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# THE LEGAL FRAMEWORK OF EMPLOYER'S LIABILITY OF ACCIDENT AT CONSTRUCTION SITES: A CRITICAL ANALYSIS

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## ABSTRACT

The rapid urban transformation in India symbolises modern progress through the construction of high rise towers and bridges. Yet the real story is far grimmer. The records of National Statistic Office shows that the construction industry contributes over 8 % to India's GDP and provides employment to more than 5 crore workers, so it stands as a torch bearer of economic expansion.<sup>1</sup> The official statistics from the NCRB shows that thousands of workplace deaths annually, they are widely considered as the tip of an iceberg due to under-reporting.<sup>2</sup> According to international analyses India's construction industry ranks among the most hazardous in the world, with accident and fatality rates alarmingly very high. For a nation eager to project itself as a global economic force, it is a harsh reality. In the construction industry, employers hold a key responsibility to make sure the safety and security of its workers. It is the obligation of the employers to implement comprehensive safety measures, like proper training programs, the use of self-protective equipment, and regular safety checks. Failure to maintain any of these standards can make the employer liable for any. Mishappening at the site. Additionally, employers are responsible for complying with occupational health and safety laws, ensuring that all safety protocols are updated, and promptly address any hazards identified by workers. Ultimately, employer liability in construction extends from preventive measures to accountability in the event of workplace mishaps. The research paper examines the legal framework that shapes employer liability towards accidents at construction site. At its core, employer liability does not only act as a mechanism of accountability and compensation but also as a legal tool to promote a culture of safety. This author adopts doctrinal, socio-legal and comparative approach to examine what may be called India's "paradox of progressive law and regressive reality."

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<sup>1</sup> National Statistical Office (NSO), Ministry of Statistics and Programme Implementation, Government of India. *Annual Report of the Periodic Labour Force Survey (PLFS)*, 2024-25.

<sup>2</sup> National Crime Records Bureau (NCRB), Ministry of Home Affairs, Government of India. *Accidental Deaths & Suicides in India*, 2025 Report. The report's methodology often fails to capture the nuances of workplace accidents, categorizing them under generic headings.

## INTRODUCTION:

The obligations on employers at construction sites form a critical aspect of labour and safety law, particularly in construction sector. Employers, whether it be a principal employers or contractors, bear significant legal and moral responsibilities to make sure the health, safety and wellbeing of workers engaged on construction sites. These obligations are provided in various statutes such as the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, the Contract Labour (Regulation and Abolition) Act, 1970, the Employee's Compensation Act, 1923 and in OSH Code, 2020. Managers are obligated to give safe working conditions and adequate payment to its workers in case of injury, disability, or death due to their job at work place. Moreover, the concept of principal's liability holds managers accountable for the acts of their workers or contractors, especially in inherently dangerous activities such as demolition, high-rise construction, and handling hazardous materials. The obligation to care extends to ensuring compliance with health and safety regulations, conducting regular safety audits, and providing necessary training to prevent accidents. Failure to discharge these duties not only exposes employers to legal action and financial penalties but also undermines the well-being of the workforce and the integrity of the construction industry. This initiation sets the stage for the author to do thorough examination of the legal framework, practical challenges, and evolving standards governing employer liabilities on construction sites in India.

## 1. FOUNDATIONS OF EMPLOYER LIABILITY

The background of employer liability in India reflects a wider story of legal and social transformation, moving from the neglect of workers under British rule to the recognition of workplace safety as part of a rights-based constitutional framework.

- **Pre-Independence:** Prior to India's independence, questions of employer liability were largely shaped by practices adopted in local customs and community, offering formal safeguards for workers. Doctrines such as Contributory Negligence and *Volenti Non Fit Injuria*—often described as “unholy trinity” of defences—stacked the system against labourers, forming an exceedingly difficult for aggrieved workmen to claim damages.<sup>3</sup>

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<sup>3</sup> The doctrine of common employment, established in *Priestley v. Fowler* (1837) 3 M & W 1, was a significant barrier until it was progressively diluted by statute.

