



# LABOUR LAW COMPLIANCE UNDER STATUTORY AUDIT

PRESENTED BY:

CA VIJAY JOSHI

“A man is not paid for having a head and hands, but for using them.”

- Elbert Hubbard



# CONTENTS

- 1. Introduction
  - 2. Labour Law Compliance
  - 3. Statutory Audits
  - 4. What is the Compliance expected from Auditor?
  - 5. Benefits of Compliance
  - 6. Report on Compliance by Listed Entities
  - 7. Concluding Remarks
- 



# INTRODUCTION



- ▶ Over a period of time, the government has taken various legislative, administrative and e-governance initiatives in the field of labour laws to generate employment and to facilitate ease of doing business.
- ▶ Labour Law is the body of legislations which focus on welfare of labour and ensure the protection of rights of workers in India.
- ▶ “Labour” is a subject in “Concurrent List” under Constitution of India where both, Central and State Governments have power to enact legislation.
- ▶ Entry No. 55,61 and 65 of Union List and Entry No 22,23 and 24 of Concurrent List provide for constitutional status of labour jurisdiction.
- ▶ Labour Laws apply to almost all industrial and commercial establishments.
- ▶ Broadly, labour laws are categorized in following four categories:
  - ▶ Employment Conditions
  - ▶ Industrial Relations
  - ▶ Remuneration
  - ▶ Social Security benefits

# LABOUR LAW COMPLIANCE

- ▶ The scope of compliance is very vast and under various labour laws, the organization has to produce records of compliance as evidence.
- ▶ It is in the interest of every employer that compliance with various provisions of labour laws applicable to respective organization is ensured for it helps both the employer as well as employee and in effect, the whole nation.
- ▶ Many a laws are welfare legislations and as such, the compliance is in national interest as well.
- ▶ On Feb 21,2017, the Ministry of Labour and Employment, has issued the 'Ease of Compliance' to maintain registers under various Specified labour laws Rules, 2017 (Ease of Compliance Rules).
- ▶ As for auditors, his role is to ensure compliance and report on failures in compliance.
- ▶ Some statutes governing the entity may seek direct reporting whereas some other may seek information indirectly.



# STATUTORY AUDITS

- ▶ Audit as we know is a process of independent examination of financial records, irrespective of form of entity, with a view to give opinion thereon.
- ▶ Different statutes govern different forms of entities as well as different audit compliances are prescribed under different statutes.
- ▶ An auditor is required to prepare a report and express his opinion about 'true and fair' view of the financial statements and comment on various specific issues as required by governing statute.
- ▶ The compliance with labour laws as applicable to an entity under audit is thus, a part of audit process and being mandated by law, an auditor is under obligation to examine the compliance and comment on its status.
- ▶ This presentation examines the role of auditor in the area of labour law compliance, its obligations and benefits of such compliance to both, auditor as well as auditee.



# STATUTORY AUDITS

- ▶ There are many audits mandated by different statutes of various forms of entities.
- ▶ Prominent amongst them are:
  - ▶ Companies Act, 2013
  - ▶ Income Tax Act, 1961
  - ▶ Any other respective governing statute
- ▶ The reporting obligation under these statutes is 'Direct' as well as 'Indirect'.
- ▶ Apart from the statutory requirement referred to above, the methodology prescribed mandates examination of compliance to be verified by auditor. These are stated under 'Standards of Audit' or SA.
- ▶ SA 250 specifically mandates verification of compliance of other laws as applicable and comment on any non-compliance.

# AUDIT OF FINANCIAL STATEMENTS

- ▶ In conducting an audit of financial statements, the overall objectives of the auditor are:
- ▶ (a) To obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, thereby enabling the auditor to express an opinion on whether the financial statements are prepared, in all material respects, in accordance with an applicable financial reporting framework; and
- ▶ (b) To report on the financial statements, and communicate as required by the SAs, in accordance with the auditor's findings.
- ▶ The Companies Act, 2013 requires the auditor to carry out his audit in accordance with the standards on auditing and in addition to the expression of opinion on the financial statements under subsection 143(2), report on various other matters: 12 under Section 143(3) and 16 under the [Companies \(Auditor's Report\), Order 2016](#) . These 28 items have differing degrees of relevance to the audit objectives.



