

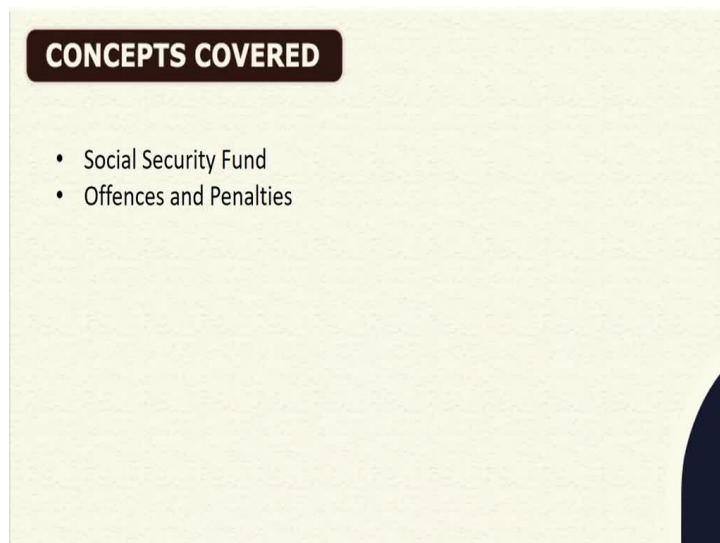
**New Labour Codes of India**  
**Professor K D Raju**  
**Rajiv Gandhi School of Intellectual Property Law**  
**Indian Institute of Technology Kharagpur**  
**Lecture 53**  
**Social Security Fund, Offences and Penalties**

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Dear students in this class we are going to discuss about the constitution of the Social Security Fund and more importantly, the offences and penalties in the Occupational Safety Code. So because the implementation /enforcement is an important part of any legislation, you must know what are the penalties prescribed under this particular code.

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So we know that without offences and the corresponding penalties imposed and the authorities mentioned no legislation can be successfully implemented.

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- **Social Security Fund under The Occupational Safety, Health and Working Conditions Code, 2020**

#### □ **Sec. 115: Social Security Fund**

- There shall be established by the appropriate govt. a social security fund for the welfare of the unorganized workers, the credited amount received from the composition of the offence, specified u/s.111(6)
- The fund also be funded by such other sources as may be prescribed by the appropriate govt
- The fund shall be administered and expended for welfare of the unorganized workers, including the transfer of amount in the fund to any fund established under any other law for the time being in force

So first of all, the Social Security fund the Occupational Safety and Health Working Conditions Code prescribed for a Social Security fund. So what is this particular fund and what is its constitution? So section 115 says that there shall be a social security fund established by the appropriate government. So central government also can constitute a Social Security fund, and the state government also can constitute a Social Security fund for the welfare of especially unorganized workers.

And other funds can also come from other sources as well, so the appropriate governments can prescribe where the funds will come. And the funds shall be administered and expanded,

for the welfare of unorganized workers only. For the transfer of the amount to any funds established under any other law for the time being in force, that means, the Social Security fund can be only used for the purpose of unorganized workers.

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- **Offences and Penalties under The Occupational Safety, Health and Working Conditions Code, 2020**

- **Sec. 94: General penalty for offences**

- It provides general penalty for those offences, which expressly not mentioned in this Code.
- **Offence-** causing **contravention to any provision of this Code or any rules or any other law** for the time being in force by the employer or principal employer of any establishment.
- **Penalty –** Liable to pay **penalty not less than Rs. 2 lakhs but may extend upto Rs. 3 lakhs.** In case of continuation of contravention after conviction, **penalty extend for Rs. 2,000/day** till such contravention continues

And now, we will see what are offences and penalties under the particular code. Here causing contravention of any of the provisions of this particular code or rules they are under will be considered as an offence. So it may be the being the offences done by the employer, principal employer or any of any establishment and here in the general contraventions. So if anything is not mentioned in the particular code, the penalty is not less than 2 lakh rupees, but may be extended to 3 lakh rupees.

So it means that if there is no punishment is mentioned for a particular offence under contravention of any of the provisions of this particular code, then the penalty is going to be 2 lakhs to 3 lakh rupees. So if it is repeatedly done, the continuation of contravention of conviction, the penalties will be 2000 rupees per day till such contravention continues. So the total penalties are increased for general offences.

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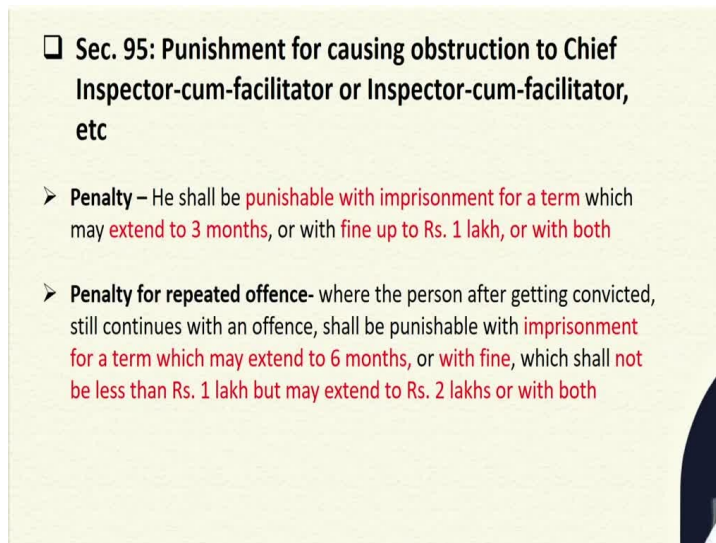
❑ **Sec. 95: Punishment for causing obstruction to Chief Inspector-cum-facilitator or Inspector-cum-facilitator, etc**

