

# THE EMPLOYERS' LIABILITY ACT, 1938

[Act No. 24 of 1938]

[24th September, 1938]

*An Act to declare that certain defences shall not be raised in suits for damages [\* \* \*] in respect of injuries sustained by workmen.*

## STATEMENT OF OBJECTS AND REASONS

Under the common law of England, in civil suits for damages for injuries sustained by workmen it is open to the employer to plead-

(1) the doctrine of common employment, by which the employer is not normally liable to pay damages to a workman for an injury resulting from the default of another workman;

(2) the doctrine of assumed risk, by which an employer is presumed to have accepted a risk if it is such that he ought to have known it to be part of the risks of his occupation.

The Royal Commission on Labour regarded both these doctrines as inequitable and recommended by a majority that a measure should be enacted abrogating these defences. Provincial Governments were consulted in 1932 and were almost unanimously in favour of legislation for the purpose. In the meantime judicial decisions in British India while generally agreeing as to the intractability of the doctrines have been such as to leave it open to employers in most provinces to have recourse to them. The Bill seeks to abolish these defences in the case of all workmen.”-[Published in Gazette of India, 1938, part V, page 286.]

Where it is expedient to declare that certain defences shall not be raised in suits for damages in respect of injuries sustained by workmen; It is hereby enacted as follows:

1. **Short title and extent.**- (1) This Act may be called the Employers; Liability Act, 1938.

(2) It extends to the whole of India [\* \* \*]

2. **Definitions.**- In this Act, unless there is anything repugnant in the subject or context,-

(a) “workman” means any person who has entered into, or works under a contract of, service or apprenticeship with an employer whether by way of manual labour, clerical, work or otherwise, and whether the contract is expressed or implied, oral or in writing ; and

(b) “employer” includes any body of persons whether incorporated or not, any managing agent of an employer and, the legal representative of a deceased employer, and

where the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, means such other person while the workman is working for him.

**3. Defence of common employment barred in certain cases.-** Where personal injury is caused to a workman,-

(a) by reason of the omission of the employer to maintain in good and safe condition any way, works, machinery or plant connected with or used in his trade or business, or by reason of any like omission on the part of any person in the service for the employer who has been entrusted by the employer with the duty of seeing that such way, works, machinery or plant are in good and safe condition :  
or

(b) by reason of the negligence of any person in the service of the employer who has any superintendence entrusted to him, whilst in the exercise of such superintendence : or

(c) by reason of the negligence of any person in the service of the employer to whose order or directions the workman at the time of the injury was bound to conform, and did conform, where the injury resulted from his having so conformed : or

(d) by reason of the act or omission of any person in the service of the employer done or made-

(i) in the normal performance of the duties of that person : or

(ii) in obedience to any rule or bye-law of the employer (not being a rule or bye-law which is required by or under any law for the time being in force to be approved by any authority and which has been so approved) ; or

(iii) in obedience to particular instructions given by any other person to whom the employer has delegated authority in that behalf ;

A suit for damages in respect of the injury instituted by the workman or by any person entitled in case of his death shall not fail by reason only of the fact that the workman was at the time of the injury a workman of, or in the service of, or engaged in the work of , the employer.

**3-A. Contracting out.-** Any provision contained in a contract of service or apprenticeship, or in an agreement collateral there, shall be void in so far as it would have

the effect of excluding or limiting the liability of the employer in respect of personal injuries caused to the person employed or apprenticed by the negligence of persons in common employment with him.

4. **Risk not to be deemed to have been assumed without full knowledge.-** In any such suit for damages, the workman shall not be deemed to have undertaken any risk attaching to the employment unless the employer proves that the risk was fully explained to and understood by the workman and that the workman voluntarily undertook the same.

5. **Saving.-** Nothing in this Act shall affect the validity of any decree or order of a Civil Court passed before the commencement of this Act in which any such suit or damages.

## [THE] EMPLOYEES PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT, 1952

[Act 19 of 1952]

4th March, 1952]

An Act to provide for the institution of provident funds,<sup>1</sup> [family pension fund and deposit-linked insurance fund] for employees in factories and other establishments.

