

Liabilities of Directors under Labour Laws

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This Presentation gives only an indication of penalties and liabilities regarding selected labour laws of India.

Key Labour Laws

- ❖ Employees' State Insurance Act, 1948
- ❖ Employees' Provident Funds Family Pension Fund and Deposit Linked Insurance Fund Act, 1952
- ❖ The Minimum Wages Act, 1948
- ❖ The Payment of Bonus Act, 1965
- ❖ The Payment of Wages Act, 1936
- ❖ The Payment of Gratuity Act, 1972
- ❖ Contract Labour (Regulation and Abolition) Act, 1970
- ❖ The Maternity Benefit Act, 1961
- ❖ The Industrial Employment (Standing Orders) Act, 1946

A. Key Concepts

- A1. Occupier under Factories Act
- A2. Exemption of Occupier or Manager
- A3. Recovery as Arrears of Land Revenue

A1. Occupier under Factories Act

(n) "occupier" of a factory means the person who has ultimate control over the affairs of the factory [12](#)[***].

(ii) in the case of a company, any one of the directors shall be deemed to be the occupier;

(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--

(a) the name and situation of the factory;

(b) the name and address of the occupier;

(f) the name of the manager of the factory for the purposes of this Act;

Section 2(n) and 7(1) of Factories Act, 1948

A1. Occupier under Factories Act (Continued)

22. There is a vast difference between a person having the ultimate control of the affairs of a factory and the one who has immediate or day to day control over the affairs of the factory. In the case of a company, the ultimate control of the factory, where the company is the owner of the factory, always vests in the company, through its Board of Directors. The Manager or any other employee, of whatever status, can be nominated by the Board of Directors of the owner company to have immediate or day to day or even supervisory control over the affairs of the factory. Even where the resolution of the Board of Directors says that an officer or employee, other than one of the directors, shall have the "ultimate control over the affairs of the factory, it would only be a camouflage or as artful circumvention because the ultimate control cannot be transferred from that of the company, to one of its employees or officers, except where there is a complete transfer of the control of the affairs of the factory. Mechanical recitation of the words of Section 2(n), as a Mantra, in a resolution nominating an employee or an officer as the occupier by stating that he shall have "ultimate control over the affairs of the factory", cannot be permitted to defeat the object of the amendment. The provisions of the Act have to be construed in a manner which would promote its object, prevent its subtle evasion and foil its artful circumvention to suppress the mischief. Though, the expression ultimate control was used

J.K. Industries Ltd. and Ors. Vs. Chief Inspector of Factories and Boilers and Ors.,
MANU/SC/1293/1996

A1. Occupier under Factories Act (Continued)

(1) In the case of a company, which owns a factory, it is only one of the director of the company who can be notified as the occupier of the factory for the purposes of the Act and the company cannot nominate any other employee to be the occupier of the factory;

(2) Where the company fails to nominate one of its directors as the occupier of the factory, the Inspector of Factories shall be at liberty to proceed against any one of the directors of the company, treating him as the deemed occupier of the factory, for prosecution and punishment in case of any breach or contravention of the provisions of the Act or for offences committed under the Act.

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MANU/SC/1293/1996

A2. Exemption of Occupier or Manager

Where the occupier or manager of a factory is charged with an offence punishable under this Act, he shall be entitled, upon complaint duly made by him and on giving to the prosecutor not less than three clear days' notice in writing of his intention so to do, to have any other person whom he charges as the actual offender brought before the Court at the time appointed for hearing the charge; and if, after the commission of the offence has been proved, the occupier or manager of the factory, as the case may be, proves to the satisfaction of the Court--

(a) that he has used due diligence to enforce the execution of this Act, and

(b) that the said other person committed the offence in question without his knowledge, consent or connivance,

that other person shall be convicted of the offence and shall be liable to the like punishment as if he were the occupier or manager of the factory, and the occupier or manager, as the case may be, shall be discharged from any liability under this Act in respect of such offence:

Section 101 of Factories Act, 1948

A3. Recovery as Arrears of Land Revenue

THE REVENUE RECOVERY ACT, 1890

[Act, No.1 of 1890]¹

[AS ON 1957]

[14th February, 1890]

PREAMBLE

An Act to make better provision for recovering certain public demands.

WHEREAS it is expedient to make better provision for recovering certain public demands;
It is hereby enacted as follows:-

(1) When the Collector of a district receives a certificate under this Act, he may issue a proclamation prohibiting the transfer or charging of any immovable property belonging to the defaulter in the district.

