

# THE INSIGHT

WEEKLY NEWSLETTER FROM  
HR VIDYALAYA CORPORATE SERVICES LLP

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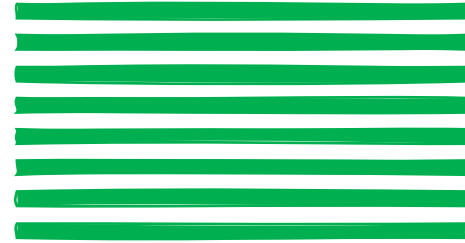


Image courtesy: CNIBCTV18

**ISRO Made us PROUD  
Thank you ISRO**



**Chandrayaan – 3  
Mission successful**

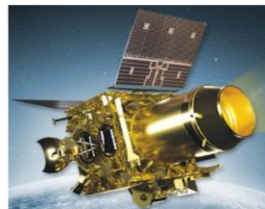
1. To demonstrate Safe and Soft Landing on Lunar Surface
2. To demonstrate Rover roving on the moon and
3. To conduct in-situ scientific experiments

**Chandrayaan – 2  
Mission partially achieved**

1. Develop and Demonstrate Newer Technologies
2. To design, realize & deploy Lander-Vikram capable of soft landing on a specified lunar site and deploy a Rover to carry out in-situ analysis of elements.



