of work in a quarter (Amendment of subsection 4 in clause iv of Section 64):** The Act permits the state government to make rules related to the regulation of overtime hours of work in some specific condition up to 50 hours for a quarter. The specific conditions include urgent repairs, preparatory or complementary work which must necessarily be carried on outside the limits laid down for the general working of the factory, work which is necessarily so intermittent that intervals during which they do not work while on duty, any work which for technical reasons must be carried on continuously, making or supplying articles of prime necessity which must be made or supplied every day, a manufacturing process which cannot be carried on except during fixed seasons, a manufacturing process, which cannot be carried on except at times dependent on the irregular action of natural forces, work engaged in engine-rooms of boiler-houses or in attending to power-plant or transmission machinery, engaged in the loading or unloading of railway wagons or lorries or trucks and in any work, which is notified by the State Government in the Official Gazette as a work of national importance.

However, the total number of hours of overtime must not exceed 50 hours for a quarter. The Bill raises this limit from 50 hours to 100 hours. Rules in this regard may be prescribed by the central government as well.

- **Overtime hours if the factory has higher workload (Amendment of Section 65):** The Act enables the state government to permit adult workers in a factory to work overtime hours if the factory has an exceptional workload. Further, the total number of hours of overtime work in a quarter must not exceed 75. The Bill permits the central or state government to raise this limit to 115 hours in a quarter.

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- **Overtime in public interest (Amendment of Section 65, inserted after sub section 3 and before the Explanation):** The Bill introduces a provision, which permits the central or state government to extend the 115-hour limit to 125 hours. It may do so because of public interest.
- **State Government will have the power to double Employment threshold limits for factories:** In a fresh proposal circulated on 14<sup>th</sup> February, 2017, the labour ministry has stated that state government will have the power to double employment threshold limits from 10 workers to 20 workers in units using power for manufacturing and from 20 workers to 40 workers in units that do not use power for manufacturing, except in factories with “hazardous processes”. Moreover, according to the fresh amendment, state governments could decide the employment threshold for a unit to be considered a factory under the Factories Act by simply issuing a notification to this regard.

### PART III: Concern and Criticism

The Factories Act, 1948 has been enacted to consolidate and amend the law regulating the workers working in the factories. It extends to the whole of India and applies to every factory wherein 20 or more workers are ordinarily employed. Since the aim and objectives of the Act are to safeguard the interest of workers and protect them from exploitation, the Act prescribes certain standards with regard to safety, welfare and working hours of workers, apart from other provisions. However, the Amendments of the Act are contradictory to the key idea for which the Act actually exists. In this section some of the key criticisms of the Bill have been highlighted.

- **Diluting the Principal Objective of the Act:** The Factories Act came into existence with the primary objective of raising the labour standard and protecting them from exploitation. But the increase of over time limit is contradictory and instead of improving the working conditions of labour it would even lead to some intense health and social problems among the labour class. Although the Factories Act was initially enacted by the British Government to protect the interests of British employers as Indian textile goods offered stiff competition to British textiles in the export market and hence in order to make Indian labour costlier the Factories Act was first introduced in 1881. Thus India received the first stipulation of eight hours of work, the abolition of child labour, and the restriction of women in night employment, and the introduction of overtime wages for work beyond eight hours. Although the real motivation of this measure was undoubtedly protectionist, the impact of this measure was clearly welfarist<sup>4</sup>. Since then the Factories Act was amended many times but the amendment after the independent India was enacted as an Act to protect the interest of the labour class in independent India. But the proposed amendment is inconsistent to the motive of the Act for which it exists.
- **Contradictory and overlapping Overtime limits:** The Section 64, sub-section -3 of the Act mentions that the total hours of work including overtime should not exceed 10 hours in a day and 60 hours in a week. Moreover, the Act also mentions that the total normal hours of work excluding overtime, in a week should be 48 hours. So, it will be 12 hours of overtime in a week assuming 60 hours of overtime, which will be 48 hours in a month and 144 hours in a quarter  $[(12*4)*3=144]$ . However, the Bill has increased the limit maximum up to 125. In case of any future issues, neither the Bill nor the Act mention which calculation will be used therefore it allows the employers to increase the overtime limits up to 144 hours in a quarter.
- **Public Interest not defined:** In section 65 after sub-section (3) and before the Explanation a proviso will be inserted, namely, "Provided that the Central Government or the State Government or the Chief Inspector with the prior approval of the State Government, as the case may be, may, by order, further extend the total number of hours of overtime work in any quarter up to one hundred and twenty-five in the public interest.". However, neither the Act nor the Bill defines what "public interest" is. Therefore, it allows the employers to influence the working time limits for their own convenience in running the business.