# AUDIT OF FINANCIAL STATEMENTS

## SA 200 SCOPE OF AUDIT

- ▶ **“Scope of the Audit (Ref: Para. 3)**


- ▶ A1. The auditor's opinion on the financial statements deals with whether the financial statements are prepared, in all material respects, in accordance with the applicable financial reporting framework. Such an opinion is common to all audits of financial statements. The auditor's opinion therefore does not assure, for example, the future viability of the entity nor the efficiency or effectiveness with which management has conducted the affairs of the entity. In some cases, however, the applicable laws and regulations may require auditors to provide opinions on other specific matters, such as the effectiveness of internal control, or the consistency of a separate management report with the financial statements. While the SAs include requirements and guidance in relation to such matters to the extent that they are relevant to forming an opinion on the financial statements, the auditor would be required to undertake further work if the auditor had additional responsibilities to provide such opinions.”

- ▶ a) Reporting within the Scope of the reporting requirements of SAs
- ▶ b) Reporting on matters enquired into or findings from procedures carried out during the course of the audit.
- ▶ c) Other matters



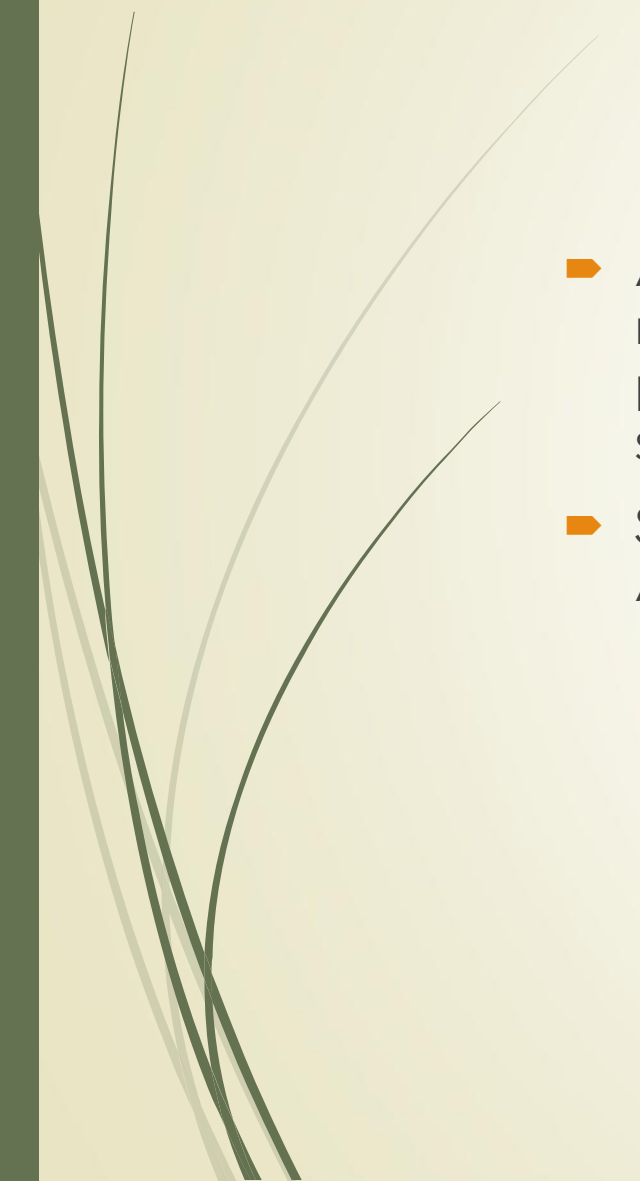


# AUDIT OF FINANCIAL STATEMENTS COMPLIANCE WITH AUDITING STANDARDS

- ▶ Section 143(9) of Companies Act, 2013 mandates compliance with the auditing standards.
  - ▶ The word 'auditing standards' is defined by section 2(7) as 'the standards of auditing or any addendum thereto for companies or class of companies referred to in sub-section 10 of section 143 of Companies Act, 2013.
  - ▶ Hence, consideration of SA 250 becomes important to the core of compliance in relation to labour law compliance.
- 



# STANDARD ON AUDITING – SA 250

- ▶ As part of Quality Control measure of audits carried out by members of ICAI, various standards on auditing have been prescribed and every member is mandated to comply with such standards.
  - ▶ SA 250 covers 'CONSIDERATION OF LAWS AND REGULATIONS IN AUDIT OF FINANCIAL STATEMENTS' by every auditor.
- 