**Chandrayaan – 1  
Mission: Remote Sensing,  
Planetary Science  
Target : 2 years  
Achieved: almost 1 year**



Images courtesy; ISRO.gov.in



**Miles to Go..... Conquered.....  
Many more achievements ..... Soon to happen**

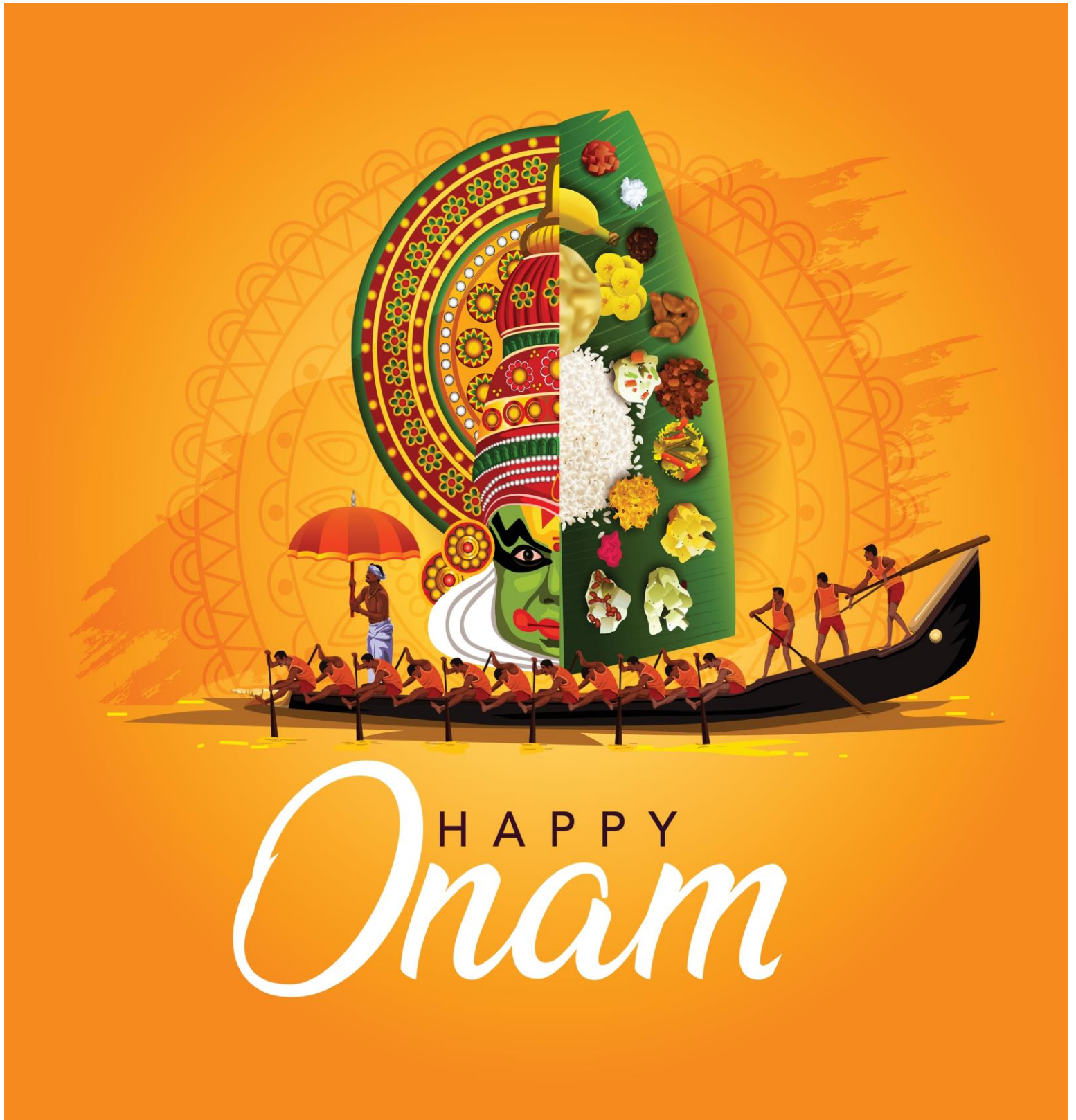


Image courtesy: Shutterstock (through news18.com)

## Safety @ Factories having Hazardous processes

The Lockdown has taught, as many lessons to the Globe. To the people, keeping health and safety, to the economy, and to the industry, too.

The fatal accident due to a mishap at LG polymers at Vizag, AP has exposed the safety measures to be taken by an Industry, during non-operational phase of a hazardous facility.



The flora and fauna of the surroundings of the manufacturing facility has been injured, apart from taking lives of around 11 innocent lives. There is unconfirmed news that the many such industries are not conformed with the Environment legislations and obtained necessary consents to operate the facility.

Such Hazardous manufacturing facilities are covered under two major legislations:

### **1. Factories Act, 1948 & Factories Rules of the specific State**

A separate chapter IVA – Provisions relating to Hazardous processes was inserted to the Factories Act in 1987, post Bhopal Gas Tragedy.



The major provisions of the Chapter insertions, are:

- a) Constitution of Site Appraisal Committee
- b) Compulsory disclosure of information by the occupier— The occupier of every factory involving a hazardous process shall disclose in the manner prescribed all information regarding dangers, including health hazards and the measures to overcome such hazards arising from the exposure to or handling of the materials or substances in the manufactures, transportation, storage and other processes, to the workers employed in the factory
- c) Specific responsibility of the occupier in relation to hazardous processes—
- d) Power of Central Government to appoint Inquiry Committee
- e) Emergency standards.
- f) Permissible limits of exposure of chemical and toxic substances
- g) Workers' participation in safety management— The occupier shall, in every factory where a hazardous process takes place, or where hazardous substances are used or handled, set up a Safety Committee consisting of equal number of representatives of workers and management to promote co-operation between the workers and the management in maintaining proper safety and health at work and to review periodical the measures taken in that behalf
- h) Right of workers to warn about imminent danger.

## 2. Manufacture, Storage and Import Of Hazardous Chemical (Amendment) Rules, 1989

This regulatory legislation was enacted in 1989 subsequently amended in 1994 and 2000 which regulates – manufacture, storage and import of hazardous chemicals in India.

"Hazardous Chemicals " includes 3 schedules. Regulatory requirements are different for each schedule.