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<sup>4</sup>[http://ncib.in/pdf/ncib\\_pdf/Labour%20Act.pdf](http://ncib.in/pdf/ncib_pdf/Labour%20Act.pdf)

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- **Limitation in the Exemption Rule is not defined:** In section 64 of the Act, the exemptions under the Act should remain for five years but the new Bill removed the five years limit without mentioning the reason for this. Even the Act itself did not mention the reason of the five years limitation over the exemption rule under section 64 of the Act.
- **Industrial Demand for work on “Urgent Basis” is ambiguous:** It is mentioned in the Bill that “The need for increasing the total number of hours of work on overtime in a quarter is based on the demand from industries so that factories can carry out the work on urgent basis.” Yet, the word urgent is already mentioned in Section 64 of the Act and also in Section 64 and Section 65 some specific conditions are mentioned when the factories can increase the overtime limit. But the Amendment Bill does not mention the justification of extending overtime up to different limit on “urgent basis”.
- **Contradictory to the ILO Recommendation:** The ILO Hours of Work (Industry) Convention (No. 1) of 1919 introduced a maximum standard working time of 48 hours per week and eight hours per day as an international norm. In several exceptional cases, working time is allowed to exceed these limits, as long as daily working time remains not higher than ten hours, and weekly working time not higher than 56 hours<sup>5</sup>. But any of the ILO convention related to hours of work donot prescribe any requirements as to policies or measures concerning hours of work, nor do they mention any such policies or measures. Nevertheless, certain guidance as to the formulation and implementation of policies on hours of work can be drawn from the Reduction of Hours of Work Recommendation, 1962 (No. 116)<sup>6</sup>. The reduction of hours of work is viewed as a tool for achieving two major goals: (i) creating additional workplaces; and (ii) achieving a balance between the work and family lives of employees.<sup>7</sup> But the present amendment of doubling over time in Factories Act 1948 is completely contradictory to the ILO recommendation of 1962.

Moreover in other countries like the United States, although there is no overtime limit, but the normal hours of work is 40 hours a week according to the Fair Labour Standard Act (FLSA)<sup>8</sup>. In the United Kingdom, according to the Working Time Regulation 1998 Act, the total hours of work including the overtime in a week should not exceed 48 hours<sup>9</sup>. In Brazil, according to section 59 of the Consolidation of Labour Laws, the overtime should not exceed two hours in a day and according to section 41 of labour law in China, it should not exceed three hours a day.

- **Health and Social effects:** Piloting the Bill, Labour Minister said the changes in the law would enable workers to "work more and earn more"<sup>10</sup>. The purpose of earning the livelihood is to fulfill the necessities of life and having a basic standard of living. Livelihood is the means to achieve the end in terms of comfortable life for the worker and his/her family. Only the achieved states are in themselves valuable, not the

<sup>5</sup>[http://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/travail/documents/publication/wcms\\_170708.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/travail/documents/publication/wcms_170708.pdf)

<sup>6</sup> Recommendation No. 116 was designed to supplement and facilitate the implementation of existing international instruments by indicating practical measures for the progressive reduction of hours of work, taking into account the differences in economic and social conditions in the various countries, as well as the variety of national practices for the regulation of hours and other conditions of work; by outlining in broad terms methods by which such practical measures might be applied; and by indicating the standard of the 40-hour week, as set out in the Forty-Hour Week Convention, 1935 (No. 47), as a social standard to be reached by stages if necessary, and setting a maximum limit for normal hours of work, pursuant to the Hours of Work (Industry) Convention, 1919 (No. 1)

