

Labour Law

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Topic- Penalties and procedure under the Factories Act 1948.

Introduction –

In India, After independence, there is a fast-growing development of factories. There is no law that protects the workers right under factories. There is a various unsatisfactory provision related to health, safety, and welfare of workers. There is a need to make a law which provides protection to the right of workers. After that Factories Act, 1948 is formed and is come in force on 1st April 1949. This Act protects the rights of workers, so to channelized all the provisions of this Act. There is a necessity to make the provision of a penalty then it was provided under Chapter X of this Act. In some sort of punishment is provided to offenders under this Act. Penalty creates fear in the mind of the offender so he follows the provision of Factories Act, 1948.

Various form of the penalty provided under the Factories Act 1948-

There are various penalty is provided under this Act

The general form of penalty

The general form of penalty is provided under Section 92 of this Act. If any factory makes any provision, rule or order in writing which is contrary to the provision of this Act then the occupier and manager shall be guilty under this Act. The imprisonment under Factories Act which may extend to two years or fine which may extend to one lakh rupees. If an offender continues the contravention after conviction then fine may extend to one thousand rupees per day.

If there is a contravention related to the provision of the Safety of workers under Chapter IV or Section 87 (Dangerous Operation) then this has resulted in the death or serious bodily injury of the worker then the offender is liable for that. In the case of death fine shall not less than twenty-

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five thousand rupees and in serious bodily injury fine shall not less than five thousand rupees provided under this Act.

A penalty in the form of liability of the owner of premises

A penalty in the form of liability of the owner of the premises in certain circumstances mentioned under Section 93 of the Factories Act, 1948.

- If there are any separate building from the premises. This separate building was given to lease for work as a factory then the owner of the premises has a responsibility to provide proper maintenance and facility to workers like approachable roads, drainage systems, Water supply, lighting, and sanitation.
- The chief inspector has a power in subject with the state government to issue directions, related to the proper maintenance of the facility in the premises of factory-like proper roads, drainage system, water supply, lighting, etc.
- In any premises, independent or self-control, floor or flat are given in lease to another occupier. The occupier has a responsibility to a given proper facility like-
- Latrines urinals and washing facility are proper or not, Water is properly provided or not.
- Proper fencing of machinery and plants for the safety of workers working under the factory.
- No material put on stairs and common passage leave sufficient space for passing the

passage

- Taken precautions in case of fire and emergency arise.
- Proper maintenance of lifts and hoists.
- The chief inspector sees all the above facilities if this facility is not properly maintained by the owner of that premises then we can understand that owner as an occupier and manager of the factory. Punishment is given to that owner of the premises.

In the various forms, the penalty is enhanced after a previous conviction

If the person is previously convicted and again doing the same offense so that the penalty of that person is enhanced. It was mentioned under Section 94 of the Factories Act, 1948

If a person committed a crime under Section 92 of the Factories Act, 1948 and again doing the same crime under the same section then punishment is –

- Imprisonment which may extend to three years or fine which may not less than ten thousand rupees and may not extend up to two lakh rupees or both.
- If any court gives fine less than ten thousand rupees then it was necessary to specially mention the reason for commuting the fine.

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- If there is any contravention to the provision of Chapter IV or Section 87 due to it there is a result of an accident causing death or serious bodily injury then the punishment for it. For death, fine is not less than thirty-five thousand rupees and in case serious bodily injury then fine is not less than ten thousand rupees.

When will be the penalty provided

The penalty will be provided for obstructing the inspector (Section 95)

- When the inspector is willfully obstructed to premises and stop them to use his power which is provided under this Act.
- When inspector demand to produce any document or register for checking but they were not provided the excess of these documents or register.
- When the inspector wants to talk to the workers for inspecting but factory members were not allowed the workers to talk with the inspector and sometimes they have concealed information of the workers, also prevent the worker to talk them.

If the above consequences arise then punishment is –

Imprisonment which may extend to six months or fine which may extend to ten thousand rupees or with both.