- a) any chemical which satisfies any of the criteria laid down in Part I of Schedule 1 or listed in Part II of this Schedule 1
- b) any chemical listed in Column 2 of Schedule 2
- c) any chemical listed in Column 2 of Schedule 3

Schedule – 1, which consists of two parts

- 1) any hazardous chemicals that meet one of the following criteria
  - Toxic chemicals: oral LD50 <200mg/kg, or dermal LD50 <2,000mg/kg or inhalation LC50 < 10mg/L
  - Flammable gases: i.e gases that are ignitable when in a mixture of 13 percent or less by volume with air
  - Flammable liquids: liquids with flash points below than 90° Celsius
  - Explosives
- 2) 684 named chemical substances listed in Schedule 1.



Image Courtesy: Office 365

### **Obligations of the owners, who store/use the hazardous chemical:**

- identify hazards associated with industrial activity and take adequate steps for prevention and control
- provide relevant information to persons liable to be affected by a major accident
- notify the concerned authorities within 48 hours of the occurrence of a major accident
- provide safety data sheets and label every container of hazardous chemicals.

Other duties of the person responsible for importing such Hazardous chemicals is to provide the date of import to the Chief controller of Imports and Exports, at the earliest within 30 days, with the following further details

- the name and address of the person receiving the consignment in India
- the port of entry in India
- mode of transport from the exporting country to India
- the quantity of chemical (s) being imported; and
- complete product safety information



Schedule 2 and schedule 3 - Where in a site, which handles such hazardous chemicals, more than the prescribed threshold limits, they are considered as Major Accident Hazards (MAH).

Appropriate safety assessments and contingency plan are required to be undertaken.

**Safety precautions to be taken:**

Any such hazardous facility, more specifically a facility located near to densely populated area shall mandatorily have the following OPERATIONAL anytime and every time:

- Works committee
- Safety Committee
- Site Appraisal Committee
- On-site emergency play
- Adherence to definite Safety rules
- Environment Clearance, etc.



Personnel engaged in such operational site shall be “Skilled” to contain any emergency.

Employer shall ensure, proper, appropriate, and timely maintenance of machineries / utilities / parts of the machines in such specific hazardous areas.

**In case of any emergency, there shall be,**

- **Advance warning system of the leak**
- **And if there is any leak or imminent danger, people in and around the workplace shall be immediately alerted through Public Address System for them to safely move out of the place.**

**Please be also informed that the transport of hazardous chemicals must meet the provisions of the Motor Vehicles Act, 1988.**

Are you engaging Trainees (company Trainee / Project Trainee, etc.) who were otherwise not covered by Apprenticeship Training under Apprentices Act?

And as you are paying a lump sum amount as a fee/consolidated pay/allowance, do you think you will get away from coverage of various Labour legislations? You are wrong....

Post Pandemic it becomes a Trend or Industry Practice that many employers engage persons on a large scale under the guise of Interns / Trainees.

These types of employments (?) are happening through Campus or being engaged through Contractors (staffing companies) or through some other third Party Vendors.

Most of such employers believe that these types of employments (?) will benefit them in the long run as “Such Interns/Trainees” cannot claim permanency of employment or cannot be treated as a Permanent Workmen.

Enthusiastic HR personnel or Young Management personnel, do not understand in Labour Laws in India, the criteria to decide whether “*a person engaged is a workman or not*” is not the TITLE/DESIGNATION he or she holds.

It is vital for any Employer to know the difference between (a) Apprentice as per the Apprentices Act (b) Trainee as per Certified Standing Order (c) Other Trainees. This may help the Employers in a big way, in case of a dispute.

The Hon’ble Courts in India, had in several cases, had clarified this. We tried our best to bring such Judgments for the reader’s easy reference.

## Who is Apprentice?

The Hon'ble Supreme Court held in a Judgment.... UP State Electricity Board vs. Shri Shiv Mohan, that under the Apprentices Act, the only obligation of the employer was to impart them training and pay stipend.

Beyond that, there was no obligation to accept them as his employees and give them the status of workmen under the Industrial Disputes Act. "The position of the apprentice remains as an apprentice/trainee and during the period of training they will not be treated as workmen" the judgment said. The Hon'ble Apex Court overruled the contrary view held by the Hon'ble Gujarat and Madhya Pradesh High Courts.