➤ **Offence-** whoever wilfully-

- i. Prevents or causes obstruction to Chief Inspector-cum-facilitator or Inspector-cum-facilitator or an officer of an appropriate govt, to discharge any duty or exercise any of his power under this Code or under any other law for the time being in force;
- ii. Refuse entry to the Chief Inspector-cum-facilitator or Inspector-cum-facilitator to any place, where such officer is entitled to enter;
- iii. Fails or refuses to produce any document which he is required to produce;
- iv. Fails to comply with any requisition or order issued to him

Then punishment for causing obstruction to the chief Inspector cum facilitator. So some of the employees may prevent the Inspector cum facilitator from entering the premises. So preventing or causing an obstruction for discharging the functions of Inspector cum facilitator or somebody to refuse entry to chief Inspector cum facilitator to any place where such officer is entitled to enter, fails or refuses to produce any document, fails to comply with the requisition order issued to him by the Inspector cum facilitator.

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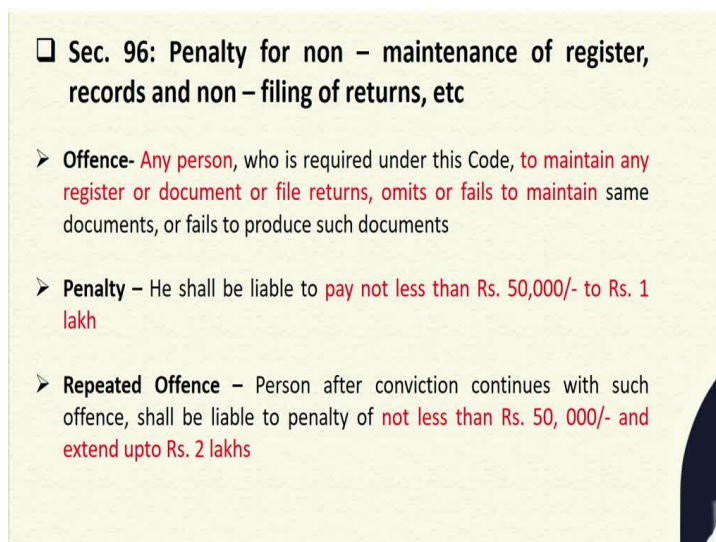


❑ **Sec. 95: Punishment for causing obstruction to Chief Inspector-cum-facilitator or Inspector-cum-facilitator, etc**

- **Penalty** – He shall be punishable with imprisonment for a term which may extend to 3 months, or with fine up to Rs. 1 lakh, or with both
- **Penalty for repeated offence**- where the person after getting convicted, still continues with an offence, shall be punishable with imprisonment for a term which may extend to 6 months, or with fine, which shall not be less than Rs. 1 lakh but may extend to Rs. 2 lakhs or with both

Then also we can see the penalty for causing obstruction, not producing documents, not allowing to entering into premises, it is punishable with imprisonment for a term which may extend to 3 months or a fine of 1 lakh rupees. So we can see in general the punishments have been increased, and the amount has been increased substantially. So repeated offences, again we can say that it is from 3 months to 6 months punishment and then the penalty is from 1 lakh to 2 lakh rupees. So the penalty has been increased.

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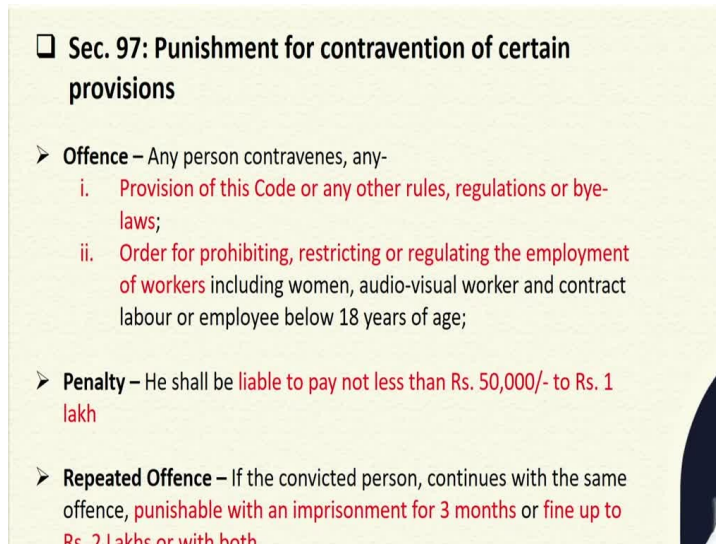
❑ **Sec. 96: Penalty for non – maintenance of register, records and non – filing of returns, etc**

- **Offence**- Any person, who is required under this Code, to maintain any register or document or file returns, omits or fails to maintain same documents, or fails to produce such documents
- **Penalty** – He shall be liable to pay not less than Rs. 50,000/- to Rs. 1 lakh
- **Repeated Offence** – Person after conviction continues with such offence, shall be liable to penalty of not less than Rs. 50, 000/- and extend upto Rs. 2 lakhs

If the occupier is not maintaining a register, records, and non-filing of returns every year to the Inspector, so we talked about the electronic filing of returns. So violation of any of these provisions, the penalty is to pay not less than 50,000 rupees to 1 lakh rupees and repeated

offences 50,000 to 2 lakh rupees. So it is going to be a problem for the prospective occupiers of the factory not to comply with is not a proposition at all.