<sup>7</sup> *ibid*

<sup>8</sup> <https://www.dol.gov/whd/flsa/>

<sup>9</sup> <http://www.legislation.gov.uk/ukxi/1998/1833/made/data.pdf>

<sup>10</sup> <http://www.firstpost.com/business/lok-sabha-passes-Bill-to-double-overtime-hours-for-factory-workers-2947942.html>



opportunities, which are valued only as means to the end of reaching valuable states. But the earning from the overtime work will affect the health and social life of the workers. Doubling the over time, which is in excess of normal working hours of eight to nine hours is certainly not justifiable from the perspective of the health of the workers. Moreover, working overtime could result in increased consumption of alcohol, tobacco, obesity and depression, which might result in a major social issue. It will also have an effect on the family life and social obligation of the workers. According to an ILO report on Decent and Safe work published in 2002, the cardiovascular disease is one of the prime causes of work-related death. And first and important factor of these diseases is night work and long hours of work<sup>11</sup>.

*Karoshi* is a Japanese word meaning death from overwork. This term has been used since the 1970s. In 1978 there was a report on 17 *karoshi* cases at the 51st annual meeting of the Japan Association of Industrial Health. *Karoshi* is not a pure medical term but a socio-medical term that refers to fatalities or associated work disability due to cardiovascular attacks (such as brain strokes, myocardial infarction or acute cardiac failure) aggravated by a heavy workload and long working hours. The phenomenon was first identified in Japan, and the word is now adopted internationally. *Karoshi* has become an important social problem in Japan<sup>12</sup>. However, Article 36 of the Japanese Labor law mentions the overtime limit of 5 hours per day, 45 hours per quarter and 360 hours per years.

- **Increase Unemployment:** According to a UN labour report, unemployment in India is projected to witness marginal between 2017 and 2018 signalling stagnation in job creation<sup>13</sup>. The report also added that the unemployment in India is projected to increase from 17.7 million last year to 17.8 million in 2017 and 18 million next year, which in percentage terms will remain at 3.4 per cent in 2017-18. The said Bill was defended on the ground that it would facilitate an increase in employment generation in the manufacturing sector. But increasing overtime will in no way reduce the unemployment rate. It will further deteriorate the unemployment situation. The urgency of increasing overtime only proves the urgency of bringing a higher level of dynamism to increase production at the cost of labourers whether employed or unemployed. Because as mentioned earlier the proposed changes in Bill will affect the welfare of the workers employed in these industries and also at the same time it will result in increased unemployment.
- **Business Friendly Policy at the Cost of Labour:** The most of the reforms of labour laws in India are the most focused official initiative for Ease of Doing Business. It seems business friendliness is measured only in labour front. According to the International Trade Union Confederation (ITUC), India is among the 10 worst countries for labour rights in 2016 in terms of the Global Rights Index (GRI)<sup>14</sup>. Although Government is working comprehensively on the Ease of Doing Business index, it ignores the worsening labour rights violations records. It is not surprising that the conventional democratic space for trade unions is narrowing

<sup>11</sup><http://www.ibram.org.br/sites/700/784/00001030.pdf>

<sup>12</sup>[http://www.ilo.org/safework/info/publications/WCMS\\_211571/lang--en/index.htm](http://www.ilo.org/safework/info/publications/WCMS_211571/lang--en/index.htm)

<sup>13</sup><http://auto.economicstimes.indiatimes.com/news/industry/unemployment-in-india-to-increase-marginally-in-2017-18-report/56515699>