The first significant step with “*laissez-faire*” approach came with the **Workmen’s Compensation Act, 1923**.<sup>4</sup>

## 2. THE CONCEPTUAL AND CONSTITUTIONAL BEDROCK

The Indian Constitution is the final force and guarantor of employer liability. Its Preamble’s pledge to “social justice,” together with the fundamental rights and Directive principle of State Policies, laid down a moral and legal foundation for labour protections. For the first time, the worker was not seen merely as a party to a contract of employment but as a citizen entitled to fundamental rights and dignity. Employer liability in India rests on a powerful synthesis of common law principles, statutory duties, and overarching constitutional guarantees. The Supreme Court has, through transformative jurisprudence, filled 21<sup>st</sup> Article of the Indian Constitution with knowledgeable social meaning. In cases like *Francis Coralie Mullin*, it declared that the right to life means the right to live with human dignity.<sup>5</sup> This was explicitly tethered to workplace safety in *CEDRC v. Union of India*, where the Hon’ble Supreme court enshrined that health and a safe working environment is a " part of the right to life."<sup>6</sup> This makes workplace safety a non-negotiable constitutional rights. Directive Principle of State Policies, while not directly enforceable, are "fundamental in the governance of the country."<sup>7</sup> The courts have consistently applied these principles to widen the reach of fundamental rights, effectively requiring both the state and employers to uphold a higher standard of care toward workers. When a government body like the Public Works Department is the employer, any failure in safety can be treated as a constitutional violation, attracting serious damages.<sup>8</sup> In addition, international agreements such as UDHR and ICESCR both of which India has ratified, affirm the right to safe and healthy working conditions and have guided courts in India for shaping their construction of domestic labour rights. The International judicial system has also developed the doctrine of "constitutional tort" for violations of FR’s by the state or its instrumentalities.

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<sup>4</sup> Now the Employees’ Compensation Act, 1923.

<sup>5</sup> *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi*, AIR 1981 SC 746.

<sup>6</sup> *Consumer Education and Research Centre v. Union of India*, AIR 1995 SC 922.

<sup>7</sup> The Constitution of India, Art. 37.

<sup>8</sup> See *Nilabati Behera v. State of Orissa*, AIR 1993 SC 1960, which firmly established the principle of awarding compensation for violation of fundamental rights.

### 3. WORKERS LAWS OF INDIA

India's legal framework is characterized by a multiplicity of statutes that create a complex, sometimes overlapping, web of responsibilities for employers.

- a. **The Employees' Compensation Act, 1923:** The ECA remains the bedrock for post-accident monetary relief. It is based on no-fault liability principle in its greatest strength, ensuring that compensation is a matter of right, not a subject of dispute over negligence.<sup>9</sup> However, it prescribes compensation amounts, which is periodically revised and often seen as insufficient to counter the catastrophic economic impact of a fatality or serious disability.<sup>10</sup>
- b. **The Contract Labour (Regulation and Abolition) Act, 1970:** Since most development works is done through contractors, this Act is crucial. It firmly places the ultimate responsibility for providing amenities and ensuring payment of wages on the **principal employer** if the contractor defaults, establishing a clear chain of liability.<sup>11</sup>
- c. **The Inter-State Migrant Workmen Act, 1979:** Although now incorporated into the (OSH) Code, its core principles continue to be important. The law placed clear obligations on contractors and principal employers to provide workers recruited from other states with displacement and travel allowances, as well as adequate accommodation.
- d. **The Building and Other Construction Workers Act, 1996:** This is the cornerstone legislation, designed to be a holistic safety and welfare code. Its preventive focus is its most important feature. Chapter VI of the Act empowers the state governments to frame exhaustive rules on every conceivable aspect of construction safety, from scaffolding and ladders to excavation, demolition, and protection from chemical and biological hazards.<sup>12</sup> Its most innovative feature is the creation of State Welfare Boards funded by a 1-2% cess on all construction costs.<sup>13</sup> These boards are tasked with providing a

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<sup>9</sup> The Employees' Compensation Act, 1923, Section 3(1).