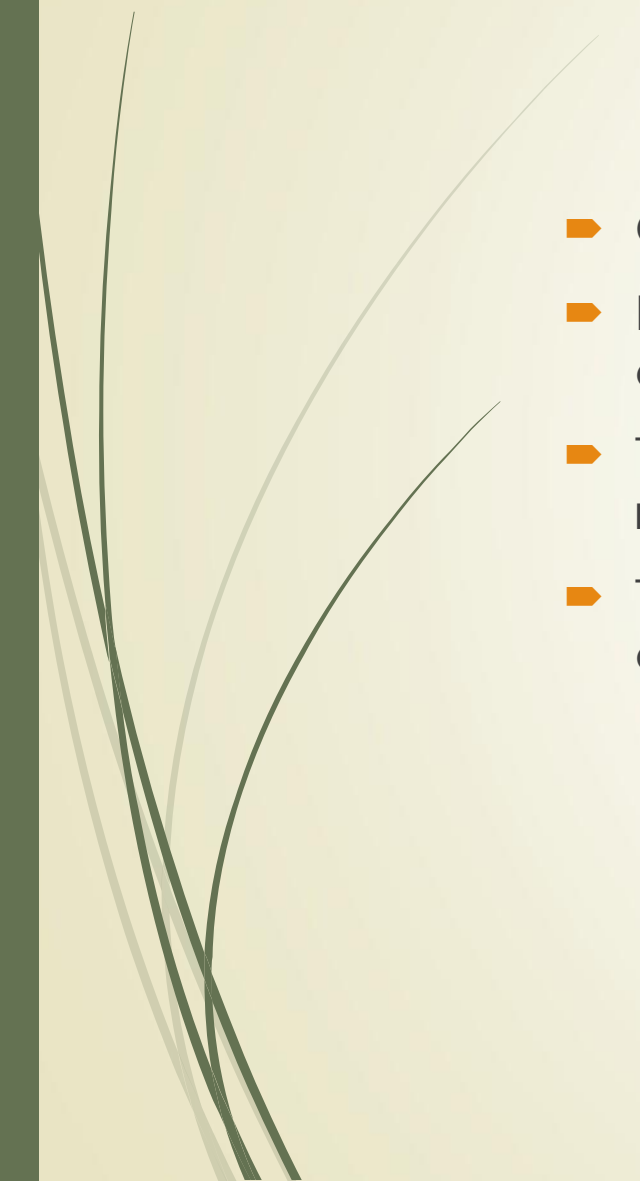


# STANDARD ON AUDITING – SA 250

- ▶ Introduction:
- ▶ This Standard on Auditing (SA) is effective from 1<sup>st</sup> April, 2009 and mainly deals with the auditor's responsibility to consider laws and regulations in an Audit of Financial Statements.
- ▶ It is not applicable to other assurance engagements in which the auditor is specifically engaged to test and report separately on non-compliance with specific laws and regulations.
- ▶ According to this SA, non-compliance means an act of omission or commission by the entity, either intentional or unintentional, which are contrary to the prevailing laws or regulations.