Section 6(1) of The Revenue Recovery Act, 1890

B. Employees State Insurance Act

- B1. Principal Employer
- B2. ESI Dues as Land Revenue
- B3. Punishment for False Statement
- B4. Punishment for Failure to Pay
- B5. Offences by companies
- B6. Repeated offences

B1. Principal Employer

(17) "principal employer" means--

(i) in a factory, the owner or occupier of the factory and includes the managing agent of such owner or occupier, the legal representative of a deceased owner or occupier, and where a person has been named as the manager of the factory under [18](#)[the Factories Act, 1948 (63 of 1948)], the person so named;

Section 2(17) of ESI Act, 1948

B2. ESI Dues as Land Revenue

Section 45B - Recovery of contributions

Any contribution payable under this Act may be recovered as an arrear of land revenue.

B3. Punishment for False Statement

Whoever, for the purpose of causing any increase in payment or benefit under this Act, or for the purpose of causing any payment or benefit to be made where no payment or benefit is authorized by or under this Act, or for the purpose of avoiding any payment to be made by himself under this Act or enabling any other person to avoid any such payment, knowingly makes or causes to be made any false statement or false representation, shall be punishable with imprisonment for a term which may extend to ¹[six months], or with fine not exceeding ²[two thousand] rupees, or with both:

Section 84 of ESI Act, 1948

B4. Punishment for failure to pay

If any person--

(a) fails to pay any contribution which under this Act he is liable to pay, or

(b) deducts or attempts to deduct from the wages of an employee the whole or any part of the employer's contribution, or

¹[he shall be punishable--

²[(i) where he commits an offence under clause (a), with imprisonment for a term which may extend to three years but--

(a) which shall not be less than one year, in case of failure to pay the employee's contribution which has been deducted by him from the employee's wages and shall also be liable to fine of ten thousand rupees;

(b) which shall not be less than six months, in any other case and shall also be liable to fine of five thousand rupees:

Provided that the court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a lesser term;

(ii) where he commits an offence under any of the clauses (b) to (g) (both inclusive), with imprisonment for a term which may extend to one year or with fine which may extend to four thousand rupees, or with both.]]

B5. Offences by companies

¹[(1) If the person committing an offence under this Act is a company, every person, who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director or manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Section 86A of ESI Act, 1948

B5. Offences by companies (Continued)

Explanation.--For the purposes of this section,--

(i) "company" means any body corporate and includes a firm and other associations of individuals; and

(ii) "director" in relation to--

(a) a company, other than a firm, means the managing director or a whole-time director;

(b) a firm means a partner in the firm.]

Section 86A of ESI Act, 1948

B6. Repeat offences

¹[Whoever, having been convicted by a court of an offence punishable under this Act, commits the same offence shall, for every such subsequent offence, be punishable with imprisonment for a term which may extend to ²[two years and with fine of five thousand rupees]:

Provided that where such subsequent offence is for failure by the employer to pay any contribution which under this Act he is liable to pay, he shall, for every such subsequent offence, be punishable with imprisonment for a term which may extend to ³[five years but which shall not be less than two years and shall also be liable to fine of twenty five thousand rupees].

C. Provident Fund

- C1. Employer
- C2. Recovery of Moneys as Land Revenue
- C3. Penalties
- C4. Offences by Companies
- C5. Repeat Offences and Cognizable Offence

C1. Employer

⁶[e) "employer" means--

- (i) in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier and, where a person has been named as a manager of the factory under clause (f) of sub-section (1) of section 7 of the Factories Act, 1948 (63 of 1948), the person so named; and
- (ii) in relation to any other establishment, the person who, or the authority which, has the ultimate control over the affairs of the establishment, and where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent;]

Section 2(e) of Employees' Provident Funds Family Pension Fund and Deposit Linked Insurance Fund Act, 1952

C2. Recovery of moneys as land revenue

Any amount due--

(a) from the employer in relation to²[an establishment] to which any³[Scheme or the Insurance Scheme] applies in respect of any contribution payable to⁴[the Fund or, as

may, if the amount is in arrear,⁹[be recovered¹⁰[by the Central Provident Fund Commissioner or such other officer as may be authorised by him, by notification in the Official Gazette, in this behalf] in the same manner as an arrear of land revenue.]

Section 8 of Employees' Provident Funds Family Pension Fund and Deposit Linked Insurance Fund Act, 1952

C3. Penalties

(1) Whoever, for the purpose of avoiding any payment to be made by himself under this Act ¹ [,the Scheme ² [the ³ [Pension] Scheme or the Insurance Scheme]] or of enabling any other person to avoid such payment, knowingly makes or causes to be made any false statement or false representation shall be punishable with imprisonment for a term which may extend to ⁴ [one year, or with fine of five thousand rupees, or with both].