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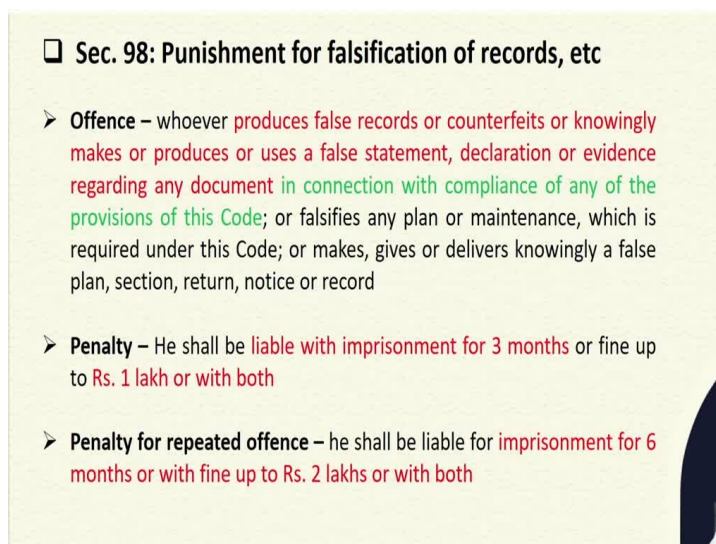


❑ **Sec. 97: Punishment for contravention of certain provisions**

- **Offence** – Any person contravenes, any-
  - i. Provision of this Code or any other rules, regulations or bye-laws;
  - ii. Order for prohibiting, restricting or regulating the employment of workers including women, audio-visual worker and contract labour or employee below 18 years of age;
- **Penalty** – He shall be liable to pay not less than Rs. 50,000/- to Rs. 1 lakh
- **Repeated Offence** – If the convicted person, continues with the same offence, punishable with an imprisonment for 3 months or fine up to Rs. 2 lakhs or with both

So other offences which we can see that any person contravenes the provisions of this code rules, regulations, bye-laws or prohibiting or restricting or regulating employment of workers and also including women, audio-visual workers, contract labourers, I mean employees below 18 of age. So the penalty shall be not less than 50,000 rupees to 1 lakh rupees and repeated offenders will be punished with you can say that the imprisonment of 3 months or fine up to 2 lakh rupees or both.

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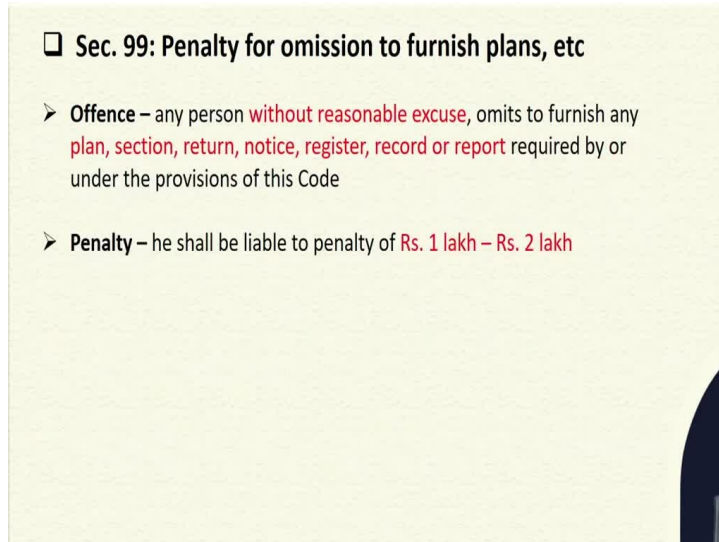


❑ **Sec. 98: Punishment for falsification of records, etc**

- **Offence** – whoever produces false records or counterfeits or knowingly makes or produces or uses a false statement, declaration or evidence regarding any document in connection with compliance of any of the provisions of this Code; or falsifies any plan or maintenance, which is required under this Code; or makes, gives or delivers knowingly a false plan, section, return, notice or record
- **Penalty** – He shall be liable with imprisonment for 3 months or fine up to Rs. 1 lakh or with both
- **Penalty for repeated offence** – he shall be liable for imprisonment for 6 months or with fine up to Rs. 2 lakhs or with both

Then, punishment for falsification of records. So falsification of records is a criminal offence. So whoever produces false records, counterfeits or knowingly makes or produces or uses a false statement, declaration or evidence regarding any document. So then falsifies any plan or maintenance which is required under the code or makes, give delivers knowingly a false plan, section, return, number, notice, etc. Such offences shall be punished with imprisonment for 3 months and fine up to 1 lakh rupees. So repeated offences from 3 to 6 months and 1 to 2 lakh rupees.

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□ **Sec. 99: Penalty for omission to furnish plans, etc**

- **Offence** – any person **without reasonable excuse**, omits to furnish any **plan, section, return, notice, register, record or report** required by or under the provisions of this Code
- **Penalty** – he shall be liable to penalty of **Rs. 1 lakh – Rs. 2 lakh**

Then penalty for omission to furnish plans. So any person without reasonable excuse though these parameters are very different omits or furnishes any plan, section, return, notice, register, record or repeat report required by or under the provisions of this code penalties is 1 lakh to 2 lakh rupees. So it is like 1 lakh to 2 lakh rupees punishment.