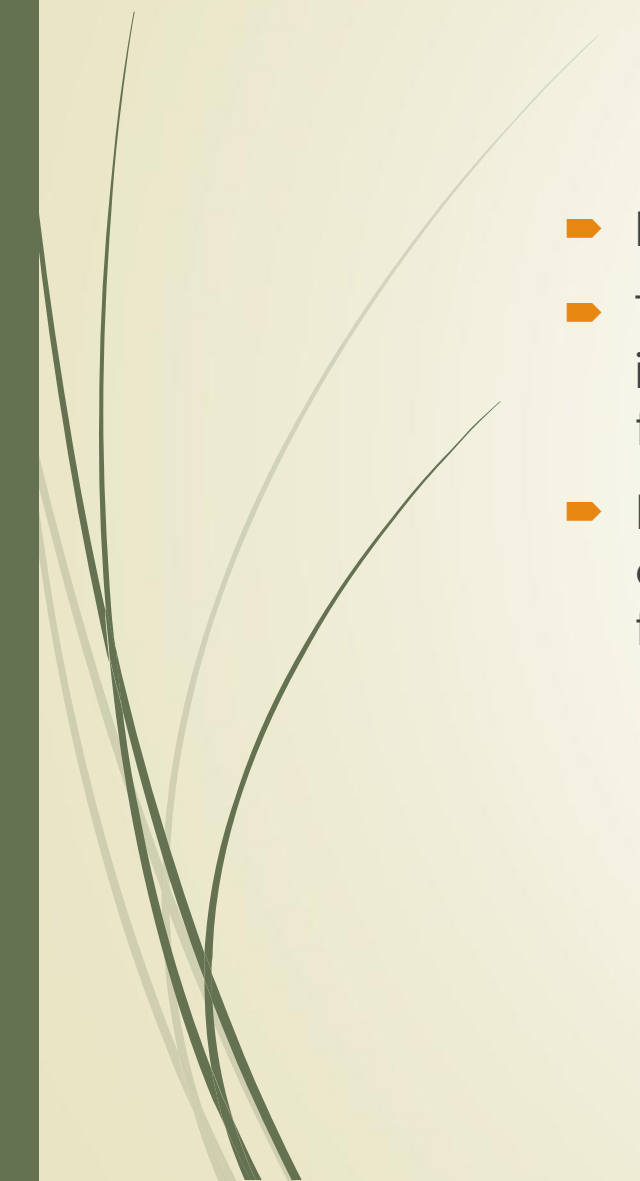
# STANDARD ON AUDITING – SA 250

- ▶ Objective of the auditor is to:
  - ▶ Perform specific audit procedures to identify the instances of non-compliance which have a direct impact on the financial statements;
  - ▶ To obtain sufficient appropriate audit evidence regarding the laws and regulations which have a direct impact on the Financial Statements;
  - ▶ To respond appropriately to non-compliance or suspected non-compliance with laws and regulations identified during the audit.
- 



# STANDARDS ON AUDITING – SA 250

- ▶ **Impact on the Financial Statements:**

- ▶ The provisions of laws and regulations may either have a direct or an indirect effect on the reported amounts and disclosures on the financial statements.
  - ▶ Non-Compliance may result in fines, penalties, litigations or other consequences for the entity that may have a material effect on the financial statements.
- 



# STANDARDS ON AUDITING – SA 250

- ▶ **Responsibility for compliance with Relevant Laws and Regulations:**

- ▶ It is the responsibility of the management, with the oversight of Those Charged With Governance (TCWG) to ensure that the entity's operations are conducted in accordance with the applicable laws and regulations.

- ▶ **Auditor's Responsibility:**

- ▶ Identify material misstatement in the Financial Statement due to non-compliance (However auditor is not responsible for preventing non-compliance and cannot be expected to detect non-compliance relating to all laws and regulations);
- ▶ To obtain reasonable assurance that the financial statements as a whole are free from material misstatements, whether caused due to fraud or error;



# STANDARDS ON AUDITING – SA 250

- ▶ **Auditor's Consideration for Compliance with Relevant Laws and Regulations:** The auditor shall obtain a general understanding of the following:
  - ▶ The legal and regulatory framework applicable to the entity or sector in which the entity operates;
  - ▶ Entity's compliance with the relevant framework.
- ▶ The auditor shall obtain sufficient appropriate audit evidence regarding compliance with other laws and regulations generally recognized to have a direct impact on the determination of material amounts and disclosures in the financial statements.



# STANDARDS ON AUDITING – SA 250

- ▶ Auditor shall perform the following audit procedures to identify the instances of non-compliance:
  - ▶ Inquiry with the management; and
  - ▶ Inspecting, correspondence, if any, with the relevant licensing or regulatory authorities.
- ▶ To maintain professional skepticism throughout the audit;
- ▶ Obtain a written representation as per SA 580, from the management stating that all the instances of non-compliance or suspected non-compliance with laws and regulations have been disclosed to the auditor.





# COMPLIANCE UNDER STATUTORY AUDIT

- ▶ An auditor has primary duty to report on matters prescribed under statute for reporting classified as 'Direct' Reporting.
- ▶ In some other cases, an auditor is expected to report on matters covered in the clauses classified as 'Indirect' Reporting.
- ▶ In order to report, an auditor has to:
  - ▶ Know the gamut of compliance;
  - ▶ Classify and analyse the information available;
  - ▶ Verify such compliance; AND
  - ▶ Report in the ,manner prescribed.

# COMPANIES ACT 2013 - COMPLIANCE

- ▶ Companies Act 2013 does not provide for Labour Law Compliance and audit.
- ▶ However, section 134(5), section 204 and section 205 directly clarify the requirement of Labour Law Compliance.
- ▶ Section 134(5)(f)-Director Responsibility Statement:
  - ▶ Directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.
- ▶ Section 204(1)-Secretarial Audit and Rule 9 of the Companies (Appointment and Remuneration Personnel) Rules, 2014
  - ▶ Secretarial Audit, inter alia, includes reporting of compliance of all applicable laws to companies.
- ▶ Section 205 (1)-Duties of Company Secretary
  - ▶ To report to the Board about compliance with the provisions of this Act, the rules made thereunder and other laws applicable to company.