<sup>10</sup> K.M. Pillai, *Labour and Industrial Laws*, 17th ed. (Allahabad Law Agency, 2024).

<sup>11</sup> The Contract Labour (Regulation and Abolition) Act, 1970, Section 21.

<sup>12</sup> The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, Chapter VI.

<sup>13</sup> The Building and Other Construction Workers' Welfare Cess Act, 1996, Section 3.

comprehensive social safety net, including pensions, disability benefits, medical assistance, and educational scholarships for workers' children.

- e. **The (OSH) Code, 2020:** This Code aims to amalgamate 13 labour laws into a single legislative instrument.<sup>14</sup> While it is praised for its goal of simplification and universalization, it is also heavily criticized for potentially diluting worker protections. The Major concerns include the raising of thresholds for the applicability of certain safety provisions and the replacement of specific, detailed rules (like those under the BOCW Act) with more generalized, discretionary powers granted to the executive.<sup>15</sup>

### 3.1. JUDICIAL DOCTRINES: FORGING ACCOUNTABILITY

The judiciary of India has played the most dynamic force in shaping employer liability. The doctrine of absolute liability laid down in “*M.C. Mehta’s case*” is the most important contribution by the Indian judiciary.<sup>16</sup> The Hon’ble Supreme Court established a robust legal mechanism to hold corporations in high-risk industries accountable. For large construction firms engaged in inherently dangerous activities, this means liability is virtually absolute, leaving little room to escape responsibility for harm. The Hon’ble Supreme court by its doctrine “**Lifting the Corporate Veil**” has consistently refused to let principal employers hide behind the façade of subcontracting. The "control and supervision" test established in *Dharangadhra Chemical Works* is mostly used to identify the true employer.<sup>17</sup> Courts have repeatedly held that the non-transferable obligation to provide a safe place of work rests with principal employer who ultimately controls the worksite and profits from the labour. The doctrine of “**Res Ipsa Loquitur**” is particularly relevant to construction accidents. As per this doctrine, Courts draws an inference that when an incident is of a kind that does not ordinarily happen without the neglect and the instrumentality resulting the mishappening was under the opponent's exclusive control. The onus shifts to employer to prove that they were not negligent.<sup>18</sup>

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<sup>14</sup> The Occupational Safety, Health and Working Conditions Code, 2020 (Act No. 37 of 2020).

<sup>15</sup> K. R. Shyam Sundar, "A Critical Analysis of the Labour Codes," *Economic and Political Weekly*, Vol. 55, No. 40 (2020).

<sup>16</sup> *M.C. Mehta v. Union of India*, AIR 1987 SC 1086.

<sup>17</sup> *Dharangadhra Chemical Works Ltd. v. State of Saurashtra*, AIR 1957 SC 264.

<sup>18</sup> See *Pushpabai Purshottam Udeshi & Ors. v. Ranjit Ginning & Pressing Co. (P) Ltd.*, AIR 1977 SC 1735, where the Supreme Court discussed the application of this doctrine.

## 4. THE GROUND REALITY - A CHASM OF INJUSTICE

### ABDICATION OF ENFORCEMENT

The enforcement of safety laws is the weakest link in the system. The labour inspectorate is crippled by understaffing, lack of specialized training, and endemic corruption.<sup>19</sup> Scholars describe this phenomenon as “regulatory capture,” where influential construction industry groups shape policy to their advantage, ensuring that enforcement stays weak and largely non-confrontational. Inspections are often sporadic and superficial, and penalties are rarely severe enough to serve as a real deterrent. The Comptroller and Auditor General (CAG) has, in successive reports, highlighted how state welfare boards have become vast repositories of idle funds, amounting to tens of thousands of crores.<sup>20</sup> The failure to utilize the funds in the form of cess collected under the BOCW Act is a national tragedy. But a stark contrast can be seen in states like Kerala, with its strong union presence and political will, has achieved high rates of worker registration and benefit-disbursal, whereas states like Uttar Pradesh and Bihar, which supply the bulk of migrant labour, have demonstrably failed to utilize the funds meant for their citizens.<sup>21</sup>