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❑ **Sec. 100: Punishment for disclosure of information**

- **Offence** – if the Chief Inspector-cum-facilitator or Inspector-cum-facilitator or any other person, discloses any information in contravention to the provisions of this Code and without the consent of the appropriate govt
- **Penalty** – he shall be punishable with imprisonment for a term of 3 months or with fine up to Rs. 1 lakh or with both
- **Procedure** – No court shall proceed with the trial of this offence without the sanction of the appropriate govt.

Then punishment we talked about the secrecy of information received by the Inspector and Chief Inspector cum facilitator. So the Chief Inspector cum facilitator or Inspector cum facilitator or any other person discloses any information in contravention of the provisions of this particular Act, there is a penalty or punishment of imprisonment for a term of 3 months or with a fine of 1 lakh rupees or, so it is very clear.

So divulging information is again an offence. So no court shall we proceed with the trial of this offence without the sanction of the appropriate government. It means that if prosecuting somebody, then you should take permission from the appropriate government.

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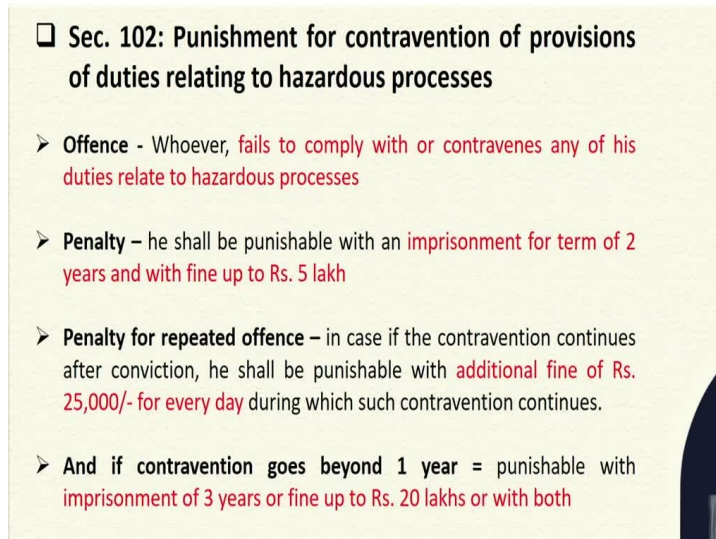
❑ **Sec. 101: Punishment for wrongfully disclosing results of analysis**

- **Offence** – whoever, except as it may be necessary, for the purposes of a prosecution for any offence punishable under this Code, publishes or discloses to any person, the results of analysis, of a sample of substance used or intended to be used any of the process under Code
- **Punishable** – he shall be punishable with imprisonment for a term of 6 months or with fine up to Rs. 50,000/- or with both



Wrongly disclosing the result of any test or analysis. So any officer or even Inspector cum facilitator discloses any analysis result and publishes it. So a sample of substance use that will need to be used for any of the purposes of the code shall be punished with imprisonment for a term of 6 months or with a fine of 50000 rupees or both.

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❑ **Sec. 102: Punishment for contravention of provisions of duties relating to hazardous processes**

- **Offence** - Whoever, fails to comply with or contravenes any of his duties relate to hazardous processes
- **Penalty** – he shall be punishable with an imprisonment for term of 2 years and with fine up to Rs. 5 lakh
- **Penalty for repeated offence** – in case if the contravention continues after conviction, he shall be punishable with additional fine of Rs. 25,000/- for every day during which such contravention continues.
- **And if contravention goes beyond 1 year** = punishable with imprisonment of 3 years or fine up to Rs. 20 lakhs or with both

Second, punishment with regard to the hazardous process. So offences and also whoever fails to comply with the contravention provisions of this hazardous provision. So we saw a lot of hazardous processes provisions, and the employer has to take special care to deal with the hazardous process and products.

So a violation is punishable with imprisonment for 2 years and can be fined up to 5 lakh rupees. So there is an increased fine in the case of hazardous materials hazardous process. So here, the contravention continues and an additional fine up to 25000 rupees per day of such contravention will be imposed. So if any contravention is beyond 1 year, so punishable with 3 years jail time and 20 lakh rupees fine or both. So the fines are gone up like anything.

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❑ **Sec. 103: Punishment for contravention of provisions of duties relating to safety provisions resulting in an accident**

➤ **Offence** – if a person fails to comply with or contravenes any duties under this Code, and that has resulted in an accident or dangerous occurrence causing-

a) **Death – Penalty** = he shall be punishable with imprisonment for a term of 2 years or with fine up to Rs. 5 lakh or with both; or

b) **Serious bodily injury – Penalty** = he shall be punishable with an imprisonment for a term not exceeding 1 year, or with fine up to Rs. 2 lakhs – Rs. 4 lakhs or with both;

**PROVIDED** – In case of fine, the Court may direct any portion of such fine of not less than 50% to be given as compensation to the legal heirs of the victim in case of death.

So again we can see that safety provisions, violation of safety provisions, if any employer occupier or person fails to comply with the contravention duties under this particular code, which will result in an accident or dangerous occurrences which leads to death, so the penalty he shall be punished with imprisonment for a term of 2 years or with fine or fine up to 5 lakh rupees or both. And serious bodily injuries, the penalty is he shall be punishable with imprisonment for a term not exceeding 1 year or with a fine up to 2 lakh rupees to 4 lakh rupees. So the fine has been substantially increased.