Be it enacted by Parliament as follows :-

### STATEMENTS OF OBJECTS AND REASONS

“The question of making some provision for the future of the industrial worker after he retires or for his dependants in case of his early death, has been under consideration for some years. The ideal way would have been provision through old age and survivors’ pensions as has been done in the industrially advanced countries. But in the prevailing conditions in India the institution of a pension scheme cannot be visualised in the near future. Another alternative may be for provision of gratuities after a prescribed period of service. The main defect of a gratuity scheme, however, is that amount paid to a worker or his dependants would be small. As the worker would not himself be making any contribution to the fund. Taking into account the various difficulties, financial and administrative, the most appropriate course appears to be the institution compulsorily of contributory provident funds in which both the worker and the employer would, contribute, Apart from other advantage, there is the obvious one of cultivating among the workers a spirit of saving

something regularly. The institution of a provident fund of this type would also encourage the establishing of a steady labour force in industrial centres.

2. The subject of legislation for instituting compulsorily of contributory provident funds in industrial undertakings was discussed several times at tripartite meetings in which representatives of the Central and State Governments and of employers and workers took part. A large measure of agreement was reached that there should be such legislation. Further, a non-official bill on this subject was introduced in the central legislature in 1948 and was withdrawn only on an assurance given that Government itself would soon consider the introduction of a comprehensive Bill. The view that the proposed legislation should be undertaken was lastly endorsed by the conference of provincial Labour Ministers held in January 1951. It may be added that a statutory contributory provident Fund already exists for workers in coal mines, covering about 300,000 persons. This has been in operation for about five years and is working very satisfactorily.

3. The Bill provides for institution, in the first instance, of contributory provident funds in the six major organised industries named in schedule<sup>1</sup>, except undertakings owned by the Central or a State Government or by a local authority. There is also a provision empowering the central Government by notification, to add other industries to the schedule or to apply the Act to industrial undertakings employing less than fifty persons.

4. To avoid any hardship to new establishments, a provision has been made for exempting them for a period of three years and similar exemptions are given to other establishments which are less than three years old if they have been in operation for a period of three years in all the rate of contribution will be 6-1/4 per cent of the total emoluments of the worker, the worker and the employer each contributing these amounts. Further, the scheme could empower payment of a higher subscription by the worker at their option.

5. Where Provident Funds exist in private industry, contributions are usually a percentage of the basic wage, Unlike Government Departments, wages in private industry have not, however, been rationalised and there are very great variations in the level of basic wages in private industry, even in different units in the same industry. If contributions are reckoned on the basis of basic wage only, workers and may also penalise those employers

---

1. Substituted by Act No. 99 of 1976. s. 16.

who have brought the level of basic wages more in accord with current requirements. Government appreciates that dearness allowance is a variable factor depending on the cost of living. Nevertheless, for the reasons explained, Government is satisfied that contributions to the Provident Fund should be on the basis of basic pay plus dearness allowance. This should not be construed as in any employing that dearness allowances on the existing rates are to be recognised as a permanent measure.

14	Hearing impairment cause by noise	All work involving exposure to t risk concerned.
15	Poisoning by dinitrphenol or homologue or by substituted dimrrophenol or by the salts of such obstinacies.	All work involving exposure to t risk concerned.
16	Disenses caused by beryllium or its tick compounds	All work involving exposure to t risk concerned.
17	Discuses caused by cadmium or its act compounds.	All work involving exposure to t risk concerned.
18	Decupational asthma caused by recognised sensitising agents herent to the work process.	All work involving exposure to t risk concerned.
19	Diseases caused by fluorine or its the compounds.	All work involving exposure to t risk concerned.
20	Diseases caused by metrology cerince or other nitro acid stores.	All work involving exposure to t risk concerned.
21	Diseases caused by allcohols and ketones.	All work involving exposure to t risk concerned.
22	Diseases caused by asphyxiants; carbon monoxide, and its toxic derivatives, hydrogen sulphide.	All work involving exposure to t risk concerned.
23	Long cancer and mesotheliomas caused by asbestos.	All work involving exposure to t risk concerned.
24	Primary ncoplasm of the epithclial licaing of the urinary bidder or the kidney or the under.	All work involving exposure to t risk concerned.
	<b>Part C</b>	

1	Pneumoconioses caused by scieregic minernt dust (silicosis, anthreoc-silicosis asbestosis) and silica-cuberculosis provided that socialises is an essential factor in causing the resultant incapacity or death	All work involving exposure to t risk concerned.
2	Bagassosis.	All work involving exposure to t risk concerned.
3	Bronchopulmonary diseases caused by cotton, flax hemp and sisal dust (Businesses).	All work involving exposure to t risk concerned.
4	Extrinsic allergic velocities caused by the inhalation of organic dusts.	All work involving exposure to t risk concerned.
5	Bronchopulmonary diseases caused by hard metals.	All work involving exposure to t risk concerned.