### OCCUPATIONAL HEALTH

Employer liability is often narrowly conceived as responsibility for sudden, traumatic accidents. A far more insidious threat is the prevalence of occupational diseases with long latency periods. Workers those who are exposed to silica dust from stone crushing develop silicosis, a fatal and incurable lung disease and exposure to asbestos leads to life threatening cancer diseases. But proving a causal link is a Herculean task for workers, and the law has been slow to effectively address employer liability for these slow-motion fatalities.<sup>22</sup>

## 5. COMPARATIVE PERSPECTIVES

The UK’s (HASAWA) Act 1974 and the US OSH Act of 1970 offer examples of strong, centralized regulatory systems. Both take a proactive, preventive approach, reinforced by the

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<sup>19</sup> Tata Institute of Social Sciences (TISS), *A Study on the Efficacy of the Labour Inspection System in India*, 2022.

<sup>20</sup> Comptroller and Auditor General of India, *Performance Audit of the Implementation of the Building and Other Construction Workers Act*, Report No. 18 of 2024.

<sup>21</sup> Centre for Budget and Governance Accountability (CBGA), *A Study on the Functioning of BOCW Welfare Boards in India*, 2023.

<sup>22</sup> People's Union for Civil Liberties (PUCL), *Silicosis: A Report on the Scourge of Dust*, 2021.

real threat of substantial fines. In the UK, the Corporate Manslaughter and Corporate Homicide Act 2007 goes further, holding companies criminally responsible for deaths due to gross negligence. Whereas Brazil offers a more analogous comparison like India, it has a large informal construction sector and significant social inequality. However, its framework includes a "Labour Inspectorate" with considerable power, a specialized system of Labour Courts known for being pro-worker, and strong constitutional provisions. Brazil's Ministry of Labour maintains a "dirty list" (*lista suja*) of employers found to be using slave-like labour, who are then blocked from receiving public loans, providing a powerful market-based deterrent.<sup>23</sup> On the other aspects, the ILO's **Convention 167 (Safety and Health in Construction industry)** provides a global gold standard. But its non-ratification by India is a significant lacuna in the country's commitment to international best practices.

## 6. THE PATH FORWARD - A BLUEPRINT FOR REFORM

An independent, empowered, and technically proficient body such as a National Construction Safety Authority modelled on the UK's HSE, is non-negotiable. This authority must have the power to set standards, conduct surprise audits, impose crippling fines, and prosecute offenders. Further, All construction companies should have a Public "Safety Rating System" based on their safety record. A poor rating should automatically disqualify them from bidding for public contracts, creating a powerful market incentive for compliance. Also Banks and other financial institutions funding major construction projects should be required to closely examine the Safety Rating of the companies, whom they offer funds. Linking project financing to a strong safety ratings would provide a meaningful credit score for employers for prioritizing worker protection. The compensation system must also be removed from the adversarial court process. A mandatory, employer-funded insurance scheme, linked to a universal worker identity, would also ensure efficient, automatic payouts and would be accessible across states. Nationwide Promotion for Aadhaar-linked digital registry for all construction workers would be the first step to formalization. The role of unions and NGOs cannot be ignored. The state must facilitate, the unionization of construction workers and support civil society organizations which provide legal aid, awareness, and collective bargaining support. A national legal aid portal and helpline should also be established.

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<sup>23</sup> International Labour Organization, *Labour Inspection in Brazil: An Overview*, 2019.

## **7. CONCLUSION:**

India's legal framework for employer liability is impressive on paper, built on constitutional principles and detailed statutes. Yet in practice, it is weakened by poor enforcement, widespread informality, and institutional difference. The daily, preventable injuries and deaths on construction sites are not just unfortunate incidents but they are stark indictment of a development model that reshapes the entire system of governance. A nation's progress is not measured by the height of its skyscrapers, but by the dignity and security it guarantees its citizens. For India's infrastructure to be truly sustainable, the foundation, the rights safety, and dignity of construction workers must be made. This is not just a topic of legal reform it is an inquiry of the country's commitment to building a fair and just society

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