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❑ **Sec. 104: Special provision for contravention of order u/sec. 38**

➤ **Offence** – whoever continues to work in contravention of any general or special order issued under the provisions of section 38 (Special powers of Inspector-cum-facilitator in respect of factory, mines, dock work and building and other construction work)

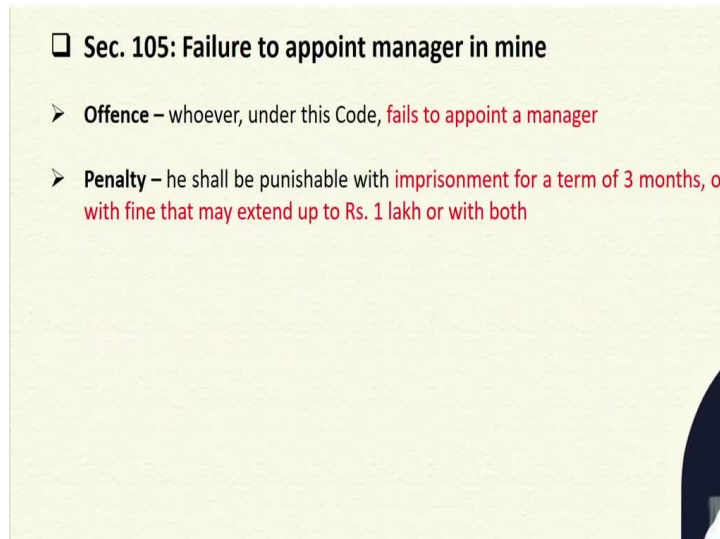
➤ **Penalty** – he shall be punishable with imprisonment for term of 2 years and also liable to fine up to Rs. 5 lakh

➤ **PROVIDED** – The Court shall not impose a fine without recording in the judgment the reasons for imposing such fine.

And special provisions for contravention of order offences. So we can see that in contravention of any general or special orders then the punishment is imprisonment for 2

years and liable to be 5 lakh rupees fine. So here the court shall not impose a fine without recording in the judgment the reason for imposing such a fine. So it is the code should clearly come out with the speaking order, and they should mention the reasons for imposing such fine.

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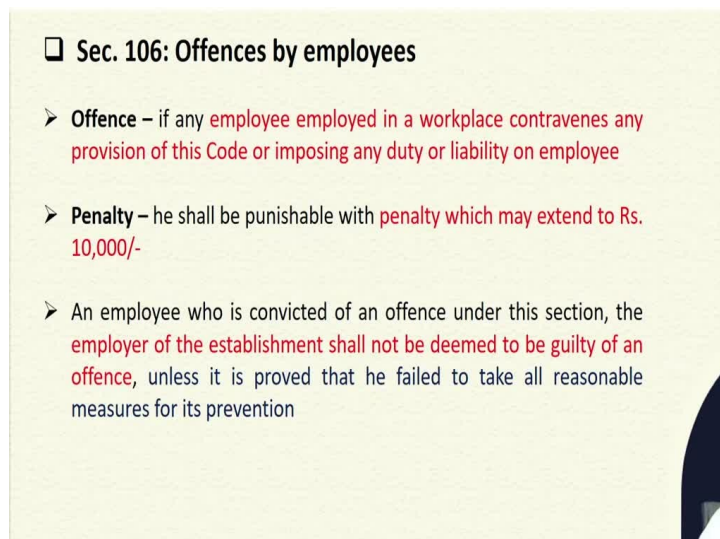


❑ **Sec. 105: Failure to appoint manager in mine**

- **Offence** – whoever, under this Code, **fails to appoint a manager**
- **Penalty** – he shall be punishable with **imprisonment for a term of 3 months, or with fine that may extend up to Rs. 1 lakh or with both**

And a failure to appoint managers in mine. So we said that because of the peculiar nature of the works in the mines, the occupier/employer should appoint managers. So if they fail to appoint a manager to manage the mines, then there will be imprisonment for 3 months or with the fine extended up to 1 lakh rupees or both. So appointing a manager is a must in mines.

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❑ **Sec. 106: Offences by employees**

- **Offence** – if any **employee employed in a workplace contravenes any provision of this Code or imposing any duty or liability on employee**
- **Penalty** – he shall be punishable with **penalty which may extend to Rs. 10,000/-**
- An employee who is convicted of an offence under this section, the **employer of the establishment shall not be deemed to be guilty of an offence**, unless it is proved that he failed to take all reasonable measures for its prevention

And now offences by employees. So if an employee employed in a workplace contravenes any provisions of this particular code, the particular code is the factory's provisions of code of 2020 Occupational Safety Code. So here the penalty is up to 10000 rupees, so the punishment is 10000 rupees. So the employee is will be imposed a fine of 10000 rupees if they are going to violate any of these particular provisions.

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❑ **Sec. 107: Prosecution of owner, agent or manager of mine**

➤ No prosecution shall be instituted against any owner, agent or manager of a mine for any offence under this Code, except –

- i. Chief Inspector-cum-facilitator; or
- ii. District Magistrate; or
- iii. Inspector-cum-facilitator;

Authorized by general or special order in writing by the Chief Inspector-cum-facilitator

➤ **PROVIDED** – the Chief Inspector-cum-facilitator or the District Magistrate or the Inspector-cum-facilitator, shall before instituting such prosecution satisfy himself that the owner, agent, or manager of a mine had failed to exercise due diligence to prevent the commission of such offence

And prosecutions which we can find of owner agent or manager. So if the agent or manager is for any other purpose they are exempted, so no prosecution shall be stood against any owner agent or manager in the case except Inspector cum facilitator or District Magistrate, Inspector cum facilitator authorized by the general special order by the Chief Inspector cum facilitator.