# COMPANIES ACT 2013 - COMPLIANCE

- ▶ The Auditor's Report on the accounts of a Company to which CARO, 2020 applies shall inter alia, include a statement on the following matter:
- ▶ (vii) (a) whether the company is regular in depositing undisputed statutory dues including provident fund, employees' state insurance, income-tax, sales-tax, service tax, duty of customs, duty of excise, value added tax, cess and any other statutory dues to the appropriate authorities and if not, the extent of the arrears of outstanding statutory dues as on the last day of the financial year concerned for a period of more than six months from the date they became payable, shall be indicated;
- ▶ (b) where dues of income tax or sales tax or service tax or duty of customs or duty of excise or value added tax have not been deposited on account of any dispute, then the amounts involved and the forum where dispute is pending shall be mentioned. (A mere representation to the concerned Department shall not be treated as a dispute)
- ▶ Thus, statutory auditor is cast a responsibility to report directly details as above.




# NON COMPLIANCE REPORTED PUBLISHED

- ▶ CAG Report No. 19 of 2018-Compliance to Statutory Requirements by Indian railways
- ▶ Executive summary cites non-compliance with various Labour laws including Contract Labour, Minimum Wages, EPF & MPA, ESIC with details contained in the report as well as evaluation of revenue impact including penalties and fines thereunder.
- ▶ On the other hand, AQR in the case of audit of IL&FS published in 2019 contains remarks on failure of compliance with Standards on Auditing.
- ▶ The examples are quoted only to bring out importance of compliance.



# COMPLIANCE UNDER INCOME TAX ACT

- ▶ Other than Companies Act, 2013, provisions for compliance with 'other laws and regulations' have been made under Income tax Act, 1961.
  - ▶ The prominent among them is 'Tax Audit Report in Form 3CD' under section 44AB.
- 




# COMPLIANCE UNDER INCOME TAX ACT

- ▶ Clause [20(b)] of Form 3CD requires reporting on:
- ▶ Details of contributions received from employees for various funds as referred to in section 36(1)(va): (to be given in table form containing details nature of fund, sum received from employees, due date of payment under the relevant act and the amount paid with actual date of payment.
- ▶ Clause [21 (a)] requires reporting of expenditure by way of penalty, fine for violation of any law for the time being in force.
- ▶ Clause [26] requires reporting of any payments made, as referred to in section 43B, for which liability pre-existed on the first day of the previous year but was not allowed in the assessment of any preceding previous year and was paid or not paid during the year as well as liability incurred during the previous year and was paid before due date of filing of return of income or was not so paid.



# COMPLIANCE UNDER INCOME TAX ACT

- ▶ An amendment was made by Finance Act, 2019 has amended section 12AA to include therein 'the compliance of such requirements of any other law for the time being in force by the trust or institution as are material for the purpose of achieving its objects.'
  - ▶ The similar clause is included in newly inserted section 12AB which replaces erstwhile section 12AA.
  - ▶ Thus, effect of the said amendment is that every charitable institution registered under Income Tax has to ensure compliance with 'other applicable laws and regulations' in order to save itself from foregoing of benefit of exemption.
  - ▶ This has cast responsibility on Auditor furnishing report in Form 10B since the Auditor needs to keep in mind these provisions so that exemption under section 11 is properly computed.
- 



# COMPLIANCE UNDER OTHER AUDITS

- ▶ Apart from the Audit under Companies Act, 2013 and Income tax Act, 1961, other laws also mandate various audits with such laws including state legislations as well.
- ▶ These laws also include seeking compliance with labour laws indirectly as having been included in 'other compliances' or such other nomenclature.
- ▶ Thus an auditor needs to properly analyse the extent of compliance and reporting under various governing laws while framing and reporting on financial statements of an entity under audit.
- ▶ In any case, such compliances result in benefits to auditee as well as auditor.



# LABOUR LAW COMPLIANCE

S.No.	Name of legislations	Certificates to cover
1	Payment of Wages Act, 1936	1) Annual Certificate provides that the wages were paid in accordance with the Act
		2) How many number of employees in the establishment governed by the Act
		3) No deduction from wages has been made other than those authorised under the Act
		4) Calculation of wage period
2	Payment of Bonus Act, 1965	1) Determination of Available and Allocable surplus and correctness of Computation
		2) Timely payment of bonus
		3) Bonus is paid to the eligible persons.
		4) Whether the company paid minimum or maximum bonus ?