The penalty will be provided for wrongfully disclosing the result analysis of section 91

It was mentioned under Section 96

Section 91 is very important for punishing offenses. If the result of the sample report is published or disclosed then it comes under offense. The punishment for is imprisonment which may extend to six months or fine which may extend to ten thousand rupees or both.

The penalty is provided when there is any contravention of the provision of section 41-B, 41-C and 41-H

It was mentioned under Section 96- A, which states that if there is any contravention with the provision of Section 41-B, 41-C, and 41-H then imprisonment which may extend to seven years and with fine which may extend to two lakh rupees. After the conviction offense continues then fine is extend to five thousand rupees per day. If one year is passed but still there is a contravention of provision then imprisonment extended up to ten years.

Offenses have done by workers

It was mentioned under Section 97 that

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- There are certain duties of workers which are mentioned under section 111 if it was not fulfilled then fine is imposed which may extend to five hundred rupees.
- The occupier or manager of the factory is not liable if they prove that they take all reasonable care and prevention then they were held not guilty for the actions of workers.

When anyone produces a false certificate of fitness then the penalty will be provided

In section 98, it was stated that the occupier or manager of the factory or parents of a child or child himself makes a false certificate then the punishment is provided to that person. Imprisonment which may extend to two months or fine which may extend to one thousand rupees.

If anyone provided double employment of child then the penalty will be provided.

In Section 99

If a child works in a factory. parents or guardian or any person who has custody of the child or controls the child using force on the child to do extra work for the benefit of wages then the court provides the punishment. Fine which may extend to one thousand rupees. If parents, guardians or that person who has control child prove that they were not forcing the child then they were held not guilty for that.

Opportunity for occupier or manager of the factory to escape from his liability

In under Section 101

- When the charges imposed on the occupier or manager of the factory. The notice of intention is given after receiving the notice, manager or occupier within 3 days file a duly complained.
- The manager or occupier alleges that we are not the true offender of that crime. Another person is liable for that.
- The court has do cross-examination of that another person for satisfaction and call them for hearing.

The hearing happened but that another person did not come in front of court then the court adjourns the proceeding and wait for three months.

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- Court believes that the real offender is the occupier or manager of the factory then the court punished that offender.

Power of the court-

In section 102, the power of the court to make an order

It was stated that the court provides punishment to the offender but also see the public interest and remedial punishment is provided.

Presumption as to employment-

In Section 103, If any worker working on a machine except at the time of interval then that person assumed as an employee of that factory.

Onus as to age-

In Section 104, onus means to prove. The burden of proof of age lies in the accused himself. The certificate of certified surgeon regarding age worked as evidence in this case. If any question is arises in the age of workers working in a factory.

Application of Cancellation of Bailable Warrant Format

The onus of proving limits of what is practicable, etc.-

In Section 104-A, If there is any contravention with the provision of this Act or rule made thereunder, for the offense proceeding is done. Court passed his verdict and impose the duty. Those people who fail to comply with the duty then they have to prove that this is practically impossible or they have taken all the measures properly.

Cognizance offense

In Section 105, In this, no court can entertain the case without the written permission of an inspector.

Only the presidency magistrate or magistrate of first-class can entertain the case.

Limitation of Prosecution

In Section 106, When the offense comes in the knowledge of inspector on that date, within three months we file a complaint. If someone wants to file a complaint against the written order of an inspector then within six months we file a complaint.

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Jurisdiction of court

In Section 106-A, where the plant or factory is situated on that area of the court has jurisdiction to entertain the case.

Conclusion

For the success of every legislation, there is a need for proper execution. The provision of penalty helps the legislature for execution. The penalty which is provided under the Factories Act, 1948 is very less. If we see the reality the manager or occupier due to less effective penalty escapes from their liability just to pay the fine. If we interpret some sections of the penalty “OR” word is mentioned. This word “OR” provides benefits to managers or occupiers. There is a need for changes in the provision of penalty.

The End