So here, the Chief Inspector cum facilitator or the District Magistrate shall be instituting such prosecution to satisfy himself that the owner, agent, or manager of a mine had failed to exercise due diligence and prevent the commission of any such offences. So the manager is going to be held responsible and liable under the Mines Act.

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❑ **Sec. 107: Prosecution of owner, agent or manager of mine**

➤ **PROVIDED FURTHER** – With a respect of an offence committed in the course of the technical direction and management of a mine, the District Magistrate shall not institute any prosecution against an owner, agent or manager of a mine without the previous approval of the Chief Inspector-cum-facilitator

In the case of prosecution of agent owner, agent or manager. So any offences committed in the course of technical direction and management of a mine, then the District Magistrate shall not institute any proceedings against an owner, agent or manager of mine without the previous approval of the Chief Inspector cum facilitator. So if somebody is working as a part of his work, then you require the Chief Inspector cum facilitator's permission to prosecute such person.

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❑ **Sec. 108: Exemption of owner, agent or manager of mine or occupier of factory from liability in certain cases**

➤ Where the owner, agent or manager of the mine or employer or occupier of the factory is charged with an offence under this Code, he shall be entitled, upon complaint duly made by him and on giving to the prosecutor not less than 3 clear day's notice to the person whom he charges as the actual offender, brought before the Court at the time of hearing the charge;

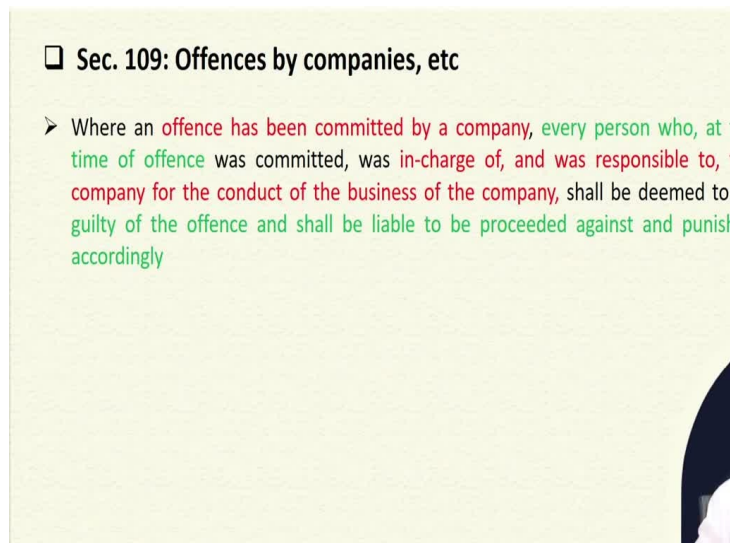
➤ If after commission of an offence, the owner, agent or manager of the mine or occupier or manager of the factory, as proves to the satisfaction of the Court-

- a) That he has exercised due diligence to enforce the execution of this Code;
- b) That the other person committed the offence in question without

Then exemptions can be given for the owner, agent and manager of mine occupier from certain liabilities. So he shall be entitled upon complaint duly made by him and on giving to the prosecutor not less than 3 days' notice.

So after the commission of an offence the owner, agent or manager of the mine or occupier of the manager of the factory, the complete satisfaction to the court, that he has exercised due diligence to explore the execution of this code. And the other persons who committed the offence without his knowledge or consent or connivance, then also who will be appointed. So that means the activities are carried out without the owner's consent, then also the owner or agent or manager can escape from liability.

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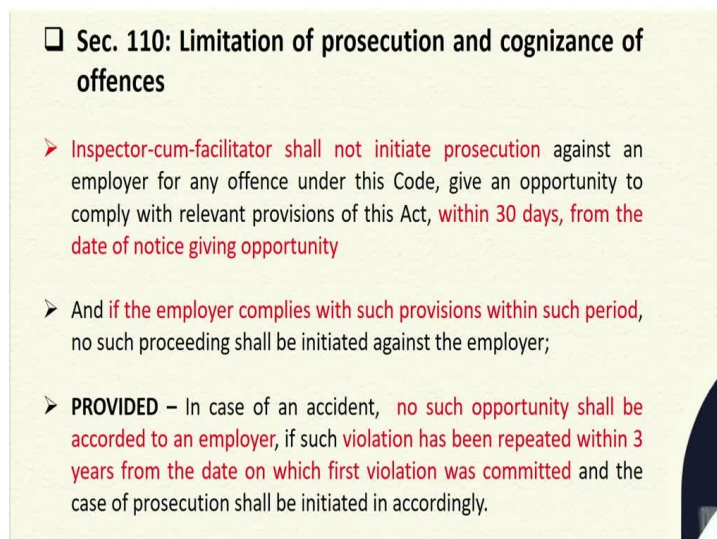


❑ **Sec. 109: Offences by companies, etc**

- Where an offence has been committed by a company, every person who, at time of offence was committed, was in-charge of, and was responsible to, company for the conduct of the business of the company, shall be deemed to guilty of the offence and shall be liable to be proceeded against and punished accordingly

In the case of companies, we saw that, who is going to be in charge of the company, who is in charge responsible to the company or to that particular business of the company, he is going to be punished under this particular Act.