<sup>14</sup> ITUC has been collecting data on violations of trade union and collective bargaining rights for more than three decades. The exercise is contextualised in Decent Work and Core ILO Standards. These rights codified are fundamental to achieving core and other labour standards and violations amount to a fundamental weakening of the collective power of the working class and dilution of democratic rights. The Global Rights Index (GRI) seeks to capture the degree of respect accorded to labour rights by government and industry, and ranks 141 countries against 97 internationally recognised indicators. Suffice it to say that the GRI is subject to rigour and hence is as credible as others. The countries are rated from 1 to 5+ and labour rights violations are higher as we move up — 1 being the best rating and 5 the worst. [Accessed from <http://www.thehindubusinessline.com/opinion/businessfriendly-policy-at-labours-expense/article8765213.ece> on 24th February, 2017]

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and a sense of insecurity is enveloping the working class, the example of which is the Government's restriction on the Congress-affiliated trade union, Indian National Trade Union Congress (INTUC), from participating in any tripartite meetings, be it labour law reforms or routine wage negotiations on both national and international platforms<sup>15</sup>.

The need for increasing the total number of hours of work on overtime in a quarter is based on a demand from industry so that factories can carry out work without any interruption whenever they want.

- **Increasing threshold limit of the number of workers employed in defining a factory will remarkably decrease coverage of the Act:** The Factories Act, 1948, defines a factory based on the number of workers it employs. If a unit uses power for manufacturing, it is considered a factory if it employs more than 10 workers in a year. Units that do not use power for manufacturing are identified as a factory only if they employ at least 20 workers. In its amendment Bill, introduced in Parliament on August 7, 2014, the government had proposed changing the original Act to double the threshold level of employment from 10 workers to at least 20 workers in case of factories using power, and from 20 workers to 40 workers in case of factories not using power for manufacturing. This meant that units employing less than these numbers would no longer have to follow the standards set out in the Factories Act. Data from the Annual Survey of Industries shows that about one lakh (or 58%), of the 1.75 lakh factories in 2011-'12 employed less than 30 workers. Of the total, 36% of all units employed less than 14 workers, while 10.6% had workers in the range of 15-19, and 11.6% of the total units had 20-29 workers employed in the previous year. Taking note of this data that was presented by central unions, the Parliamentary Standing Committee on Labour rejected the proposal to increase threshold defining limits, in its 116-page report presented on December 23, 2014. The report said, "More than 70 percent of the factory establishments in the Country will be out of the coverage of the Factories Act and workers will be at the mercy of employers in every aspect of their service conditions, rights and protective provisions laid down under the Act.,".
- **Increasing informalization under the aegis of formalization in the Economy:** According to the Government the demonetization process was the "smoothest possible replacement" of high denomination currency anywhere in the world and it would bring a predominantly cash economy to a digital economy, better revenue generation via banking system and the integration of the informal economy with the more formal one<sup>16</sup>. But by proposing the changes in the said Act, the Government is actually reducing the scope of the formal economy in terms of labour market (linked to the previous point). Formalizing an economy is not only about broadening the tax base and revenue collection, it is also about protecting the rights and welfare of the people contributing to the economy. Moreover, in revolutionizing the labour laws, the Government seems to ignore the contemporary issues in the labour market.

<sup>15</sup> <http://www.thehindu.com/news/national/Centre-bars-INTUC-from-key-meetings/article17314623.ece>

<sup>16</sup> <http://www.news18.com/news/business/wont-settle-for-slogans-like-indians-for-india-alone-arun-jaitley-1353287.html>  
<http://www.dailyexcelsior.com/economy-grows-strongly-even-notes-ban-jaitley/>

### **PART IV: Conclusion**

An analysis of the Factories Act (Amendment) Bill suggests that the provisions mentioned in the Bill are far removed from the reason for which the original Act came into existence. By amending the Act, the Government is actually altering the uniqueness of the Act which is the protection of the workers in the country.

Increasing overtime could raise earnings for some workers but it would come at the cost of health and standard of living of the workers. Moreover, increasing overtime is not even a sign of industrial development as it will not necessarily add to the productivity of the factory (diminishing returns to scale appears in production after a point in time) in fact, it rarely leaves either companies or their employees better off.

In this context, the government should take into consideration the criticism and feedback from trade unions, the labour community and civil society and as a first step it should look at giving more benefits to daily wagers and action need to be taken against companies that do not pay the stipulated wages for working overtime.

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