⁵ [(1A) An employer who contravenes, or makes default in complying with, the provisions of section 6 or clause (a) of sub-section (3) of section 17 in so far as it relates to the payment of inspection charges, or paragraph 38 of the Scheme in so far as it relates to the payment of administrative charges, shall be punishable with imprisonment for a term which may extend to ⁶ [three years], but--

(a) which shall not be less than ⁷ [one year and fine of ten thousand rupees] in case of default in payment of the employees' contribution which has been deducted by the employer from the employees' wages;

⁸ [(b) which shall not be less than six months and a fine of five thousand rupees, in any other case]:

Section 14 of Employees' Provident Funds Family Pension Fund and Deposit Linked Insurance Fund Act, 1952

C3. Penalties (Continued)

Provided that the court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a lesser term

(2) ¹⁴ [Subject to the provisions of this Act, the Scheme] ² [, the ³ [Pension] Scheme or the Insurance Scheme] may provide that any person who contravenes, or makes default in complying with, any of the provisions thereof shall be punishable with imprisonment for a term which may extend to ⁴ [one year, or with fine which may extend to four thousand rupees, or with both].

¹⁵ [(2A) Whoever, contravenes or makes default in complying with any provision of this Act or of any condition subject to which exemption was granted under section 17 shall, if no other penalty is elsewhere provided by or under this Act for such contravention or non-compliance, be punishable with imprisonment which may extend to ⁴ [six months, but which shall not be less than one month, and shall be liable to fine which may extend to five thousand rupees].]

Section 14 of Employees' Provident Funds Family Pension Fund and Deposit Linked Insurance Fund Act, 1952

C4. Offences by companies

(1) If the person committing an offence under this Act²[, the Scheme or³[the⁴[Pension] Scheme or the Insurance Scheme]] is a company, every person, who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under the Act²[, the Scheme or³[the⁴[Pension] Scheme or the Insurance Scheme]] has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director or manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.--For the purposes of this section,--

(a) "company" means any body corporate and includes a firm and other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.]

Section 14A of Employees' Provident Funds Family Pension Fund and Deposit Linked Insurance Fund Act, 1952

C5. Repeat Offence & Cognizable Offence

Whoever, having been convicted by a court of an offence punishable under this Act, the Scheme or²[the³[Pension] Scheme or the Insurance Scheme], commits the same offence shall be subject for every such subsequent offence to imprisonment for a term which may extend to⁴[five years, but which shall not be less than two years, and shall also be liable to a fine of twenty-five thousand rupees].

Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898) an offence relating to default in payment of contribution by the employer punishable under this Act shall be cognizable.

D. Minimum Wages

D1. Employer

D2. Penalties

D3. Offences by Companies

D1. Employer

(e) "employer" means any person who employs, whether directly or through another person, or whether on behalf of himself or any other person, one or more employees in any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, and includes, except in sub-section (3) of section 26,--

(i) in a factory where there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, any person named under [6](#)[clause (f) of sub-section 7 of the Factories Act, 1948 (63 of 1948)] as manager of the factory;

Section 2(e) of The Minimum Wages Act, 1948

D2. Penalties

Any employer who--

(a) pays to any employee less than the minimum rates of wages fixed for that employee's class of work, or less than the amount due to him under the provisions of this Act; or

(b) contravenes any rule or order made under section 13,

shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both;

Provided that in imposing any fine for an offence under this section, the Court shall take into consideration the amount of any compensation already awarded against the accused in any proceedings taken under section 20.]

Section 22 of The Minimum Wages Act, 1948

D3. Offences by companies

(1) If the person committing any offence under this Act is a company, every person who at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly;

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer of the company shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.--For the purposes of this section,--

(a) "Company" means any body corporate and includes a firm or other association of individuals; and

(b) "director" in relation to a firm means a partner in the firm.]

Section 22C of The Minimum Wages Act, 1948

E. Payment of Bonus

E1. Employer

E2. Penalties

E3. Offences by Companies

E1. Employer

(14) "employer includes-

(i) in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier and where a person has been named as a manager of the factory under clause (0 of sub-section (1) of section 7 of the Factories Act, 1948 (63 of 1948), the person so named; and

(ii) in relation to any other establishment, the person who, or the authority which, has the ultimate control over the affairs of the establishment and where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent;

Section 2(14) of The Payment of Bonus Act, 1965

E2. Penalties

If any person--

- (a) contravenes any of the provisions of this Act or any rule made thereunder; or
- (b) to whom a direction is given or a requisition is made under this Act fails to comply with the direction or requisition,

he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Section 28 of The Payment of Bonus Act, 1965

E3. Offences by companies

(1) If the person committing an offence under this Act is a company, every, person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.--For the purposes of this section,--

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

Section 29 of The Payment of Bonus Act, 1965

Thanks!

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