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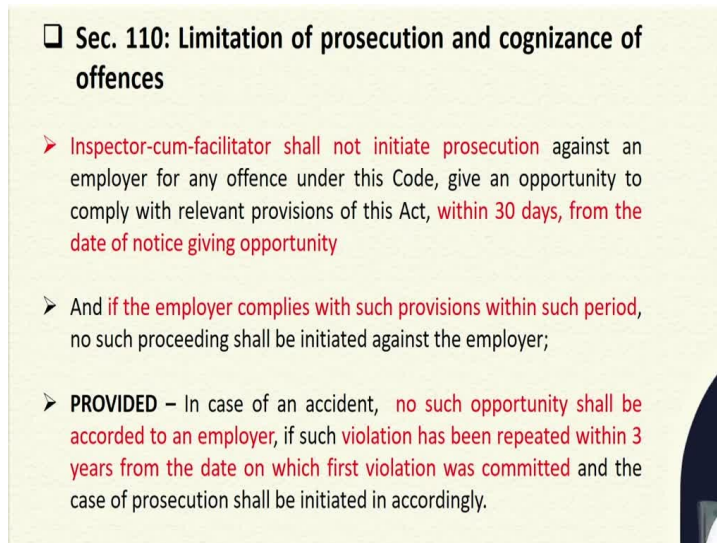


❑ **Sec. 110: Limitation of prosecution and cognizance of offences**

- Inspector-cum-facilitator shall not initiate prosecution against an employer for any offence under this Code, give an opportunity to comply with relevant provisions of this Act, within 30 days, from the date of notice giving opportunity
- And if the employer complies with such provisions within such period, no such proceeding shall be initiated against the employer;
- **PROVIDED** – In case of an accident, no such opportunity shall be accorded to an employer, if such violation has been repeated within 3 years from the date on which first violation was committed and the case of prosecution shall be initiated in accordingly.

So certain limitations we can find. So the Inspector cum facilitator shall not initiate prosecution against the employer for any offence under this court, even the opportunity to comply with the relevant provisions of this Act within 30 days from the date of receiving such opportunity. So and if the employer complies or complies with such provisions within a such particular period, no such proceedings shall be initiated against the employer.

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❑ **Sec. 110: Limitation of prosecution and cognizance of offences**

- Inspector-cum-facilitator shall not initiate prosecution against an employer for any offence under this Code, give an opportunity to comply with relevant provisions of this Act, within 30 days, from the date of notice giving opportunity
- And if the employer complies with such provisions within such period, no such proceeding shall be initiated against the employer;
- **PROVIDED** – In case of an accident, no such opportunity shall be accorded to an employer, if such violation has been repeated within 3 years from the date on which first violation was committed and the case of prosecution shall be initiated in accordingly.

And it is so we can see that certain limitations are also put and also no court shall take cognizance of any offence punishable unless a complaint is made within 6 months, so there is a limitation period. A limitation period is put on the alleged commission of the offence and the date of filing the complaint. And also Metropolitan Magistrate or Judicial Magistrate of the first class shall try any offence punishable under this code, no inferior code. So Metropolitan Courts are all the Judicial Magistrate courts are going to deal with these particular cases.

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❑ **Sec. 111: Power of officer of appropriate govt to impose penalty in certain cases**

- The appropriate govt may appoint any officer not below the rank of Under Secretary to the govt of India or an officer of equivalent rank in State Govt, for holding enquiry in such manner as prescribed by the Central govt;
- While holding an enquiry, the officer shall have the power to summon and enforce attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document, which in the opinion of the officer, is relevant and he is satisfied that such person has committed any offence

And even appropriate governments have the power to impose penalties in certain cases. So the officer not below the rank of Under Secretary to government or officer equivalent rank in state governments is holding an inquiry in such a manner as prescribed by the central government.

So while holding an inquiry, the officer shall have the power to summon and enforce the attendance of any acquainted with the facts and circumstances of the case to give evidence or to produce any such documents. So most of the powers of the civil court are available to him, so in case of invading anybody. So and also we can see that the appropriate government can impose a penalty, so officers not below the rank of Under Secretary can impose the penalty, which we already said.



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❑ **Sec. 111: Power of officer of appropriate govt to impose penalty in certain cases**

- Any person aggrieved by an order, may prefer an appeal within 60 days from the date of order, to the appellate authority to be appointed by the appropriate govt from amongst officers not below the rank of Deputy Secretary to the govt of India or equivalent rank in State govt;
- The appellate authority, after giving parties to opportunity of being heard, pass order or modify, confirming or setting aside the order within 60 days from receipt of appeal;
- Where the person fails to submit the penalty within 90 days, he shall be punishable with fine which shall be between Rs. 25,000/- - Rs. 2 lakh
- The amount received as penalty, shall be deposited to the fund established u/s 115

So in certain cases, we can see that appeal may be preferred within 60 days. And appellate authority again, while following the principles of natural justice opportunity of being heard, and confirming or setting aside the order within 60 days of such appeal, receipt of such appeal. For the person fails to submit the penalty within 90 days, so he shall be punished with a fine, and he shall be fined 25000 to 2 lakh rupees other than the punishment.

So the amount received as a penalty shall be deposited to the Social Security fund. So all the penalties under this particular code, the money will go to the Social Security fund constituted by the appropriate governments.