# LABOUR LAW COMPLIANCE

Sr.	Name of Legislation	Certificate to cover
3	Provident Funds and Miscellaneous Provisions Act	1) Timely deposits of employer and Employee's dues with Provident Fund 2) Reporting of cases where proceedings under the Act have been initiated against the Directors for recovery of dues. 3) If the Employer has created its own trust, whether the terms of trust are more beneficial than those provided under the trust? 4) Whether condition imposed by PF Commissioner for the creation of trust are satisfied or not?
4	Payment of Gratuity Act, 1972	1) Whether liability for gratuity has been provided for in the accounts maintained or not ? 2) Whether the company has formed another trust that would take over the liability arising out of gratuity ? 3) Number of claims during the year for the payment of gratuity and time taken for its settlement. 4) Whether the Gratuity has been paid in accordance with the provisions of the Act ? 5) Whether any dispute exists/arises against the company for non payment of gratuity ? If so, details thereof
5	Trade Union Act, 1926	1) Number of Registered Trade unions in operation in the factory and its affiliations to any All India Organisations of trade Unions.

# LABOUR LAW COMPLIANCE

Sr.	Name of Legislation	Certificate to Cover
6	Employees Compensation Act, 1923	1) Fatal Accidents are to be reported.
		2) time taken for payment for compensation. Disputes on settlement of compensation to be reported.
		3) Any case of occupational Disease reported in the factory or establishment.
		4) Insurance Cover for meeting the liability.
		5) Pending disputes under the Act and its natures along with note on liability accepted by the Employer.
7	Minimun Wages Act, 1948	1) Whether the company is paying the wages in accordance with the provisions of the Act?



# NATURE OF COMPLIANCES UNDER LABOUR LAWS

- ▶ The Ministry of Labour & Employment has come up with a unique E-Governance service called “E-Kranti” which aims to make government services accessible to the common man in his locality, through Common Service delivery outlets and ensure efficiency, transparency and reliability at affordable costs.
- ▶ The Ministry has developed a unified Web Portal called “Shram Suvidha Portal”.
- ▶ The objective of this portal is to consolidate information of Labour Inspection and its enforcements. It also facilitates reporting of inspections and submissions of returns.
- ▶ This shall help an auditor to easily verify the compliance for the purpose of reporting compliance.



# NATURE OF COMPLIANCES UNDER LABOUR LAWS

- ▶ In view of the start-up entrepreneurs increasing in the country pursuant to 'Make in India' programme being implemented by Government of India, The Ministry of Labour and Employment has issued an advisory to the States/Union Territories/Central Labour Enforcement Agencies for a compliance mechanism based on self-certification and various regulations under different types of Labour Laws.
- ▶ Startups shall be allowed to self-certify with 9 labour and environment laws through the Mobile App.
- ▶ No inspection will be conducted for a period of 3 years.
- ▶ Startups can be inspected for the violation of labour laws if complaint is received in writing and approved by at least one level senior to the inspecting officer.
- ▶ However, self certification is the facility for first year only. For the subsequent years, startups have to furnish compliance returns.



# BENEFITS OF LABOUR LAW COMPLIANCE

- ▶ It enhances the morale and social security of the employees.
- ▶ It helps in maintaining the sense of belongingness between employer and employees.
- ▶ Timely payment of wages, remuneration and statutory amount of the employees such as – pension, gratuity, PF etc results in lesser grievances.
- ▶ Harmonious labour relation helps prevent lockout, retrenchment, strikes etc.
- ▶ Lesser visits from Government Authorities helps smooth working.
- ▶ Measures like E-kranti facilitates compliances and brings transparency.
- ▶ Auditor's reporting ensures statutory compliance helping nation building.



IF YOU THINK  
COMPLIANCE  
IS EXPENSIVE


TRY  
NON-COMPLIANCE

FORMER U.S. DEPUTY ATTORNEY GENERAL PAUL MCNULTY





# CONCLUSION

- ▶ The statutory audit is not merely compliance with AS and SAs but should be more compliance oriented.
  - ▶ Many a deficiencies even in audit reporting have been found and the time has come where every auditor needs to take serious look at compliance and reporting.
  - ▶ This is not to say that all the reports are deficient but an effort is being made to make one aware to look at compliance with labour laws and reporting under statutory audit in terms of duty cast on auditor.
  - ▶ The cost of compliance is negligible when compared to benefits derived from the same.
- 



# Thank You



**All ownerships and credits for pictures, logos, copyrights and trademarks rest with the owners.**

**We thank all of them for the use of their material in this presentation to educate users.**