## Who is Trainee?

A trainee employed under a contract of employment is not an apprentice, under the Apprentices Act, unless he is undergoing-apprenticeship training in a designated trade in pursuance of a contract of apprenticeship. Trainee outside the Apprentices Act is to be distinguished from an apprentice undergoing training in a designated trade in pursuance of contract of apprenticeship. The former is covered by the definition of the term "employee" while the latter is excluded from the definition. The heart of the matter in apprenticeship is, therefore, the dominant object and intent to impart on the part of the employer and to accept on the part of the person learning under certain agreed terms.

Hon'ble Orissa High Court.... Chairman-Cum-Managing ... vs Controlling Authority, Payment ... on 2 May, 1994

## Difference

In, Sree Mangaiyarkarasi Mills (P) Ltd. Vs. The Assistant Provident Fund Commissioner and others, the Hon'ble Madras High Court, has held that in case of apprentices who were paid bonus, the management cannot be heard to contend that he is not a worker.

## Difference

In this regard, I may say that one should not go by the nomenclature attached to the post but it is the nature of the job which is material. Admittedly, the first respondent Mill was involved in production. Though it is stated that the said employees were engaged as Trainees/Apprentices, it is the positive evidence of M.W.1 that there was no permanent employee. It is highly impossible to engage in the production without having regular employees. Therefore, though the workmen were called as Apprentices since they were all involved in the production activities.....

Apart from that, it has to be stated that if these people were really Trainees, there should have been a Trainer to train them.

***Hon'ble Madras High Court.... Workmen of PMP Textiles, Coimbatore vs. Management of PMP Textiles***

## Difference

But, in the present case, the finding of the authority is not only based upon payment of overtime wages alone, but the authority's order as confirmed by the Tribunal clearly states that substantial section of workers is employed as apprentices and they are engaged in production line. They were also paid overtime wages as monthly salary and not stipend. It is misnomer to call them as trainees...Hon'ble Madras High Court....  
**M.R.F.Ltd vs The Presiding Officer on 18 October, 2011**

## Probationer Trainees.... To be treated as Employee under PF Act?

Employees engaged as "Probationer trainee" will be treated as employees for purpose of EPF&MP Act 1952? Question of law that arises for consideration, before High Court, was

*"Whether the pre-induction training period undergone by the petitioners in the Bharat Sanchar Nigam Limited (for short BSNL) is covered for the purpose of deducting subscription towards Employees Provident Fund in terms of the Employees Provident Fund and Miscellaneous Provisions Act, 1952"*

BSNL had file the writ petitions against order of Regional PF Commissioner by which probationer trainees were to be treated as employees from the very first day of employment and were eligible for EPF benefits. Aggrieved by the order, BSNL approached High court through writ petitions and Hon'ble High Court dismissed the all writ petitions filed by BSNL and upheld the orders passed by Regional PF Commissioner. *The Hon'ble Madras High court in Bharat Sanchar Nigam Ltd vs. Union of India (W.P.Nos.21520, 21782 and 21783),*

## Camouflaging.... Unfair Labour Practice in the name of Trainees

No evidence whatsoever was adduced on behalf of the Management to show that for more than one and half years those persons remained as 'trainees' in the true sense of the term. It is pertinent to note the statement of the Management's witness that in June-July, 1989, the Company did not have any permanent workmen and all the persons employed were trainees. It would be impossible to believe that the entire production activity was being carried on with none other than the so-called trainees. If there were trainees, there should have been trainers too. The Management evidently came forward with a false plea dubbing the employees/workmen as trainees so as to resort to summary termination and deny the legitimate benefits.

On the facts and evidence brought on record, the conclusion was inescapable that the appellant-employer resorted to unfair labour practice.

*Hon'ble Supreme Court of India...M/S Trambak Rubber Industries Ltd vs Nashik Workers Union & Ors on 16 July, 2003*