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❑ **Sec. 112: Jurisdiction of court for entertaining proceedings, etc., for offence**

- The Court having the jurisdiction under this Code, shall be deemed to be the place where offence has been committed, in connection to an establishment, the place where such establishment is for the time being situated

#### ❑ Sec. 113: Power of court to make orders

- Where the employer of a mine or a factory or a dock is convicted under this Code, the Court, in addition to awarding him punishment, requiring the offender within a period specified in the order, to take such measures as may be specified in the order for remedying the matters in respect of which the offence was committed.
- Where an order is made, the employer of the mine or factory shall not be liable under this Code, in respect of the continuance of the offence during the period but if the expiry of such period extended, shall be deemed to have further offence and shall be punishable with imprisonment for a term of 6 months or with fine of Rs. 100/ for every day

So jurisdiction of courts is to be notified by the State governments from time to time. And also the powers of the courts to issue orders from time to time are absolute. So the power of the court also to issue orders.

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#### ❑ Sec. 114: Composition of certain offences

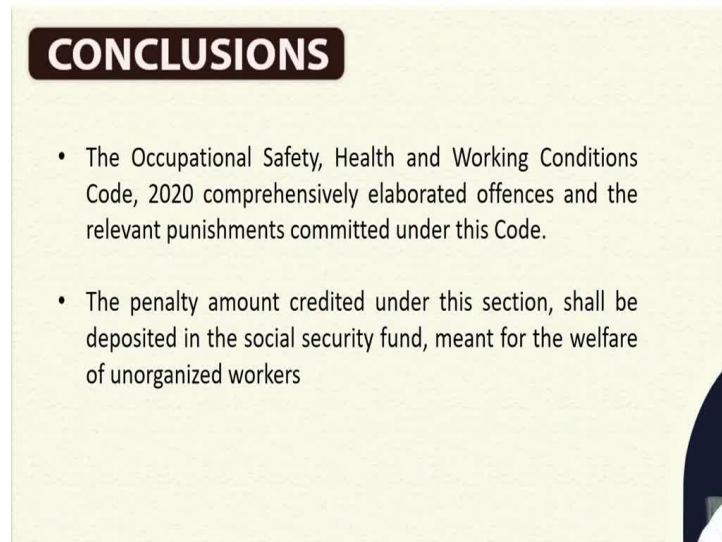
- The holding of enquiry or institution of prosecution under this Code, may be compounded by such officer of the appropriate govt as notified by that govt:
  - i. In a case of penalty for a sum of 50% of the maximum penalty, provided; and
  - ii. In a case of offence for a sum of 75% of the maximum fine provided for such offence
- Where the penalty or offence has been compounded, the person liable for penalty or the offender, shall be discharged of the penalty or offence and there shall be no further proceedings;
- Any person who fails to comply with an order, he shall be liable to pay a penalty equivalent to 20% of maximum penalty or fine;
- The amount of composition received, shall be credited to fund that is

And also compounding of certain offences is also mentioned under the Act. So only in certain cases, the compounded by such officer of the appropriate government in case of penalty for example 50 percent of the maximum penalty provided and the case of offence for a sum of 75 percent of the maximum fine provided for such offences.

So if the penalty has been compounded, the person liable for the penalty or the offender shall be discharged of the penalty or offence and there shall be no further proceedings. And a person who fails to comply with an order shall be liable to pay a penalty equal to 20 percent

of the maximum penalty for fine. So the amount of composition received shall credit to the fund in the meant for unorganized sectors. That means, the fines are deposited or can be used for the unorganized sector from the fund.

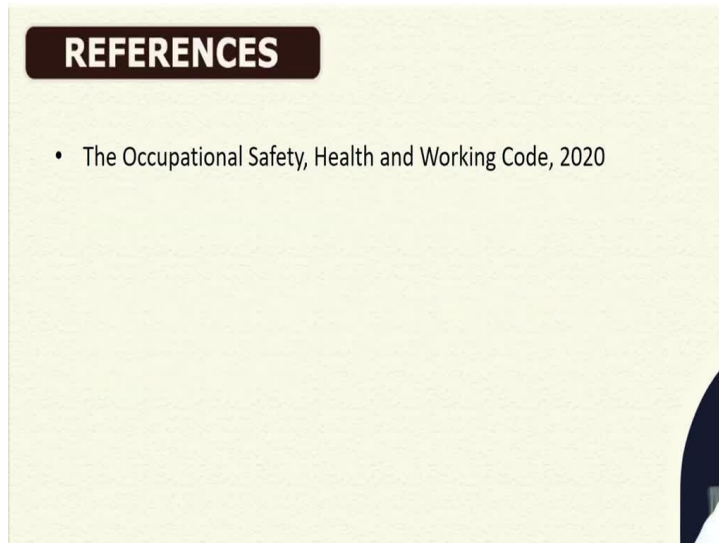
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So in conclusion, we can see that the Occupational and Safety Health and Working Condition Code 2020 has wide powers on the Inspector cum facilitator as well as we can see there the penalties imposed on various offences under this code are also very clearly mentioned.

So the penalty amount is should be put in the particular fund constitute for this and you can use this particular money for various other activities. So social security fund these penalties will go to social security funds and the welfare of unorganized workers in this country which is going to be one of the largest in the workforce. So the Occupational Health and Safety Code also use these particular provisions.

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So I would say that, so this is the end of this particular class, but we hope that these penalties are going to be used sparingly even though the amounts are very high prescribed as penalties. Thank you.